File No. 241136 **Committee Item No.** 11
Board Item No. ____

COMMITTEE/BOARD OF SUPERVISORS

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Completed by: Brent Jalipa **Date** November 26, 2024
Completed by: Brent Jalipa **Date** ____

FILE NO. 241136 RESOLUTION NO.

1 [Agreement - Potrero Neighborhood Collective, LLC - Potrero Yard Infrastructure Facility
2 Design-Build-Finance-Operate-Maintain Agreement - 2500 Mariposa Street - Not to Exceed $275,500,000]

3

4 **Resolution conditionally approving an Infrastructure Facility Design-Build-Finance-**
5 **Operate-Maintain Agreement for the San Francisco Municipal Transportation Agency**
6 **(SFMTA) Potrero Yard Modernization Project, subject to final pricing; delegating**
7 **authority under Charter, Section 9.118(b) for the SFMTA Board of Directors to approve**
8 **the final pricing within the following not to exceed pricing limits: 1) an initial milestone**
9 **payment of up to $75,000,000 at financial close, 2) a relocation payment of up to**
10 **$500,000 within 60 days of completing temporary relocation of Potrero Yard operations,**
11 **3) a milestone payment of up to $200,000,000 by no later than 2033, and 4) an initial**
12 **maximum annual availability payment of up to $42,200,000 (in Fiscal Year 2030 dollars)**
13 **over a maintenance term not to exceed 30 years after the scheduled substantial**
14 **completion date, anticipated in 2029, subject to interest rate and credit spread**
15 **fluctuations between commercial close and financial close and annual Consumer Price**
16 **Index adjustments, with the part of the payment covering capital costs increasing 1%**
17 **per year and sculpted to align with the SFMTA's existing debt service obligations;**
18 **authorizing the Director of Transportation to execute the Form Project Agreement, as**
19 **modified with the final pricing and to substantially include the terms of a Draft Small**
20 **Business Enterprise/Disadvantaged Business Enterprise Plan, with Potrero**
21 **Neighborhood Collective, LLC or its affiliate; and to authorize the Director of**
22 **Transportation to enter into amendments or modifications to the Final Project**
23 **Agreement that do not materially increase the obligations or liabilities to the City and**
24 **are necessary to effectuate the purposes of the Agreement or this Resolution; and**
25 **making environmental findings under the California Environmental Quality Act.**

WHEREAS, The San Francisco Municipal Transportation Agency (SFMTA) has determined it is critical to replace its outdated Potrero Yard facility at 2500 Mariposa Street in the Mission District to provide the best quality transit service for all of San Francisco, one of the most important tools we have to fight climate change; and

WHEREAS, The SFMTA's Potrero Yard Modernization Project (Project) includes the joint development of a modern bus storage and maintenance facility (Bus Yard Component), affordable and moderate-income housing with limited commercial space if financially feasible (Housing Component), and shared infrastructure supporting both the Bus Yard and Housing Components (Common Infrastructure), with a potential paratransit facility as an alternative if constructing housing above the Bus Yard Component is not feasible; and

WHEREAS, The Bus Yard Component and Common Infrastructure are, collectively, the Infrastructure Facility; and

WHEREAS, The Bus Yard Component will dramatically improve efficiency of Muni operations and maintenance by providing adequate space and operational flow for bus maintenance, parking, and circulation of the electric trolley bus fleet; and

WHEREAS, By improving the work environment for SFMTA frontline operations and maintenance staff, who currently work in a 109-year-old facility that is significantly outdated and undersized, buses can be repaired faster for more reliable Muni service; and

WHEREAS, The Project would be the nation's first known joint development of a bus storage and maintenance transit facility with housing, and if feasible, would address a critical housing need with up to 465 affordable rental units proposed for low and moderate income households; and

WHEREAS, On April 7, 2020, by Resolution 200407-035, a copy of which is on file with the Clerk of the Board of Supervisors in File No. 240136, the SFMTA Board of Directors

1 authorized the SFMTA to use a joint development procurement method to deliver the Project
2 and seek approval from the Board of Supervisors for that method; and
3 WHEREAS, On March 16, 2021, by Ordinance 38-21, a copy of which is on file with the
4 Clerk of the Board of Supervisors in File No. 240136, the Board of Supervisors approved a
5 joint development delivery method and a best-value selection of the developer for the Project
6 and exempted various Project agreements from certain San Francisco Administrative Code
7 requirements that are inconsistent with the joint development delivery method, with the
8 Ordinance being signed by the Mayor and effective on April 25, 2021; and
9 WHEREAS, On November 1, 2022, after a competitive solicitation process, by
10 Resolution No. 221101-105, the SFMTA Board of Directors authorized the Director of
11 Transportation to execute the Predevelopment Agreement for the Project with Potrero
12 Neighborhood Collective LLC ("Lead Developer"), wholly owned by Plenary Americas US
13 Holdings, a leading long-term investor, developer, and manager of public infrastructure; and
14 WHEREAS, The Predevelopment Agreement was fully executed as of November 2,
15 2022, and it was subsequently amended by a First Amendment to the Predevelopment
16 Agreement that was fully executed as of May 29, 2024, a copy of which is on file with the
17 Clerk of the Board of Supervisors in File No. 240937, and a Second Amendment to
18 Predevelopment Agreement dated as of October 1, 2024, a copy of which is on file with the
19 Clerk of the Board of Supervisors in File No. 240937, and which was approved by the Board
20 of Supervisors under Resolution No. 534-24; and
21 WHEREAS, Under the Predevelopment Agreement, the Lead Developer is responsible
22 for conducting predevelopment work and negotiating with the SFMTA specific transaction
23 documents to deliver the Project, including the Infrastructure Facility Design-Build-Finance-
24 Operate-Maintain Agreement (Project Agreement) for the Infrastructure Facility and housing
25 agreements for the Housing Component; and

1 WHEREAS, Construction of the Infrastructure Facility would commence before
2 construction of the Housing Component, and the SFMTA expects to submit forms of housing
3 agreements for the Housing Component to the SFMTA Board of Directors and the Board of
4 Supervisors in spring 2025; and
5 WHEREAS, The Project Agreement would serve as the primary contract between the
6 City, acting through the SFMTA, and a to-be-established entity ("Principal Project Company")
7 that would be an affiliate of the Lead Developer, covering the design, construction, and
8 financing of the Infrastructure Facility, and the operation and maintenance of certain elements
9 over a 30-year period after the scheduled substantial completion date; and
10 WHEREAS, The SFMTA and the Lead Developer have negotiated the form of the
11 Project Agreement ("Form Project Agreement"), a copy of which is on file with the Clerk of the
12 Board of Supervisors in File No. 241136, which requires the SFMTA to pay any possessory
13 interest tax assessed on the Principal Project Company's interest under the Form Project
14 Agreement, and will be modified to substantially incorporate a Draft Small Business
15 Enterprise/Disadvantaged Business Enterprise Plan (SBE/DBE), a copy of which is on file
16 with the Clerk of the Board of Supervisors in File No. 241136; and
17 WHEREAS, The Form Project Agreement includes risk allocation, technical, regulatory,
18 and insurance requirements, performance standards, and a payment mechanism; and
19 WHEREAS, Under this payment mechanism, the SFMTA would make milestone
20 payments at various times up to no later than 2033, and annual availability payments, paid on
21 a quarterly basis, during the 30-year maintenance term; the availability payments would be
22 structured as single, combined payments covering project debt, performance, and equity
23 return, subject to deductions for non-compliance with specified performance standards; and
24 WHEREAS, Finalizing the pricing for the Form Project Agreement depends on the
25 Lead Developer's selection of a design-build contractor, completion of operations and

maintenance pricing, and completion of the structure, terms, and pricing of the Project's debt financing, all of which require additional time and coordination; and

WHEREAS, The SFMTA has determined that obtaining approval of the Form Project Agreement from the Board of Supervisors before finalizing pricing is necessary to demonstrate the City's commitment to the Project, strengthen the ability to secure favorable financing terms, and avoid delays that could increase costs or disrupt the project schedule; and

WHEREAS, In accordance with Charter, Section 9.118(b), which requires Board of Supervisors approval for agreements involving anticipated expenditures of $10 million or more or a term of 10 years or more, the SFMTA requests the Board of Supervisors to: 1) conditionally approve the Form Project Agreement, subject to final pricing; 2) delegate authority under Charter, Section 9.118(b) for the SFMTA Board of Directors to approve the final pricing for the Form Project Agreement, provided final pricing falls within the following not to exceed limits: (i) an initial milestone payment of up to $75,000,000 at financial close; (ii) a relocation payment of up to $500,000 within 60 days of completing temporary relocation of Potrero Yard operations; (iii) a milestone payment of up to $200,000,000 by no later than 2033; and (iv) an initial maximum annual availability payment of up to $42,200,000 (in Fiscal Year 2030 dollars) over a maintenance term not to exceed 30 years after the scheduled substantial completion date, anticipated in 2029, subject to interest rate and credit spread fluctuations between commercial close and financial close, and annual Consumer Price Index (CPI) adjustments, with the part of the availability payment covering capital costs increasing 1% per year and sculpted to align with SFMTA's existing debt service obligations, and 3) authorize the Director of Transportation to execute the Form Project Agreement, as modified to include the final pricing approved by the SFMTA Board of Directors and to substantially incorporate the terms of the Draft SBE/DBE Plan; and

WHEREAS, On December 3, 2024, the SFMTA Board of Directors approved Resolution No. ______________, a copy of which is on file with the Clerk of the Board of Supervisors in File No. ____________, authorizing the Director of Transportation to request from the Board of Supervisors 1) conditional approval of the Form Project Agreement subject to final pricing, 2) delegation of authority under Charter, Section 9.118(b) for the SFMTA Board of Directors to approve the final pricing for the Form Project Agreement within the not to exceed pricing limits described in this Resolution, and 3) authorization for the Director of Transportation to execute the Form Project Agreement, as modified to include the final pricing approved by the SFMTA Board of Directors and to substantially include the terms of the Draft SBE/DBE Plan, with the Principal Project Company, and

WHEREAS, The National Environmental Policy Act (NEPA) process is currently in underway for the Project and anticipated to be completed in November 2024; the actions contemplated in this Resolution do not commit the City to any proposed project or any project alternative, modification, or mitigation regarding the Project until, unless, and before the NEPA Approval is obtained and City approves the Project, alternative, modification or mitigation; and

WHEREAS, On January 11, 2024, by Motion No. 21482, a copy of which is on file with the Clerk of the Board of Supervisors in File No. 231256, the Planning Commission certified as adequate, accurate, and complete the Environmental Impact Report for the Project (Final EIR) pursuant to the California Environmental Quality Act (Pub. Resources Code, Sections 21000 et seq., “CEQA”), the CEQA Guidelines (Cal. Code Reg. tit. 14, Sections 15000 et seq.), and Chapter 31 of the San Francisco Administrative Code; and

WHEREAS, On January 11, 2024, by Motion No. 21483, a copy of which is on file with the Clerk of the Board of Supervisors in File No. 231256, the Planning Commission, based on substantial evidence in the entire record of proceedings, made certain findings regarding the environmental impacts of the Project analyzed in the FEIR, rejected alternatives as infeasible,

1 adopted the proposed mitigation monitoring and reporting program (“MMRP”), and set forth a
2 Statement of Overriding Considerations explaining why the benefits of the Project outweigh
3 the unavoidable adverse environmental effects identified in the FEIR and that those adverse
4 environmental effects are therefore acceptable; and
5 WHEREAS, The Planning Department has evaluated the revisions to the Project
6 contemplated in the Project Agreement, as conditionally approved by this Resolution and
7 determined based on the requirements of CEQA, that no additional environmental review is
8 necessary; said determination is on file with the Clerk of the Board of Supervisors in File No.
9 231256 and is incorporated herein by reference; and
10 WHEREAS, The Board affirms the CEQA determination for the Project and based on
11 substantial evidence in the entire record of these proceedings, further affirms that there are no
12 substantial changes proposed for the Project, or the circumstances under which it will be
13 undertaken, that would require major revisions of the FEIR due to new significant
14 environmental effects or a substantial increase in the severity or previously identified
15 significant effects, and further, no new information of substantial importance that shows the
16 Project will have significant effects not discussed in the FEIR, substantially more severe
17 significant effects than discussed in the FEIR, or mitigation measures or alternatives that the
18 Project sponsor has declined to adopt; and
19 WHEREAS, On January 11, 2024, by Motion No. 21487, which is on file with the Clerk
20 of the Board of Supervisors in File No. 240136, the Planning Commission approved the
21 conditional use authorization for the Project and determined that the Project is consistent with
22 the General Plan, and the Board of Supervisors affirms that determination; and
23 WHEREAS, On January 11, 2024, by Resolution No. 21484, the Planning Commission
24 recommended approval to the Board of Supervisors of the General Plan amendments
25 ordinance necessary to facilitate the Project ("General Plan Ordinance"), and by Resolution

No. 21485, recommended approval to the Board of Supervisors of the Planning Code and Zoning Map amendments ordinance creating the Special Use District necessary to facilitate the Project ("Special Use District Ordinance"), which are on file with the Clerk of the Board of Supervisors in File Nos. 231256 and 240047, and are incorporated herein by reference; now, therefore, be it

RESOLVED, That the Board of Supervisors 1) conditionally approves the Form Project Agreement, as modified to include final pricing approved by the SFMTA Board of Directors and to substantially incorporate the terms of the Draft SBE/DBE Plan (as modified, the "Final Project Agreement"), 2) delegates authority under Charter, Section 9.118(b) for the SFMTA Board of Directors to approve the final pricing for the Form Project Agreement within the not to exceed pricing limits of (i) an initial milestone payment of up to $75,000,000 at financial close, (ii) a relocation payment of up to $500,000 within 60 days of completing temporary relocation of Potrero Yard operations, (iii) a milestone payment of up to $200,000,000 by no later than 2033, and (iv) an initial maximum annual availability payment of up to $42,200,000 (in Fiscal Year 2030 dollars) over a maintenance term not to exceed 30 years after the scheduled substantial completion date, anticipated in 2029, subject to interest rate and credit spread fluctuations between commercial close and financial close and annual CPI adjustments, with the part of the payment covering capital costs increasing 1% per year and sculpted to align with SFMTA's existing debt service obligations, and 3) authorizes the Director of Transportation to execute the Final Project Agreement with the Principal Project Company; and, be it

FURTHER RESOLVED, That as required by Administrative Code, Section 23.38, the Board of Supervisors authorizes and approves the Form Project Agreement requirement that the SFMTA pay any possessory interest tax assessed on the Principal Project Company's interest under the Final Project Agreement; and, be it

FURTHER RESOLVED, That the Board of Supervisors authorizes the Director of Transportation to make any additions, amendments, or other modifications to the Final Project Agreement that the Director determines are in the best interests of the City furthers the purposes of this Resolution, provided such changes do not materially increase the obligations or liabilities to the City or materially decrease the benefits to the City from those in the Form Project Agreement.

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Item 11 **File 24-1136**	**Department:** San Francisco Municipal Transportation Agency (MTA)

EXECUTIVE SUMMARY

Legislative Objectives

- The proposed resolution conditionally approves a Design-Build-Finance-Operate-Maintain (DBFOM) Agreement for SFMTA's Potrero Yard Modernization Project, subject to final pricing, with financial limits including an initial milestone payment of up to $75 million at financial close, a relocation payment up to $500,000, a milestone payment of up to $200 million by 2033, and an initial maximum annual availability payment of $42.2 million in FY 2030 dollars, adjusted for interest rate fluctuations, credit spread changes, and CPI increases over a 30-year maintenance term.
- The resolution would delegate authority under Charter Section 9.118(b) to the SFMTA Board of Directors to approve final pricing within these limits.

Key Points

- The Potrero Yard Modernization Project replaces a 109-year-old facility with a four-level structure for up to 246 buses and includes plans for up to 465 affordable housing units and commercial space, contingent on financing feasibility. The DBFOM agreement covers the Bus Yard Component and Common Infrastructure but excludes the Housing and Commercial Component.
- The final contract will be with Potrero Neighborhood Collective (PNC), a developer consortium selected to develop the Potrero Yard Modernization project following a competitive solicitation, or a special purpose corporate affiliate of Plenary Americas, an infrastructure financing firm that is part of PNC.

Fiscal Impact

- The developer secures private financing for design, construction, and maintenance, while the City provides fixed milestone payments of $75 million at Financial Close, $200 million by 2033, a $500,000 relocation payment, and availability payments starting at $42.2 million annually, subject to adjustments, over the 30-year maintenance term. Over the thirty-year maintenance term, PNC currently estimates the availability payments will total $1,967,956,981.
- Our analysis suggests the City could deliver the project at a lower cost if conventional public financing sources were available. The capital cost is $121 million more than a conventional general obligation bond and the annual operating cost is $10 million more than the City is currently spending on the facility.
- SFMTA has secured $70.1 million in funding, leaving approximately $2.2 billion in additional funding needed based on the current project estimate, which may come from sources such as bonds or federal programs.

Recommendation

- Approval of the proposed resolution is a policy matter for the Board of Supervisors.

MANDATE STATEMENT

City Charter Section 9.118(b) states that any contract entered into by a department, board or commission that (1) has a term of more than ten years, (2) requires expenditures of $10 million or more, or (3) requires a modification of more than $500,000 is subject to Board of Supervisors approval.

BACKGROUND

Potrero Yard Modernization Project

Potrero Yard, a 4.4-acre site located at Bryant Street and Mariposa Street, is a 109-year-old facility that currently serves as a trolley bus storage yard and maintenance facility. The Potrero Yard Modernization Project (the Project) will replace the existing trolley bus yard and two-story building with a four-story bus maintenance and storage facility (Bus Yard Component) and shared systems and utilities (Common Infrastructure), collectively referred to as the Infrastructure Facility.

The site is being developed through a "joint development" model, and the proposed Project would also add approximately 2,886 square feet of ground floor commercial space and housing adjacent to (along Bryant Street) and above the Bus Yard Component to provide up to 465 units of housing (Housing and Commercial Component), all of which would be affordable to low- to moderate-income residents.[1]

If construction of the units above the bus yard is infeasible due to inadequate financing, an alternative proposal would extend the bus yard facility onto the fifth floor to house SFMTA's Paratransit division, including administrative and operation spaces and paratransit vehicle storage. The alternative proposal would still provide for the low-income units of housing adjacent to the bus yard, along Bryant Street.

Procurement

In March 2021, the Board of Supervisors granted SFMTA exemption from certain procurement and contracting requirements of Chapters 6, 14B, and 21 of the Administrative Code to facilitate a joint development delivery method for the Project and permit a best-value selection of the

[1]According to SFMTA, the project includes up to 465 affordable housing units across three developments, to be delivered under their own housing agreements separate from the SFMTA Project Agreement. About 245 units for low-income residents (30%-80% AMI) will be split between approximately 99 units at Bryant Street and the remainder atop the bus yard. Another 218 middle-income units (81%-120% AMI) will also be on the bus yard podium, with a preference for SFMTA staff if the preference complies with the Fair Housing Act.

developer team (File 20-0947).[2] Following a competitive procurement process that began with a Request for Qualifications (RFQ) in August 2020, SFMTA selected three proposers to participate in a Request for Proposals (RFP) issued in April 2021. Of the three proposals submitted by December 30, 2021, SFMTA determined that two were eligible to submit revised proposals. In May 2022, SFMTA issued an RFP addendum requesting revised proposals from the two eligible proposers. Potrero Neighborhood Collective (PNC) submitted a revised proposal that met expectations, while the other proposer did not submit a revision. As a result, SFMTA selected PNC as the Lead Developer to deliver the Potrero Yard Modernization Project. Plenary Americas US Holdings, Inc.[3] is the controlling equity member of PNC. PNC also includes affordable and workforce housing developers, design consultants, construction management consultants, and an infrastructure facility maintenance consultant.

The proposed Project is in predevelopment, as discussed below, and will be constructed in three phases. Phase 1 includes the design and construction of the Bus Yard Component and common infrastructure it would share with the Housing and Commercial Component (collectively, the Infrastructure Facility). Phase 2 includes construction of housing along Bryant Street, and Phase 3 includes construction of housing on top of the bus maintenance and storage facility. According to SFMTA staff, construction of Phase 1, including the bus facility and common infrastructure is anticipated to begin in third quarter of CY 2025.

Predevelopment Agreement

In November 2022, SFMTA executed a predevelopment agreement with PNC. The predevelopment agreement covers the Project's predevelopment activities, including development of financing plans, schematic designs, and maintenance plans, project entitlements, and contractor procurement to design and build the Infrastructure Facility. The agreement also provides the terms for the SFMTA and PNC negotiations to develop the terms for one or more project agreements to deliver the Bus Yard, the Common Infrastructure, and Housing and Commercial Components. The project agreements will be subject to Board of Supervisors' approval.

Under the terms of the predevelopment agreement, the Lead Developer is required to fund all predevelopment activities at their own expense. Compensation to the Lead Developer is contingent upon achieving specific milestones, such as obtaining project entitlements and reaching financial close for the Project Agreement. However, if the City terminates the agreement without cause, or if the agreement expires without the execution of the Project

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[2] Chapter 6 of the Administrative Code contains policies for the City's public works procurements. Chapter 14B contains policies for Local Business Enterprise and non-discrimination in the City's contracting processes. Chapter 21 contains policies related to the City's contracting process for commodities and professional services. The Project is not exempt from certain prevailing wage, First Source Hiring, Local Business Enterprise, and State Apprenticeship Program requirements.

[3] According to its website, Plenary Americas is a long-term investor, manager, and developer of public and private infrastructure, with a focus on public-private partnerships. Plenary Americas is owned by CDPQ, an institutional investor that manages insurance programs and pension plans in Quebec.

Agreement, the City is obligated to provide a termination payment to the Lead Developer, provided the Lead Developer is not at fault. This termination payment is in addition to a continuation payment, intended to support ongoing predevelopment activities. The original agreement provided for a maximum term of 568 days from November 2, 2022 to May 23, 2024 and a maximum potential payment of $14,340,000 to the Lead Developer, including a potential termination payment not to exceed $9,990,000 and potential continuation payment of $4,350,000 if approved by the Board of Supervisors.

In March 2024, the Board of Supervisors approved the predevelopment agreement to facilitate payment of the continuation payment (File 24-0136).

In May 2024, SFMTA administratively approved the First Amendment to the predevelopment agreement to: (a) extend the predevelopment term by approximately five months through October 18, 2024; (b) extend the outside delivery date of the project by two years to November 30, 2029 and extend the timing for substantial completion of the housing and commercial component; (c) update the description and unit counts for the affordable housing projects; (d) specify terms related to the alternative paratransit component; and (e) make changes to the housing developers and affordable housing developers.

In October 2024, the Board of Supervisors adopted a resolution that retroactively approved a Second Amendment to the predevelopment agreement to: (a) increase the termination payment by $5,556,566 for a total termination payment that will not exceed $15,546,566, (b) require the Lead Developer to perform the activities described in the Second Amendment, (c) extend the predevelopment agreement term to no later than July 31, 2025, and (d) be retroactively effective as of October 17, 2024 (File 24-0937).

Loan Agreement for Affordable Housing at 2888 Bryant Street

In December 2023, the Mayor's Office of Housing and Community Development (MOHCD) executed a loan agreement with PY Bryant Street Housing, LP, to support the development of affordable housing at 2888 Bryant Street, Phase 2 of the Project. The loan provides $3 million in funding to finance predevelopment activities for the construction of a 96-unit affordable rental housing project and a 1,000-square-foot commercial space intended for nonprofit or community-serving tenants. According to MOHCD staff, approximately $0.8 million of the $3 million has been disbursed.

The loan agreement ties directly to the Potrero Yard Modernization Project, as the 2888 Bryant Street housing development will be constructed on a subdivided portion of the property leased by SFMTA to PY Bryant Street Housing, LP or an affiliate created for financing purposes. Under the terms of the loan, the borrower must meet specific requirements, including securing site control, complying with affordability and tenant selection criteria, and using the funds solely for eligible predevelopment expenses. At the time of the loan agreement, construction was estimated to begin by December 30, 2025, and be completed by May 30, 2028, with occupancy by December 30, 2028. However, the dates in the loan agreement will be updated after final selection of the bus yard design-builder to align with the broader timeline and objectives of the

bus yard which will determine the construction and occupancy dates of the Bryant Street housing project.

DETAILS OF PROPOSED LEGISLATION

The proposed resolution conditionally approves an Infrastructure Facility Design-Build-Finance-Operate-Maintain (DBFOM) Agreement between SFMTA and the Principal Project Company (PPC), which would either be Potrero Neighborhood Collective (PNC) or a special purpose corporate affiliate of Plenary Americas, for SFMTA's Potrero Yard Modernization Project's Bus Yard Component and Common Infrastructure, subject to final pricing. The resolution delegates authority to the SFMTA Board of Directors to approve final DBFOM agreement, subject to pricing within specified limits, including an initial milestone payment of up to $75 million, a relocation payment of up to $500,000 within 60 days of completing temporary relocation of Potrero Yard operations, a milestone payment of up to $200 million by 2033, and an initial maximum annual availability payment of $42.2 million over a 30-year maintenance term. The availability payment escalates by changes in interest rates, credit spread risks[4], the Consumer Price Index, and alignment with SFMTA debt obligations. The proposed resolution also authorizes the Director of Transportation to execute the Form Project Agreement, as modified with the final pricing and to substantially include the terms of a Draft Small Business Enterprise/Disadvantaged Business Enterprise Plan with PNC or its affiliate[5].

The proposed resolution also authorizes the City to pay possessory interest tax on the PPC's interest to the Bus Yard property under the DBFOM agreement, if it is assessed. The waiver does not apply to any commercial and residential uses of the wider Potrero Yard project, which will be developed under separate agreements and subject to Board of Supervisors' approval.

The proposed resolution authorizes the Director of Transportation to execute and amend the DBFOM agreement with the PPC, provided such changes do not materially increase the City's obligations, while ensuring CEQA compliance.

Delegated Authority

According to SFMTA, the Department is requesting delegated authority to the SFMTA Board of Directors to approve final pricing strengthen the City's negotiating position. According to the

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[4] Credit spread risk refers to the potential increase in borrowing costs due to changes in the difference between project-specific interest rates and benchmark rates, such as government bonds. Under the agreement, if credit spreads rise before Financial Close, the City may need to adjust availability payments to account for higher financing costs incurred by the Principal Project Company.

[5] The agreement requires the PPC and its contractors to meet specified Local Business Enterprise (LBE) and Disadvantaged Business Enterprise (DBE) participation goals by subcontracting work to qualifying businesses during the design, construction, and operation phases. Contractors must demonstrate good faith efforts to achieve these goals, provide documentation of compliance, and report progress regularly, with penalties applied for non-compliance without valid justification.

Department, establishing a maximum budget for the bus facility will increase the likelihood that contractor bids will come in at or below the budget.

We note, however, that SFMTA and PPC do not need Board of Supervisors approval to provide cost guidance to project bidders during the vendor solicitation process that is currently underway. City Departments routinely do so without approval of the legislative body, as do other municipalities.

Project Timeline

According to SFMTA staff, on January 11, 2024, the San Francisco Planning Commission certified the Project's Final Environmental Impact Report (FEIR) and adopted findings under CEQA. On March 12, 2024 the Board of Supervisors approved the project entitlements ordinance which was signed into law by the Mayor on March 22, 2024. In March 2024, SFMTA formally initiated the National Environmental Policy Act (NEPA) process with the Federal Transit Administration (FTA), Regional District 9 office. SFMTA anticipates that FTA will provide NEPA clearance by the end of 2024. On November 5, 2024 a draft Small Business Enterprise/Disadvantaged Business Enterprise (SBE/DBE) plan was formally released. The Principal Project Company is currently soliciting design and construction bids for the Infrastructure Facility. A Request for Proposals for design-build contractors was issued November 2024 with bids due in the first quarter of 2025.

The proposed agreement outlines the following key milestones:

- **Financial Close:** Marks the completion of all financing agreements and preconditions, ensuring the PPC has secured necessary funds without City debt. This milestone is required before construction can begin on the Infrastructure Facility and the deadline will be determined in the final agreement.
- **Construction Start:** Begins after financial close and the issuance of the Notice to Proceed, contingent on regulatory approvals, finalized designs, and site readiness. Timing aligns with minimizing transit disruptions. According to SFMTA, construction is anticipated to start in the third quarter of 2025.
- **Substantial Completion:** Achieved when construction meets all technical and performance standards, making the bus yard operational. The 30-year operating term begins at this point, and the City starts making annual availability payments to the PPC, payable on a quarterly basis. The availability payments are unitary payments that account for project debt, ongoing maintenance and operations, and equity returns. According to SFMTA, construction is anticipated to reach substantial completion by 2029.
- **Handback Condition:** At the end of the 30-year term, the PPC must return the facility to the City in compliance with handback requirements, including completing any renewal work and ensuring operational readiness.

Scope of Work

The Potrero Yard Design-Build-Finance-Operate-Maintain (DBFOM) Agreement focuses on constructing and managing a modernized bus yard facility and the Common Infrastructure

(collectively, the Infrastructure Facility) for SFMTA. The agreement specifies the development of a four-level podium structure capable of storing at up to 246 buses and supporting future battery-electric transit needs. The Principal Project Company (PPC) is responsible for substantial completion of the construction by 2029 and will then manage the facility for up to 30 years.

The Principal Project Company (PPC) and SFMTA have defined responsibilities under the DBFOM agreement, distributed across the design, build, finance, operate, and maintain phases. Below is a detailed breakdown of the responsibilities outlined in the DBFOM agreement, followed by a clarification of elements excluded from the agreement:

Design Responsibilities

The PPC is responsible for designing the Infrastructure Facility in compliance with SFMTA's specifications. This includes creating a fully integrated Building Information Model (BIM) to support construction, operation, and facility management. The design must meet criteria such as seismic resilience, LEED Gold certification, and compatibility with battery-electric bus infrastructure. The PPC must also ensure that designs incorporate sustainability measures, including energy efficiency and water management systems. SFMTA reviews design deliverables, ensuring compliance with city regulations, zoning laws, and environmental policies. The agency oversees the design process, approving deviations or changes only when they align with project goals and legal standards.

The design must address the requirements of the Infrastructure Facility, which are the primary deliverables under this agreement. The Bus Yard Component includes storage for up to 246 buses, a 68% increase in current capacity, as well as maintenance facilities, administrative offices, and a training center. The structure will be designed to accommodate future housing or paratransit components above it. Common Infrastructure includes shared structural systems, utility connections, vertical circulation elements, and stormwater management systems to support both the Bus Yard Component and potential future alternatives.

Build Responsibilities

The PPC is tasked with demolishing the existing facility and constructing a four-story structure with spaces for bus storage, maintenance, and training facilities. The construction scope includes site preparation, the development of the Bus Yard's structural systems, the installation of utilities, and the creation of related infrastructure, such as a "warm shell" retail space ready for operational use. Additionally, the construction must ensure compatibility with future joint development alternatives, such as housing or paratransit facilities.

The PPC must adhere to safety protocols, traffic control measures, and community impact mitigation, such as noise and dust suppression. SFMTA ensures that construction activities comply with relevant permits and city requirements while monitoring project progress. Regular project meetings are conducted to coordinate construction timelines and resolve challenges that might affect municipal services.

Finance Responsibilities

The PPC is required to secure and manage private financing to cover the design, construction, and operational phases of the project. This involves preparing financial models, managing risks, and ensuring budgetary compliance throughout the project lifecycle. The PPC must also report on financial performance to SFMTA at regular intervals, maintaining transparency and accountability. To recover its upfront costs, the PPC is reimbursed by the City through a combination of milestone payments and availability payments:

- **Milestone Payments**: These payments are tied to the successful completion of specific project milestones during the design and construction phases. They cover a portion of direct costs, such as labor, materials, and equipment, while providing partial recovery of the PPC's initial investment.
- **Availability Payments**: Starting after Substantial Completion, these quarterly payments compensate the PPC for project debt, ongoing operations and maintenance activities, and equity return. They include funding for lifecycle replacements and performance incentives. Deductions may apply if performance standards are not met, or parts of the facility are unavailable.

The Milestone Payment and Availability Payments may be deducted if certain design, construction, and operating metrics are not met. The City's financial obligations under the agreement are limited to Milestone Payments and Availability Payments, as defined in the contract. The Principal Project Company is solely responsible for obtaining and repaying all project financing, including debt, equity, or other funding sources, with no recourse to the City for any portion of the developer's financial obligations.

Operational Responsibilities

During the Infrastructure Facility Management phase, the PPC is responsible for managing the Infrastructure Facility. This includes maintaining utilities, vertical circulation systems (elevators and stairs), common-use spaces, IT infrastructure, and building security systems. The PPC also operates a Help Desk to address infrastructure-related service requests and incidents.

Transit-specific operations, such as bus maintenance schedules, fleet logistics, and transit equipment management, remain the responsibility of the San Francisco Municipal Transportation Agency. The PPC must coordinate with SFMTA to ensure that facility operations do not interfere with transit services. SFMTA oversees the PPC's performance to ensure compliance with contractual obligations, safety standards, and service-level requirements.

Maintenance Responsibilities

The PPC is responsible for maintaining the Infrastructure Facility to ensure long-term functionality, compliance with performance standards, and adherence to contractual handback requirements. This includes routine inspections, preventive maintenance, and lifecycle replacements for critical systems such as HVAC, fire safety equipment, and elevators, as well as building envelope components like roofs, walls, and windows. The PPC must promptly address unplanned repairs and emergencies, track activities through a Help Desk system, and provide detailed monthly and annual reports on maintenance performance. All maintenance must align

with sustainability objectives and city policies, with oversight and audits conducted by SFMTA to ensure compliance. Maintenance schedules must also be coordinated with SFMTA to avoid disruptions to transit operations.

Exclusions from the Agreement

The agreement explicitly requires the design and construction of the Infrastructure Facility but does not mandate the development of either the Housing and Commercial Component or paratransit facilities. The Housing and Commercial Component is the preferred alternative and would involve multi-story housing adjacent to and above the Bus Yard Component and ground-floor commercial spaces above the Bus Yard. The Paratransit Component is a contingency option to replace housing, should it be deemed infeasible, and would provide maintenance, storage, and operations facilities for paratransit vehicles. Both alternatives would require separate agreements and additional funding to proceed.

This agreement does not obligate the development of housing or paratransit facilities. These components are treated as potential future projects, with the PPC only required to deliver the structural foundation and Common Infrastructure needed to support such alternatives.

FISCAL IMPACT

The proposed resolution conditionally approves a Design-Build-Finance-Operate-Maintain (DBFOM) Agreement between the City and Principal Project Company, subject to final pricing, with the following key components:

- A milestone payment of up to $75 million at financial close.
- A relocation payment of up to $500,000 within 60 days of the temporary relocation of Potrero Yard operations.
- A milestone payment of up to $200 million due at Substantial Completion of the Infrastructure Facility.[6]
- Annual availability payments, paid on a quarterly basis, starting at up to $42.2 million over a maintenance term not to exceed 30 years after the scheduled Substantial Completion date, anticipated in 2029. These payments are subject interest rate and credit spread fluctuations between commercial close and financial close and annual CPI adjustments, with the part of the payment covering capital costs increasing 1% per year and sculpted to align with SFMTA's existing debt service obligations.

Exhibit 1 below summarizes the City's estimated costs under the proposed agreement's current financial model, which totals approximately $2.24 billion.

[6] The current Project Agreement requires this milestone payment at Substantial Completion. The proposed resolution extends the payment until 2033 at the latest.

Exhibit 1: City Costs Under DBFOM Agreement

Milestone Payment 1	75,000,000
Milestone Payment 2	200,000,000
Relocation Payment	500,000
Availability Payments - Capital	1,269,493,222*
Availability Payments - Operating	698,463,759*
Total City Cost	**2,243,456,981**

Source: SFMTA

*Subject to interest rate, credit spread fluctuations, and CPI adjustments between commercial close and financial close and annual CPI adjustments during the operating period.

Based on the current financial model developed by PNC, the Availability Payment is estimated to have an initial value of up to $42,228,876, which includes a fixed portion of $27,547,685 for capital expenses and $14,681,191 for operating and maintenance expenses, which is escalated based on inflation. The Availability Payment may also be escalated by changes in interest rates and credit spreads between the execution of the final Project Agreement and Financial Close. Over the thirty-year maintenance term, PNC currently estimates the Availability Payments will total $1,967,956,981, with the initial Availability Payment in 2030 totaling $42.2 million and the final Availability Payment in 2059 totaling $91.6 million. The agreement, under Section 4.7.2, requires the PPC to provide an updated financial model reflecting final financing terms, adjustments to costs or revenues, and any impacts from mitigation measures, which must be reviewed and approved by the City as part of the Financial Close process.

Cost Assessment

Capital Costs

SFMTA provided for our review an independent cost estimate of the project, which found the total construction cost for the new bus yard would be approximately $560 million. Final construction costs are not known because the design-build procurement process is underway and will not be complete until early 2025.

The current PNC financial model estimates that the total financing required for construction is $828.8 million, including $174.9 million in financing costs, resulting in total development costs of $653 million (excluding financing expenses).

If the City issued its own debt to finance and build the facility, we estimate the total debt service for a $653 million project would be $1.42 billion.[7] This is $121.1 million less than the City's expected contribution for capital costs under the proposed agreements, which is $1.54 billion ($275 million in Milestone Payments plus $1.27 billion in Availability Payments). However, the City's current Capital Plan only has $300 million earmarked for transportation (a general obligation bond in 2026). The general obligation bond and General Fund certificate of

[7] Assuming a 6 percent interest rate and thirty-year term.

participation programs are both currently at capacity in the capital plan. Providing additional City debt for transportation would require changes to the capital plan or changes to the City's debt policies. We also note that voters rejected a $400 million general obligation bond proposal for transportation in June 2022.

As of this writing, we do not know if SFMTA has capacity to finance the project with revenue bonds.

In summary, our analysis suggests the City could deliver the project at a lower cost if conventional public financing sources were available. Given the limited availability of infrastructure financing, SFMTA has devised the proposed project delivery mechanism to replace the Potrero Bus Yard.

Operating Costs

Under the proposed agreement, SFMTA would conduct transit-specific operations for the bus yard while delegating infrastructure maintenance responsibilities to the developer. The developer would handle regular maintenance, repairs, replacements, inspections, and renewal work in accordance with the Infrastructure Facilities Maintenance (IFM) Management Plan to ensure the facility remains safe, operational, and compliant with all regulatory requirements over the 30-year term. These obligations include implementing technology enhancements, managing utilities, addressing vandalism within specified thresholds, and preparing the facility to meet contractual handback conditions. Despite these responsibilities, the $14.7 million in annual maintenance expenses SFMTA would incur to pay the developer appears high, particularly when compared to the agency's current spending on Potrero Bus Yard building maintenance, which is $2.7 million. Regular compliance monitoring and reporting would also be required, with noncompliance potentially leading to City intervention and cost recovery.

Housing Costs

Housing costs are not included in this agreement, though the new bus yard will incorporate shared infrastructure capable of supporting up to 465 housing units. At an estimated average cost of $1.2 million per unit, the total housing development cost is projected at $558 million. With an assumed City subsidy of $350,000 per unit, the City's share of the housing costs would amount to approximately $162.8 million. Currently, the Mayor's Office of Housing and Community Development (MOHCD) has committed $35 million, subject to loan committee approvals, to fund the housing portion of the project at 2888 Bryant Street.

Funding Sources

According to SFMTA, the list of funds below are funds programmed within SFMTA's 5-Year Capital Improvement Program and reflected as revenues in the City's 10-Year Capital Plan (File 23-0265). All funds are secured for Milestone Payment #1, except for $5,750,000 in Caltrans SB 1 State of

Good Repair funds, a formula source, expected as a FY 26 allocation, in Summer 2025. SFMTA provided the following information about funding sources for the proposed agreement:

Exhibit 2: Funding Sources

Milestone Payment 1 & Relocation Payment

Source	Amount	Status
CalTrans -SB 1 State of Good Repair (FY23-FY26)*	$14,420,253	Partially Secured
SFCTA - Prop K/ L Sales Tax	12,309,786	Secured
FTA - Section 5337 (FY19)	350,000	Secured
MTC - Regional Measure (RM3)	20,895,747	Secured
City General Fund (2014 Prop B - Transit)	8,587,401	Secured
FTA - Section 5307 (FY22-FY24)	18,936,813	Secured
Total	**$75,500,000**	

*Future fiscal year funds are programmed.

Milestone Payment 2

Source	Amount	Status
Future General Obligation Bond 2026	**$200,000,000**	TBD

Availability Payments

Source	Amount	Status
TBD	**$1,967,956,981**	TBD
Total City Funding Requirement	**Amount**	**Amount Secured**
	$2,243,456,981	**$70,100,000**

Milestone Payment 2: According to SFMTA, if voters fail to approve a GO Bond—whether one or multiple—the Department would explore alternative revenue or financing options, such as the Federal Transit Administration (FTA) Transportation Infrastructure Finance and Innovation Act (TIFIA) program.

Availability Payments: According to SFMTA, planned sources for the availability payments include Municipal Transportation Fund (SFMTA Operating Budget); Transportation Sales Taxes (post FY 30); Caltrans – SB 1 Funds (post FY 30); FTA – Section 5307 (post FY 30).

Source: SFMTA

As shown above, SFMTA has secured $70,100,000, with an additional $5,400,000 expected in FY 2025-26 or $75,500,000 out of total project costs of $2,243,456,981.

RECOMMENDATION

Approval of the proposed resolution is a policy matter for the Board of Supervisors.

London Breed, Mayor

Stephanie Cajina, Vice Chair
Mike Chen, Director
Steve Heminger, Director

Dominica Henderson, Director
Fiona Hinze, Director
Janet Tarlov, Director

Jeffrey Tumlin, Director of Transportation

November 19, 2024

The Honorable Members of the Board of Supervisors
City and County of San Francisco
1 Dr. Carlton Goodlett Place, Room 244
San Francisco, CA 94102

Subject: Request for Approval – Resolution authorizing conditional approval of the Infrastructure Facility Design-Build-Finance-Operate-Maintain Agreement (Project Agreement) for the SFMTA Potrero Yard Modernization Project

Honorable Members of the Board of Supervisors:

The San Francisco Municipal Transportation Agency (SFMTA) requests that the San Francisco Board of Supervisors approve a resolution conditionally approving the design, build, finance, operate, and maintain agreement (Project Agreement) for the SFMTA Potrero Yard Modernization Project's Infrastructure Facility. The facility is comprised of the project's Bus Yard Component and Common Infrastructure, subject to final pricing. We are also requesting delegation of authority under Charter, Section 9.118(a) for the SFMTA Board of Directors to approve entering into the final Project Agreement with Potrero Neighborhood Collective, LLC, or their affiliate.

The final pricing for the Project Agreement shall not exceed an initial milestone payment of $75,000,000 due at Financial Close, payment of $500,000 payable within 60 days of completing temporary relocation of the Potrero Yard's operations, a milestone payment of $200,000,000 payable no later than 2033, and an initial maximum annual availability payment of $42,200,000 payable during the Infrastructure Facility's maintenance period, not to exceed 30 years after Substantial Completion.

The initial maximum annual availability payment (in 2030 dollars) shall be subject to adjustment between the Commercial Close and Financial Close based on movements in interest rates and credit spreads during this period pursuant to the terms of the Project Agreement, and a portion of the annual availability payment shall be adjusted pursuant to the Project Agreement based on annual movements in the CPI over the course of the 30-year maintenance period.

The terms of the Project Agreement will require the SFMTA to make the $200,000,000 milestone payment no later than 2033 and will provide the flexibility to make such payment as early as 2027. In the event SFMTA makes the milestone payment in 2027, its maximum availability payment obligations could be reduced in excess of $10 million per annum for the first four years of operations, though the actual amount of such reduction will be dependent on interest rates at the time that the milestone payment is made.

Background
Originally built in 1915, the existing Potrero Yard is situated on 4.4 acres bounded by Bryant, 17th, Hampshire and Mariposa Streets (Project Site). It is the first site scheduled for modernization under the Program due to the age of the current facility, and because rapidly changing innovations in bus fleet technology make it obsolete. The existing two-story building originally operated as a streetcar facility housing 100 streetcars. It has since been expanded to house and maintain approximately 138 40-foot and 60-foot trolley buses, although it remains functionally obsolete.

The Project would replace the existing two-story building and bus yard with the Bus Yard Component, a modern, four-story, efficiently designed bus maintenance and storage facility. The Bus Yard Component would support the SFMTA's growing fleet as it transitions to battery electric vehicles and serve as a consolidated site for Muni Operator Training and Muni Street Operations. It would provide open, naturally lit, and well-ventilated working conditions for employees, ensure resiliency to climate change and natural disasters, and improve transit service by reducing vehicle breakdowns, increasing on-time performance, and reducing passenger overcrowding. The Bus Yard Component would increase the maintenance and storage capacity at the Project Site by approximately 68 percent. When completed, the Bus Yard Component will become a beacon of the SFMTA's commitment to workspace improvements for its employees.

A key objective of the Program is to maximize the use of SFMTA properties through a joint development model. Joint development supports major City policies and enables the SFMTA to generate sustainable revenue for transit and other transportation services, while supporting the City's Public Land for Housing initiative. As part of this effort the SFMTA is facilitating a Housing Component at the Project Site, if feasible. The Lead Developer has proposed approximately 465 housing units as part of the Housing Component. Construction of the Housing Component would not begin until after construction commences on the Infrastructure Facility. Agreements related to the Housing Component will be brought to the Board of Directors at a future meeting.

The Developer Partner and Predevelopment Agreement (PDA)
On November 2, 2022, the SFMTA and the Lead Developer entered into a Predevelopment Agreement (PDA), under which the Lead Developer must perform certain predevelopment activities for the Project that are required to achieve substantial completion of Infrastructure Facility by November 30, 2029. These predevelopment activities include, among others, preparing and obtaining design documents, due diligence materials, and other development materials and analyses, developing the commercial and financing structure for the Project, procuring contracts for the design, construction, and long-term maintenance for certain elements, of the Infrastructure Facility, and negotiating with the SFMTA separate agreements to deliver different Project components (Transaction Documents).

Under the PDA, the Lead Developer must perform these predevelopment activities at their own expense. Compensation to the Lead Developer is contingent on the parties achieving certain milestones, such as securing Project entitlements and reaching financial close for the Project Agreement. However, if the City terminates the PDA without cause, or the PDA term expires (July 31, 2025) without the parties executing the Project Agreement, the City must make a termination payment to the Lead Developer, capped at $15,546,566, so long as the Lead Developer is not at fault. This termination payment would be in addition to the $4.35 million continuation payment approved on March 15, 2024.

To date, SFMTA staff and the Lead Developer have collaborated extensively to negotiate and develop the Project's Transaction Documents, including the Project Agreement, to transition the Project from the predevelopment phase into the delivery phase.

Project Agreement

The Project Agreement would be the primary contract between the SFMTA (acting on behalf of the City) and a principal project company to be established by the Lead Developer (Principal Project Company). The Principal Project Company is responsible for the design, construction, financing, and operation and maintenance of the Infrastructure Facility for 30 years after substantial completion, with some elements turned over to SFMTA for maintenance.

As compensation to the Principal Project Company, the SFMTA will make milestone payments at specified times prior to substantial completion and quarterly availability payments for 30 years after substantial completion, subject to deductions for failing to meet performance or maintenance standards specified in the Project Agreement. No progress payments are paid during construction. The availability payment is a unitary payment which includes payment on account of debt, performance and equity return. (See section on Payment Mechanism, below.)

Summarized below are some of the key provisions from the Project Agreement.

<u>Project Agreement Contractual Structure and Financial Structure</u>

The Project Agreement would be entered into between the City and the Principal Project Company, a special purpose vehicle established by the Lead Developer, with Plenary Americas as the sole equity member. The Project Agreement obligates the Principal Project Company to design, build, and finance the Infrastructure Facility, and operate and maintain certain elements of it for 30 years after substantial completion.

Following execution of the Project Agreement, the Principal Project Company is required to deliver certain key subcontracts, including the design and construction contract and long-term maintenance contract (unless the Principal Project Company self-performs the maintenance work), and deliver financing documents to achieve financial close. These financing documents include Principal Project Company's financial model, loan/bond documents, and equity contribution agreements. These

financing documents will define the Principal Project Company's debt and equity funding sources, certificates, and representations and warranties. The Project Agreement also includes Principal Project Company's lenders' rights and how any potential refinancing or equity transfer is addressed.

The Project Agreement requires the City to (i) provide SFMTA's most recent audited financial statements, together with economic information with respect to the SFMTA; (ii) agree to customary financial and securities disclosures; and (iii) provide customary documents, certificates or undertakings that Principal Project Company may reasonably request in connection with its financing.

Pricing and Term

The Project Agreement obligates the Principal Project Company to complete design and construction of the Infrastructure Facility on a fixed price basis and reach substantial completion by a date certain milestone no later than November 30, 2029. This fixed price and date certain completion is subject to relief provisions described in the agreement that may increase cost or extend the completion date, should conditions of the relief events be satisfied.

Following substantial completion, the Principal Project Company is required to perform long-term maintenance of the Infrastructure Facility in accordance with technical and commercial requirements for a period of 30 years. At the end of this period, the Principal Project Company must "hand back" the Infrastructure Facility in a condition that meets certain requirements set forth in the Project Agreement.

Delivery Methodology

The Project Agreement includes performance-based technical requirements that govern how the Principal Project Company's design-build contractor must design and build the Infrastructure Facility. These technical requirements include general provisions for project and construction management, performance-based design criteria for the Bus Yard Component and Common Infrastructure, environmental compliance requirements, and general requirements for construction.

The Project Agreement requires the Principal Project Company to operate and maintain certain elements of the Infrastructure Facility, including major building systems such as the outer envelope waterproofing, main structural systems, and capital renewal of major mechanical systems serving the Bus Yard Component and Common Infrastructure over a 30-year term following substantial completion. The Project Agreement includes performance-based technical requirements that govern such operations and maintenance.

The operations and maintenance work would be performed under a regime that assesses performance and requires compliance in order for the Principal Project Company to receive the full availability payment. As an example, the performance measures include requirements for availability of various functional units spanning the entire Infrastructure Facility that are measured by key performance indicators.

Failure by the Principal Project Company to meet the functional unit requirements results in pre-determined deductions to the availability payments for that period of time of non-performance (and those deductions may continue to accrue if the event is not rectified within certain time frames). Higher priority functional units are prescribed a higher deduction amount which escalates based on the duration of unavailability of that functional unit.

Payment Mechanism

The Project Agreement requires City to make various milestone payments and availability payments to compensate the Principal Project Company for its design, construction, financing, and operation and maintenance of the Infrastructure Facility. The availability payment is a unitary payment that comprises payment for all of these functions. The payments are comprised of (i) two milestone payments, for $75,000,000 at Financial Close and $200,000,000 no later than 2033; and (ii) annual availability payments, paid on a quarterly basis.

The availability payments are subject to deductions for non-compliance with performance standards. Deductions are calculated based on the criticality and duration of any performance lapse, incentivizing timely and high-quality service.

Other Obligations

The Project Agreement requires Principal Project Company to be responsible for obtaining regulatory approvals (other than CEQA and NEPA, which are the City's responsibility to obtain) and for complying with all regulatory approvals and processes; and to comply with all applicable laws, including environmental compliance with respect to the certified EIR under CEQA.

The Project Agreement requires City to review submittals in a timely manner and in accordance with its technical requirements, and to provide reasonable assistance to Principal Project Company for obtaining regulatory approvals.

Termination

Consistent with typical City contract provisions, the SFMTA maintains the right to terminate the Project Agreement for convenience at any time.

If the Project Agreement terminates for any reason including a default by the Principal Project Company, the City must pay termination compensation as described in the Project Agreement. The amount of the compensation, including deductions for things like City damages and losses in the event of a Principal Project Company default, will be determined at the time of termination pursuant to specific formulas included in the Project Agreement. The formulas vary based on the cause of the termination, but these formulas largely protect debt in most scenarios (except debt would likely take a hit in a PPC default scenario), and sometimes protect equity in varying degrees (or not at all) depending on the cause of the termination.

If there is any termination of the Project Agreement, the Project Agreement describes the termination procedures and duties which include a collaborative approach to developing a transition plan for the orderly transition of work, whereby the Principal Project Company relinquishes control of the Project and City may elect to continue any Key Contracts.

Lender Oversight

The Project Agreement includes step-in rights for lenders (for them to protect the Project Agreement, which is their only means for repayment), which generally leads to considerable lender involvement and oversight of Principal Project Company. This oversight structure can provide added protection for the SFMTA.

Key Risks

The Project Agreement allocates a number of project risks as between the parties. Among them:

- Financial close risk – generally borne by Principal Project Company unless reason falls under an exception (e.g., major adverse market issue, City fault, etc.).
- Financing risk – generally borne by Principal Project Company.
- Interest rate/spread risk – interest rate risk is borne by City; spread risk is shared.
- Refinancing gain – split 50-50.
- Design and construction risks – generally borne by Principal Project Company, but there are exceptions for various site conditions risks and relief events.
- Site condition risks – depends on the risk, but significant risk transfer to City. Current unresolved issues relate to permits, geotechnical, utilities, utility coordination/delays
- Interface risks with housing – largely borne by Principal Project Company (which has led them to require a facility interface agreement with the housing developers/contractors)
- Infrastructure Facility Maintenance risks – generally borne by Principal Project Company and supported through the performance deduction regime, but there are exceptions or certain relief events

Community and Stakeholder Engagement

Since December 2017, the Project team has led an extensive, inclusive, and transparent stakeholder engagement process to develop and design the new Potrero Yard. Community engagement has guided the Project through initial planning, the lead developer procurement process, and the launch of the City's first public-private partnership that produced the 100 percent schematic designs we have today. Community and stakeholder engagement continues as the Project enters the final phase of the PDA. Since November 2022, the SFMTA and PNC have worked with the community and other stakeholders to further develop project design. Stakeholders were engaged on open decision points, such as the look and feel of the new building, ideas for the Project's community and commercial spaces, the streetscape on 17th Street, landscaping, and public art.

Bilingual English-Spanish communications have been part of the engagement from the start. Major outreach activities to educate the community about the Project and solicit feedback have included 18 community events and open houses, 44 public tours of Potrero Yard, 46 meetings of the Potrero Yard Neighborhood Working Group, and 50+ meetings and listening sessions with community organizations. The Project team has also participated in annual community-sponsored events, including Carnaval SF; District 9 Neighborhood Beautification Day; Fiesta de las Americas; Friends of Franklin Square Park Cleanups; KQED Fest; Phoenix Day; Potrero Hill Festival; Sunday Streets - Valencia Street; and Transit Month.

In addition, the Project has been presented in a variety of public hearing settings to date, where formal public comment has been received and documented. Recently this has included the EIR certification process and entitlements approvals, including the Recreation and Parks Commission (December 21, 2023), the Planning Commission (January 11, 2024), Board of Supervisors Land Use and Transportation Committee (February 26, 2024), Board of Supervisors Budget and Finance Committee (February 28, 2024) and the full Board of Supervisors (March 5 and March 12, 2024). Additionally, the second extension to the Predevelopment Agreement was also approved at recent hearings, including the SFMTA Board of Directors (October 1, 2024), Board of Supervisors Budget and Finance Committee (October 9, 2024) and the full Board of Supervisors (October 22, 2024).

Paralleling the community outreach effort has been an extensive in-reach effort to frontline staff at Potrero Yard, including maintenance, operations, and administrative employees. Since November 2022, six in-reach meetings were held to update and solicit input from frontline staff, in addition to involving leadership at the Potrero Yard in the design of interior spaces in the Bus Facility. The SFMTA is working to establish a workforce housing preference for SFMTA employees at the site. A staff survey was developed with feedback from labor partners and targeted input from transit operators, maintenance, and other frontline staff. The survey was completed on January 10, 2024, and assessed SFMTA employees' housing needs and interest in the proposed workforce housing.

Authority for the Project Agreement

The SFMTA respectfully requests that the San Francisco Board of Supervisors approve the resolution conditionally approving the Project Agreement and delegate authority under Charter, Section 9.118(a) for the SFMTA Board of Directors to approve entering into the final Project Agreement with Potrero Neighborhood Collective, LLC, or their affiliate, within the pricing limits established herein.

Sincerely,

Jeffrey P. Tumlin
Director of Transportation

POTRERO YARD MODERNIZATION PROJECT

INFRASTRUCTURE FACILITY

DESIGN-BUILD-FINANCE-OPERATE-MAINTAIN AGREEMENT[1]

BETWEEN

THE CITY AND COUNTY OF SAN FRANCISCO

ACTING BY AND THROUGH THE

SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY

AND

[PRINCIPAL PROJECT COMPANY][2]

DATED AS OF [__________, 2025]

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INFRASTRUCTURE FACILITY DESIGN-BUILD-FINANCE-OPERATE-MAINTAIN AGREEMENT

POTRERO YARD MODERNIZATION PROJECT

This Design-Build-Finance-Operate-Maintain Agreement (this "**Agreement**") is made and entered into this [__] day of [___________], 2025 (the "**Effective Date**"), by and between the City and County of San Francisco ("**City**"), a municipal corporation acting in its proprietary capacity by and through the San Francisco Municipal Transportation Agency ("**SFMTA**"), and [__________] ("**Principal Project Company**" or "**PPC**"), a [___________], with reference to the following facts:

A. City, under the jurisdiction of the SFMTA, owns the real property commonly known as 2500 Mariposa Street in San Francisco, California, which is a 4.4-acre site comprised of Assessor's Block No. 3971-001, bounded by Bryant Streets, 17th Street, Hampshire Street, and Mariposa Street ("**Project Site**").

B. The Facility to be constructed at the Project Site is comprised of (i) a transit operations component ("**Bus Yard Component**"), (ii) a Joint Development Alternative; and (iii), and the common infrastructure shared by the two components ("**Common Infrastructure**").

C. This Agreement addresses the design, construction, financing, operations and maintenance of the Bus Yard Component and Common Infrastructure (collectively, the "**Infrastructure Facility**"), and the integration of the Infrastructure Facility, and its interface with, a future Joint Development Alternative (together, the "**Project**"). If implemented, (i) one or more Housing and Commercial Components will be delivered by a JDA Project Company, under one or more separate agreements; and (ii) the Paratransit Facility will be delivered by Principal Project Company pursuant to a Change Order or by Principal Project Company or another entity under a separate agreement. The Infrastructure Facility and the Joint Development Alternative are, collectively, the "**facility**".

D. On March 16, 2021, the Board of Supervisors of the City and County of San Francisco ("**Board of Supervisors**") adopted Ordinance No. 38-21 ("**Ordinance**"), which codifies SFMTA's authority to procure the Facility under a joint development approach.

E. On April 9, 2021, City issued a request for proposals to design, build, finance, and maintain the Infrastructure Facility and design, build, finance, operate and maintain the Housing and Commercial Component at the Project Site ("**RFP**"), and on September 12, 2022, City determined that the proposal submitted by Potrero Neighborhood Collective LLC ("**PNC**") offered the best value to City for the development of the Facility.

F. On November 2, 2022, City and PNC, a limited liability company organized under the laws of the State of Delaware, entered into a Predevelopment Agreement for the Potrero Yard Modernization Project (as amended, the "**Predevelopment Agreement**").

G. City and PNC agreed upon the terms provided in this Agreement for the development of the Infrastructure Facility pursuant to the processes described in the Predevelopment Agreement. On [__________], 2025, PNC formed the Principal Project

Company as a special purpose entity to enter into this Agreement. Principal Project Company is ***[insert ownership structure – wholly owned by Equity Members of PNC?]*.**

H. The SFMTA Board of Directors and the Board of Supervisors of the City have authorized the Work for the Project, as specified in the Contract Documents.

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties agree as follows:

ARTICLE 1. DEFINITIONS; CONTRACT DOCUMENTS; ORDER OF PRECEDENCE; OTHER DOCUMENTS

1.1 Definitions and Interpretation

1.1.1 Definitions for certain acronyms, abbreviations and terms used in this Agreement and the other Contract Documents are contained in Exhibit 1 (Abbreviations and Definitions).

1.1.2 Unless the context otherwise requires, in this Agreement:

(a) The words “including”, “includes” and “include” will be read as if followed by the words “without limitation”;

(b) The meaning of “or” will be that of the inclusive “or”, that is meaning one, some or all of a number of possibilities;

(c) A reference to any Party or Person includes each of their legal representatives, trustees, executors, administrators, successors, and permitted substitutes and assigns, including any Person taking part by way of novation;

(d) References to days are references to calendar days, provided that if the date to perform any act or provide any Notice falls on a non-Business Day, such act or Notice may be timely performed on the next Business Day. Notwithstanding the foregoing, requirements contained in this Agreement relating to actions to be taken in the event of an emergency and other requirements for which it is clear that performance is intended to occur on a non-Business Day, shall be required to be performed as specified, even though the date in question may fall on a non-Business Day;

(e) A reference to any Governmental Entity, institute, association or body is:

(i) if that Governmental Entity, institute, association or body is reconstituted, renamed or replaced or if the powers or functions of that Governmental Entity, institute, association or body are transferred to another organization, a reference to the reconstituted, renamed or replaced organization or the organization to which the powers or functions are transferred, as applicable; and

(ii) if that Governmental Entity, institute, association or body ceases to exist, a reference to the organization which serves substantially the same purposes or objectives as that Governmental Entity, institute, association or body;

(f) A reference to this Agreement or to any other deed, agreement, document, or instrument includes a reference to this Agreement or such other deed, agreement, document or instrument as amended, revised, supplemented or otherwise modified from time to time;

(g) A reference to any legislation or to any section or provision of it includes any amendment to or re-enactment of, or any statutory provision substituted for that legislation, section or provision;

(h) Words in the singular include the plural (and vice versa) and words denoting any gender include all genders;

(i) Headings are for convenience only and do not affect the interpretation of this Agreement;

(j) The captions of the articles, sections and subsections in the Contract Documents are for convenience only and are not to be treated or construed as part of this Agreement;

(k) Where any word or phrase is given a defined meaning, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning;

(l) All monetary amounts and obligations in the Contract Documents are expressed and payable in U.S. dollars;

(m) Each party must perform its obligations in accordance with this Agreement at its own cost, unless expressly provided otherwise;

(n) If this Agreement requires calculation of an amount payable to a party there must be no double counting in calculating that amount;

(o) A reference to time is a reference to Pacific Time Zone in the United States;

(p) In the event of an ambiguity in or dispute regarding the interpretation of this Agreement, this Agreement shall not be interpreted or construed against the Person who prepared this Agreement, and, instead, other rules of interpretation and construction shall be used;

(q) The Parties acknowledge and agree that: (a) the Contract Documents are the product of an extensive and thorough, arm's-length exchange of ideas, questions, answers, information and drafts during the PDA Term; (b) each Party has been given the opportunity to independently review the Contract Documents with legal counsel; and (c) each Party has the requisite experience and sophistication to negotiate, understand, interpret and agree to the particular language of the provisions of the Contract Documents. Accordingly, in the event of a conflict, ambiguity or inconsistency in or Contract Dispute regarding the interpretation of the Contract Documents, the Contract Documents shall not be interpreted or construed against the Party preparing it, and instead the Contract Dispute resolver shall consult other customary rules of interpretation and construction;

(r) Unless otherwise expressly stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meaning;

(s) A reference to a Section or Article is a reference to the section or article in the document or Exhibit where that Section or Article appears.

1.2 Contract Documents; Rules to Reconcile Conflicting Provisions

1.2.1 The term "Contract Documents" shall mean this Agreement and all its exhibits, including the Technical Requirements, as listed in Section 1.2.2. Each of the Contract Documents is an essential part of the agreement between the Parties. The Contract Documents are intended to be complementary and to be read together as a complete agreement.

1.2.2 Unless the context otherwise requires and except as provided otherwise in Sections 1.2.3 and 1.2.4, in the event of any conflict, ambiguity or inconsistency between any terms or provisions within the Contract Documents, the order of precedence, from highest to lowest, shall be as follows:

(a) For Design Work and other non-Construction Work:

(i) Change Orders and Unilateral Change Orders directing Principal Project Company to implement a City Change in accordance with this Agreement and amendments to this Agreement;

(ii) Article 1 (Definitions; Contract Documents; Order of Precedence; Other Documents) through Article 23 (Miscellaneous) and Exhibit 1 (Abbreviations and Definitions);

(iii) the Exhibits to this Agreement (excluding Exhibit 1 (Abbreviations and Definitions and Exhibit 18 (Technical Requirements));

(iv) Exhibit 18 (Technical Requirements);

(v) Principal Project Company's Implementation Proposal identified in Exhibit 3 (Implementation Proposal); provided that if City determines, in its sole discretion, that the Implementation Proposal contains a provision that is more beneficial to City than is specified elsewhere in the Contract Documents, then that provision shall take precedence; and

(vi) Project Management Plan.

(b) Without limiting Section 1.2.2(a), for Construction Work, the same order of precedence shall apply as for non-Construction Work in subsection (a), except that the Final Design Documents shall also be considered part of this Agreement and shall be included as Section 1.2.2(a)(vii) in the order of precedence subject to the following:

(i) Specifications have precedence over plans; and

(ii) Any other Deviations contained in the Final Design Documents take priority over conflicting requirements of other parts of this Agreement

but only to the extent that Principal Project Company specifically identifies the conflicts to City and City approves such Deviations by Notice to Principal Project Company.

1.2.3 In the event of any conflict, ambiguity or inconsistency within the Contract Documents, the following rules of interpretation shall apply:

1.2.3.1 If the Contract Documents contain differing provisions on the same subject matter and within the same order of precedence pursuant to Section 1.2.2, the provisions that provide greater detail or establish a higher quality, manner or method of performing the Work or use more stringent standards shall prevail.

1.2.3.2 Additional details in a lower priority Contract Document shall be given effect except to the extent they irreconcilably conflict with requirements, provisions and practices contained in the higher priority Contract Document.

1.2.3.3 If the Contract Documents contain differing provisions on the same subject matter that cannot be reconciled by applying the rules in Section 1.2.3.1 or 1.2.3.2, then the provisions contained in the document of higher order of precedence shall prevail over the provisions contained in the document of lower order of precedence, unless City, in its good faith discretion, approves or directs otherwise in writing.

1.2.3.4 In the event of an irreconcilable conflict between specific provisions of the Contract Documents and any standards, criteria, requirements, conditions, procedures, specifications or other provisions applicable to the Project established by reference to a manual or publication within a lower priority Contract Document, the specific provision of the higher priority Contract Document shall prevail over said standards or other provisions established by reference, to the extent of the irreconcilable conflict, unless City, in its good faith discretion, approves or directs otherwise in writing.

1.2.3.5 In the event of a conflict among any standards, criteria, requirements, conditions, procedures, specifications or other provisions applicable to the Project, established by reference to a manual or publication within a Contract Document or set of Contract Documents with the same order of priority, the standard, criterion, requirement, condition, procedure, specification or other provision offering the higher quality, manner or method or performing will apply unless City, in its good faith discretion, approves or directs otherwise in writing.

1.2.3.6 In the event of a conflict among the standards, criteria, requirements, conditions, procedures, specifications or other provisions of the Technical Requirements and those established by reference to a manual or publication, the Technical Requirements shall prevail.

1.2.3.7 In all other respects, in the event of a conflict, ambiguity or inconsistency within the Contract Documents, general rules concerning construction of contracts in the State shall be applicable.

1.2.4 This Section 1.2 (Contract Documents; Rules to Reconcile Conflicting Provisions) shall not apply to provisions in the Technical Requirements that are erroneous, create a potentially Unsafe Condition, or may be inconsistent with Good Industry Practice or applicable Law. Instead, such provisions shall be reconciled under Section 7.2.3.

1.2.5 Principal Project Company acknowledges and agrees that it had the opportunity and obligation to review the terms and conditions of this Agreement and to bring to the attention of City any conflicts, ambiguities or inconsistencies of which it is aware contained within this Agreement.

1.2.6 Incorporation into this Agreement of any part of the Implementation Proposal shall not (a) limit, modify, or alter City's right to review and approve any Submittal included in the Implementation Proposal, or submitted to City after the Implementation Proposal (including any Project Schedule), or (b) be deemed as acceptance or approval of any part of the Implementation Proposal by City that conflicts with this Agreement or the Technical Requirements.

1.2.7 If Principal Project Company becomes aware of any error or any conflict, ambiguity or inconsistency between or among the documents forming this Agreement, Principal Project Company shall promptly provide Notice to City, including the item Principal Project Company considers should apply based on the applicable rules in Section 1.1.2(p). Except as expressly stated in this Agreement, if (a) the conflict, ambiguity, inconsistency or error cannot be reconciled by applying the applicable rules or (b) the Parties disagree about (i) which rule applies and/or (ii) the results of the application of such applicable rule(s), then City will determine, in its reasonable discretion, which of the conflicting items is to apply and provide Notice to Principal Project Company before Principal Project Company proceeds with the applicable aspect of the Work.

1.3 Conflicts, Ambiguities or Inconsistency in Principal Project Company's Management Plans

In the event of any conflict between or among the Principal Project Company's Project Management Plan and any of the Contract Documents, or if any provisions in Principal Project Company's Project Management Plan are in conflict, ambiguous or inconsistent, Principal Project Company shall modify the Project Management Plan, as applicable, to be consistent with the Contract Documents or cure the ambiguity or inconsistency in a manner satisfactory to City.

1.4 Reference Documents

1.4.1 City has provided the Reference Documents to Principal Project Company for the purposes of disclosure and, in the case of general industry and general governmental manuals and publications, for guidance regarding Good Industry Practice. Reference Documents are for information only, and are not mandatory or binding on Principal Project Company, except to the extent that the Contract Documents incorporate specific provisions of the Reference Documents by reference.

1.4.2 Principal Project Company acknowledges and agrees that City does not give any warranty, representation or undertaking in respect of the Reference Documents including that the Reference Documents:

(a) Are complete, accurate or fit for purpose;

(b) Are in conformity with the requirements of the Contract Documents, Regulatory Approvals or Laws; or

(c) Represent all of the information in City's possession or power relevant or material in connection with the Project; provided, however, that City represents and warrants that it has not affirmatively and intentionally provided a Reference Document that is knowingly (based solely on City's Actual Knowledge) and materially false with the intent to mislead Principal Project Company.

1.4.3 Principal Project Company acknowledges and agrees that, except as provided in this Agreement:

(a) It has, before Commercial Close, conducted its own analysis and review of the Reference Documents upon which it places reliance;

(b) Any use or reliance on such Reference Documents by Principal Project Company shall be solely at its own risk;

(c) Except to the extent that the Contract Documents incorporate specific provisions of the Reference Documents by reference, no PPC-Related Entity is entitled to make any Claim, cause of action or Loss against City in connection with the Reference Documents, including on the grounds:

(i) of any misunderstanding or misapprehension in respect of the Reference Documents;

(ii) of any conclusions any PPC-Related Entity may draw from or any action or forbearance in reliance on the Reference Documents;

(iii) of any failure to disclose or make available to any PPC-Related Entity any information, documents or data or to review or update the Reference Documents; or

(iv) that the Reference Documents were inaccurate, incomplete, or not fit for purpose; and

(d) The Reference Documents may include interpretations, extrapolations, analyses, and recommendations about data, design solutions, technical issues and solutions, construction and installation means and methods, and maintenance means and methods. Such interpretations, extrapolations, analyses, and recommendations are (i) preliminary in nature and, in many cases, obsolete, (ii) not intended to express the views or preferences of City, or represent any statement of approval or acceptance thereof by City, and (iii) not intended to form the basis of Principal Project Company's design solutions, technical solutions, construction or maintenance means and methods.

ARTICLE 2. NATURE OF AGREEMENT; TERM

2.1 Nature of Agreement; PDA Status Under This Agreement

2.1.1 City hereby grants to Principal Project Company the exclusive right, and Principal Project Company accepts the obligation and agrees, during the Term, to:

(a) design, build, and finance the Infrastructure Facility, and operate and maintain certain elements of it; perform Renewal Work, and perform and undertake handback of the Infrastructure Facility at the end of the IFM Period; and

(b) perform all other activities relating to the Infrastructure Facility not specifically retained by City for the Infrastructure Facility as specified in this Agreement.

2.1.2 Principal Project Company acknowledges and agrees that the Predevelopment Agreement does not apply to this Agreement or the Parties' obligations hereunder, and that any deliverables provided by Lead Developer to City pursuant to the Predevelopment Agreement, or approvals obtained from City pursuant to the Predevelopment Agreement, do not apply to this Agreement unless any such deliverable, or approved plan or submittal, is expressly incorporated into this Agreement. The foregoing shall not apply to any obligations of the Parties under the Predevelopment Agreement that survive the completion or termination thereof, as more particularly set forth in the Predevelopment Agreement.

2.2 Right of Entry; Condition of Site

2.2.1 Subject to <u>Section 7.5</u> (Acquisition of Real Property), PPC-Related Entities shall have the right to enter onto the Project Site from and after the Financial Close Date (the "**Access Date**") and throughout the remainder of the Term to carry out Principal Project Company's obligations under this Agreement; <u>provided</u>, <u>however</u>, that construction Work may not be mobilized or undertaken until the later of (i) 90 days after the Access Date; or (ii) the date on which Principal Project Company has completed the City Relocation Scope. After the Termination Date, PPC-Related Entities may enter onto the Project Site to perform post-termination obligations either based on the right of entry granted in <u>Section 17.6.3</u> (Relinquishment and Possession of Project) or under a separate right of entry provided by City in writing. Without otherwise limiting the rights of the Principal Project Company to relief under this Agreement, Principal Project Company shall comply with, and shall ensure that PPC-Related Entities comply with, all agreements, easements, rights of entry, covenants, conditions, restrictions and other instruments applicable to the Project Site.

2.2.2 Within 90 days after the Financial Close Date, City shall ensure that the Project Site is in the City Ready for Move Condition. The Principal Project Company is responsible for notifying all Utility Owners and City in advance to turn off the Utilities and to obtain all required approvals prior to demolition. Additionally, if any power, water, and or other Utilities need to be maintained during demolition, such lines should be temporarily relocated as necessary and or protected by Principal Project Company. Should any furniture or portable equipment remain at the Project Site after City vacates the Project Site and after Principal Project Company fully performs the City Relocation Scope, those items shall be removed and/or disposed of by Principal Project Company. Removal of any Hazardous Materials, Utility infrastructure, walls, fixtures, flooring, paint, tanks, and or any other building features that currently exist and, upon

vacation by the City of the Project Site, will not be removed by City, are deemed released to Principal Project Company and are the responsibility for Principal Project Company in connection with demolition.

2.3 Term

This Agreement shall take effect on the Effective Date and shall remain in effect until 30 years after the Substantial Completion Deadline, subject to the right of the Parties to terminate this Agreement earlier in accordance with the terms of this Agreement.

2.4 Title

2.4.1 General

The Parties acknowledge and agree that:

(a) Principal Project Company is not the legal or equitable owner or lessee of the Project Site or the Infrastructure Facility improvements for any purpose;

(b) Principal Project Company's rights under this Agreement are derived solely from its status as an independent contractor under this Agreement, and not as tenant, lessee, easement holder, optionee, lienor, mortgagee, purchaser or owner of any other interest in real property; and

(c) The payments to be received by Principal Project Company under this Agreement are for services to be performed by Principal Project Company, and are not payments in the nature of rent, fees with respect to real property, or purchase price of real property.

2.4.2 Possessory Interest Tax

2.4.2.1 City hereby informs Principal Project Company, in accordance with California Revenue and Taxation Code section 107.6, that, notwithstanding Section 2.4.1 (General), (i) this Agreement may create one or more possessory interests, (ii) any possessory interest created by this Agreement may be subject to property taxation, and (iii) Principal Project Company may be subject to payment of property taxes levied on such possessory interest. Accordingly, Principal Project Company shall comply with the reporting requirements of San Francisco Administrative Code sections 23.38 and 23.39, and report (on behalf of the City) to the County Assessor the information required by California Revenue and Taxation Code section 480.5, and timely provide any information that City may request to ensure compliance with such requirements.

2.4.2.2 If it is determined that a possessory interest is created by this Agreement and the County Assessor seeks to levy an assessment or tax on such possessory interest, then:

(a) Principal Project Company shall (i) provide Notice to City not later than 3 Business Days after it becomes aware of the assessment or tax bill, and (ii) deliver copies of all documentation relating thereto no later than 3 Business Days following receipt;

(b) Principal Project Company shall cooperate and consult regularly with City, and follow City's reasonable directions, concerning tax protest, litigation strategy, refund claims and appeals process in any such circumstance. At City's request or in absence of a direction from the City sent to Principal Project Company no later than 10 days prior to any filing deadline, Principal Project Company shall timely (i) contest the assessment, and (ii) file refund claims.;

(c) If the Board of Supervisor has specifically authorized and approved, by resolution, the City's assumption of the payment, in whole, of such possessory interest taxes under this Agreement, the City will make a payment of the tax liability on behalf of the Principal Project Company (including any penalties for late payment or nonpayment and interest imposed, to the extent such penalties or interest resulted from Principal Project Company's failure to comply or timely comply with Section 2.4.2.2(a) or (b)). To the extent that penalties and interest have been imposed as a result of Principal Project Company's failure to comply or timely comply with Section 2.4.2.2(a) or (b), Principal Project Company will reimburse City for any such payment of penalties and interest, including Recoverable Costs. If Principal Project Company receives any refund of the tax (including a refund of any penalties and interest) pursuant to a claim for refund or other appeal, Principal Project Company shall pay to City an amount equal to such refund within 15 days of receipt (but only to the extent of payments previously made by City pursuant to this Section 2.4.2.2(c));

(d) Principal Project Company shall submit to City an invoice (in a format acceptable to City) on a monthly basis in arrears for all actual and reasonable costs and expenses incurred by Principal Project Company in opposing the imposition of any such possessory interest tax, together with detailed, supporting documentation evidencing same. If Principal Project Company is awarded attorneys' fees in connection with any related appeal or litigation, such costs will not also be reimbursed by the City to Principal Project Company. Within 30 Business Days of receipt of such invoice and supporting documentation, subject to Section 11.5 (Disputed Amounts), City will reimburse Principal Project Company for such invoiced amount; and

(e) City reserves the right to direct Principal Project Company to assign to the City any appeals rights available under applicable Law in order for City to directly assume the property tax appeal or litigation. Any such assignment shall be effected through an agent's authorization or similar document acceptable to both Principal Project Company and the City.

Nothing in the foregoing constitutes a notification to Principal Project Company of whether a potential possessory interest could be created under any HCC Agreement, the Housing and Commercial Component, any Housing and Commercial Component share of the Common Infrastructure, or any interest that Principal Project Company may acquire under Section 7.5.2 (Temporary Interests in Property).

2.4.3 Passage of Title

Title to all materials, equipment, tools and supplies furnished under the Contract Documents for incorporation into the Project or that are required for operation or maintenance of the Project shall pass to City, free and clear of all liens or other charges of any kind or nature, upon incorporation into the Project or, for items that will not be incorporated into the Project, upon delivery to the Project Site.

2.4.4 Intellectual Property

Except for PPC Intellectual Property and Third Party IP, title to any Intellectual Property to the extent made, conceived, prepared or reduced to practice as part of the Work, incorporated into the Project, including any improvements, modifications, enhancements or derivative works to or of the City IP shall vest in City at the earliest of creation, conception, preparation or reduction to practice.

2.4.5 Documents of Title

Principal Project Company shall furnish or execute all necessary documents of title within 90 days of receiving a written request from City.

2.4.6 Care, Custody and Control Responsibilities

Passage of title to City shall not affect Principal Project Company's care, custody and control responsibilities. Principal Project Company shall be responsible for care, custody and control of all components of the Project, including all materials, equipment, tools and supplies described in Section 2.4.3 (Passage of Title), until the Termination Date, except Principal Project Company shall be responsible for care, custody and control of (i) all elements of the Project that will be owned by Utility Owners or Authorities Having Jurisdiction until acceptance of such elements by the relevant Third Party; and (ii) the SFMTA O&M Facilities until the Substantial Completion Date.

2.5 Limitation on Principal Project Company's Rights

Notwithstanding anything to the contrary in the Contract Documents, Principal Project Company has no power or authority to make any commitments on City's behalf or to execute agreements in the name of or on behalf of City. Principal Project Company shall not enter into any agreement with any Governmental Entity, Utility Owner, property owner or other Third Party having regulatory jurisdiction over any aspect of the Project or Work or having any property interest affected by the Project or the Work that in any way purports to obligate City, or states or implies that City has an obligation to carry out any installation, design, construction, maintenance, repair, operation, control, supervision, regulation or other activity during or after the end of the Term, unless City otherwise approves.

ARTICLE 3. FINANCIAL CLOSE

3.1 Requirements for Financial Close

3.1.1 Obligation to Achieve Financial Close

Subject to the Parties' respective rights to terminate this Agreement before Financial Close pursuant to Sections 3.6 (No-Fault Termination) and 3.7 (Principal Project Company's Failure to Achieve Financial Close), Principal Project Company shall achieve Financial Close by no later than the Financial Close Deadline.

3.1.2 Date of Financial Close

Subject to Section 3.4.2(a), Principal Project Company shall determine the date of Financial Close (the "**Scheduled Financial Close Date**"), which shall be subject to a minimum 60 calendar days' prior Notice to City and no later than the Financial Close Deadline. After such determination, Principal Project Company shall have the right to modify the Scheduled Financial Close Date, provided that (i) Principal Project Company must provide City with prompt Notice of any such change; (ii) Principal Project Company shall not modify the Scheduled Financial Close Date within 14 days of such date without City's approval, in its reasonable discretion; (iii) the new date for the Scheduled Financial Close Date shall not be sooner than 10 days after delivery of Notice to City; and (iv) the modified Scheduled Financial Close Date shall be no later than the Financial Close Deadline.

3.2 Financial Close Requirements and Deliverables

3.2.1 Delivery of Financing Agreements and Other Documents

3.2.1.1 Not later than 30 days before the Scheduled Financial Close Date (or Delayed Financial Close Date, as applicable), Principal Project Company shall deliver to City, for City's review and comment, near final drafts of the Initial Financing Documents, Direct Agreement, Equity Members Funding Agreements, D&C Contract and IFM Contract. Such drafts shall be sufficiently advanced such that all material terms are incorporated into the applicable Principal Project Document or Financing Document. Principal Project Company shall also deliver to City, for City's review and comment, a list of other Key Contracts, and a draft of the model audit report related to the proposed Financial Model Update in accordance with Section 4.7.4 (Financial Model Audits). City will review the list of other Key Contracts and may request, and Principal Project Company shall promptly provide to City, substantially final drafts of the Key Contracts. In the event any material term included in the drafts of the Principal Project Documents or Financing Documents provided to City under this Section 3.2.1.1 is amended prior to Financial Close, Principal Project Company shall deliver to City, for City's review, comment and approval, a copy of such proposed amendment(s), such submittal to be no later than 10 days before the Scheduled Financial Close Date. For purposes of this Section 3.2.1.1, a material amendment shall include the following: (i) a change that differs materially from any commitments or provisions set forth in the Finance Plan; (ii) a change which would alter the risk allocations in this Agreement or any Key Contract; (iii) a change which could increase the liability of City for termination compensation in the event of a termination; (iv) a change that would modify the gearing of the financing; (v) a change that would result in an Affordability Event; (vi) a change that would cause a Delayed Financial Close Date; (vii) a change in any of

the Security Documents; (viii) a change in the funding sources of Common Infrastructure; and/or (ix) a change under any of the conditions precedent to Financial Close under the Financing Documents.

3.2.1.2 City will provide its comments on any initial submission of these documents no later than 10 Business Days after their submission and on any amendments to such documents no later than 5 Business Days after their submission, with such comments, in each case, being limited to addressing (i) changes in these documents from those approved by City during the PDA Term; (ii) changes in this Agreement or the commercial or legal structure of the Project; (iii) changes arising out of changed circumstances, new events or occurrences or additional information after the date of approval by City during the PDA Term; (iv) clarifications, errors, ambiguities or conflicts in such documents; (v) the relationship and interface of the Infrastructure Facility and the Joint Development Alternative; (vi) the impacts and implications of any decision by Principal Project Company to bifurcate the Financial Close for the Infrastructure Facility and the Joint Development Alternative; (vii) changes in applicable Law or Standards and Specifications; (viii) any change to a material term, as set forth in Section 3.2.1.1); and (ix) inconsistencies between such documents and the terms of this Agreement (including the risk allocations).

3.2.2 City Deliverables

To support the Principal Project Company's achievement of Financial Close, City shall:

(a) on or before 30 days before the Scheduled Financial Close Date and in connection with the issuance of any bonds:

(i) provide and authorize Principal Project Company to include, in the preliminary and final official statement for such bonds or any other capital markets issuance with respect to the Project, SFMTA's most recent audited financial statements together with economic information with respect to SFMTA, and provide such documents and information as required to comply with disclosure requirements under applicable Laws, provided that Principal Project Company has provided City with a list of required documents and information at least 15 Business Days before such documents and information are required;

(ii) agree to customary continuing disclosure as reasonably acceptable to City and the underwriter of any Project Debt; and

(iii) provide customary certificates as reasonably requested by Principal Project Company and as reasonably acceptable to City;

(b) on or before three Business Days prior to the Scheduled Financial Close Date, deliver each of the following items to Principal Project Company subject to customary escrow terms and to City's approval to release from escrow:

(i) an executed legal opinion of the City's Attorney's Office substantially in the form attached hereto as Exhibit 5D (Form of Opinion from City's Legal Counsel);

(ii) an executed certificate updating, as of the date of Financial Close, City's representations and warranties set forth in Section 19.2 (City Representations and Warranties); and

(iii) a counterpart signature page for the Direct Agreement executed on behalf of City;

(c) take any reasonably required authorizing actions in a reasonably timely manner; and

(d) provide customary documents, certificates or undertakings (or, as applicable, a copy of the same certified by City as true, complete and accurate) that Principal Project Company may reasonably request from City as necessary to comply with (i) disclosure requirements under applicable Laws, or (ii) customary underwriter requirements, in each case in connection with issuance of bonds or any other capital markets issuance; provided, however, that none of the documents supplied in accordance with this Section 3.2.2(d) shall be construed as providing a legal opinion binding on City.

3.2.3 Base Interest Rate Fluctuation and Credit Spread Risk Mitigation

3.2.3.1 If Principal Project Company has complied with the submittal requirements under [Section ● (Selection of Base Interest Rate(s)) of the Finance Plan], City will adjust the Base Capital MaxAP to offset 100% of the impact of fluctuations (increases and decreases) in the Base Interest Rates used in the Finance Plan that have occurred during the Bank Debt Rate Protection Period and/or the Bond Rate Protection Period, as applicable.

3.2.3.2 If Principal Project Company has complied with the submittal requirements under [Section ● (Credit Spread Risk Mitigation) of the Finance Plan], City will adjust the Base Capital MaxAP to offset a portion of the impact of fluctuations (increases and decreases) in the credit spreads for any Bond Financing proposed in the Finance Plan that have occurred during the Bond Rate Protection Period. Subject to the limitations described in [Section ● of the Finance Plan and set forth in Exhibit 5F (Base Capital MaxAP Adjustment for Base Interest Rate Fluctuation and Credit Spread Risk Mitigation)], the credit spread risk sharing between City and Principal Project Company will be implemented on an 50:50 basis, with City assuming 50% of the credit spread fluctuation risk (relative to the Baseline Credit Spreads) and Principal Project Company assuming 50% (the "**Credit Spread Risk Mitigation**"). City will not provide Credit Spread Risk Mitigation with respect to Private Placements (except offerings under Rule 144A and Regulation S of the Securities Act of 1933), Bank Debt or any other debt facilities for which committed credit spreads or margins are available. City shall not accept increases in credit spreads in respect of bonds which are part of Principal Project Company's financing resulting from the final credit rating of such bonds being lower than the indicative investment grade rating(s) of such bonds provided in the Finance Plan.

3.2.3.3 Adjustments to the Base Capital MaxAP and Original Equity IRR related to Base Interest Rates fluctuations and Credit Spread Risk Mitigation, as applicable, shall be implemented in accordance with Exhibit 5F (Base Capital MaxAP Adjustment for Base Interest Rate Fluctuation and Credit Spread Risk Mitigation).

3.2.4 Conditions Precedent to Financial Close

3.2.4.1 Financial Close will occur upon Principal Project Company's satisfaction of each of the following conditions:

(a) Principal Project Company has delivered to City, in form and substance similar to the drafts submitted to City pursuant to Section 3.2.1.1 and including any changes made pursuant to City's comments under Section 3.2.1.2, fully executed versions of:

(i) Initial Financing Documents;

(ii) Direct Agreement(s);

(iii) Equity Members Funding Agreements; and

(iv) Key Contracts, together with an updated list of Key Contracts;

(b) Principal Project Company has delivered a certification signed by its chief financial officer or equivalent officer, certifying to the following:

(i) Principal Project Company has satisfied (or upon Financial Close, will satisfy) all conditions precedent to the effectiveness of commitments of the Lenders under the Initial Financing Documents or such conditions have been waived if not satisfied, as applicable;

(ii) each of the documents delivered by Principal Project Company to City pursuant to Section 3.2.4.1(a) is a true, complete and accurate copy of the original;

(iii) all representations and warranties of Principal Project Company under the Contract Documents remain true as of the Financial Close Date, except for any representation or warranty made as of a specified date, in which case such representation or warranty shall be true as of the specified date and Principal Project Company shall provide Notice to City if any such representation is not true and correct as of the Financial Close Date; and

(iv) Principal Project Company has performed and complied with all covenants and obligations of Principal Project Company under the Contract Documents to have been performed or complied with as of the Financial Close Date;

(c) Principal Project Company has delivered to City, on or before one Business Day prior to the date of Financial Close, an interim Financial Model Update consistent with Section 4.7 (Financial Model and Financial Model Updates) that incorporates any proposed amendments to the Base Case Financial Model agreed to by the Parties on or before such date, including those agreed to pursuant to any preliminary calculations under Section 3.2.3 (Base Interest

Rate Fluctuation and Credit Spread Risk Mitigation), together with the related Financial Modeling Data;

(d) Principal Project Company has delivered to City (i) one or more legal opinion(s) of Principal Project Company's in-house or external counsel substantially in the form attached hereto as Exhibit 5E (Form of Opinion from Principal Project Company's Legal Counsel) and with customary qualifications and assumptions reasonably acceptable to City;

(e) A Financial Model in accordance with Section 4.7 (Financial Model and Financial Model Updates) which reflects, to City's reasonable satisfaction, evidence of a Construction Equity Ratio greater than or equal to 5%;

(f) Certificate from an insurer that meets the requirements in Section 10.1.2.1 (Insurers), certifying that all Insurance Policies required to be effected and maintained in accordance with this Agreement in connection with the Work to be performed during the D&C Period (whether City is required to be an insured or not) are in force and effect (or will be in full force and effect following receipt of the insurance premium payable from the proceeds of Financial Close), and such evidence as is necessary to demonstrate the compliance of each such policy with the requirements of this Agreement;

(g) Evidence that all Deferred Equity Amounts are secured by an Equity Letter of Credit (which may be annually renewable) in accordance with the approved equity contribution agreement guaranteeing the provision of the committed amount by a date which is not later than the Final Acceptance Date, and that Equity Letter of Credit has been issued and is in full force and effect; and

(h) Each Payment Bond and Performance Bond required under Section 10.2 (Performance Security) has been obtained, meets the requirements of Section 10.2 (Performance Security) and is in full force and effect, and Principal Project Company has delivered to City originals or copies, as required, of each Payment Bond and Performance Bond.

3.2.5 Waiver of Conditions Precedent to Financial Close

3.2.5.1 A condition precedent is only waived if the Party for whom the benefit of the condition precedent is provided gives Notice to the other Party of the waiver prior to the Financial Close Deadline.

3.2.5.2 When all of the Principal Project Company conditions precedent to Financial Close have been satisfied by Principal Project Company or waived by City, City shall provide Notice to Principal Project Company confirming that all of the Principal Project Company conditions precedent have been satisfied or waived and the date upon which the last of the conditions precedent was satisfied or waived.

3.2.5.3 When all of the City conditions precedent to Financial Close have been satisfied by City or waived by Principal Project Company, Principal Project Company shall provide Notice to

City confirming that all of the City conditions precedent have been satisfied or waived and the date upon which the last of the City conditions precedent was satisfied or waived.

3.2.5.4 Upon satisfaction of all conditions precedent to Financial Close, City will provide Notice to Principal Project Company confirming the date upon which Financial Close was achieved.

3.2.6 Mandatory Terms of Project Debt, Financing Agreements and Other Documents

The Project Debt and Financing Documents (including the Initial Financing Documents) shall comply with the Financing Document Terms.

3.3 Post-Financial Close Requirements and Deliverables

3.3.1 Principal Project Company shall deliver to City, on or before two Business Days following Financial Close, each of the items required under Section 4.7.3 (Replacement of Financial Model) replacing the Base Case Financial Model with a Financial Model Update that reflects all changes agreed by the Parties as of the date of Financial Close, as well as:

(a) a Financial Model Update that includes any final revisions to the interim Financial Model Update delivered under Section 3.2.4.1(c) to incorporate the Base Interest Rates and credit spreads applicable on the date of Financial Close under the Initial Financing Agreements and any other agreed upon revisions;

(b) a model audit report related to the proposed Financial Model Update in accordance with Section 4.7.4 (Financial Model Audits); and

(c) a form of written amendment that (i) effects the replacement of the Financial Model in effect with the proposed Financial Model Update, and (ii) addresses all other related amendments to this Agreement required as a result of the amended Financial Model, including any amendments to the definitions of Base Capital MaxAP, Base IFM MaxAP, Equity IRR and Key Ratios, as applicable.

3.3.2 Upon the satisfaction of each of the conditions precedent to Financial Close set forth in Section 3.2.4 (Conditions Precedent to Financial Close), and the delivery and mutual approval of the Financial Model Update and documents required by Section 3.3.1, City and Principal Project Company shall enter into the amendment.

3.3.3 At Financial Close, Principal Project Company shall pay to City the amount of **[$●]** to reimburse City for PDA-Related Costs, including all amounts paid by City to Principal Project Company or Lead Developer pursuant to any Early Works Agreement. ***[Note: City to confirm prior to Commercial Close whether any such reimbursement will be required and, if so, the amount.]***

3.3.4 City shall return to Principal Project Company the Financial Close Security within five Business Days after reaching Financial Close, provided that Principal Project Company has delivered the items required under this Section 3.3 (Post-Financial Close Requirements and Deliverables).

3.4 Potential Adverse Events and Mitigation

3.4.1 The Parties acknowledge that any one or more Adverse Events may occur during the period between the Effective Date and the Scheduled Financial Close Date. If any such Adverse Event is the sole cause for Principal Project Company's failure or inability to satisfy any of its obligations under Section 3.2.4 (Conditions Precedent to Financial Close) by the Financial Close Deadline or Delayed Financial Close Date, as applicable, then Section 3.4.2 shall apply.

3.4.2 Each Party will promptly provide Notice to the other Party if an Adverse Event has occurred ("**Adverse Event Notice**"). The Party provide an Adverse Event Notice may indicate in the notice the potential impact of the event on the schedule for Financial Close. City may elect, in its sole discretion, to consult and work with Principal Project Company to mitigate the actual or anticipated impacts of the occurrence of such event(s). City will provide Notice to Principal Project Company of City's decision to either take mitigation actions, or to not take mitigation actions, within 15 days of the Adverse Event Notice. If City elects mitigation, the Parties will negotiate in good faith to mutually agree on the actual mitigation actions to be undertaken by each Party. City anticipates that the Parties may take one or more of the following actions to mitigate the impacts and for Principal Project Company to be able to achieve Financial Close:

(a) City may agree to delay Financial Close to a date not later than 120 days after the Scheduled Financial Close Date (the "**Delayed Financial Close Date**"), in which case, if the Delayed Financial Close Date is after the last day of the original Finance Plan Validity Period, then:

(i) Principal Project Company shall extend the validity of its Financial Close Security to a date no earlier than 15 days later than the Delayed Financial Close Date;

(ii) If the Adverse Event was an Adverse Event set forth in clauses (a)-(h) of the definition of "Adverse Event", City shall compensate Principal Project Company for the actual cost of extending the validity of its Financial Close Security to the Delayed Financial Close Date within 45 days after receiving Principal Project Company's request and supporting documentation for such payment;

(iii) If the Adverse Event was an Adverse Event set forth in clauses (a)-(h) of the definition of "Adverse Event", Principal Project Company shall be entitled to escalate its D&C Contract Amount to adjust for escalation of labor, materials and equipment costs, if any, based on the change in: (1) the average of the BCI published each calendar month during the 12 calendar months preceding the Scheduled Financial Close Date; and (2) the average of the BCI published each calendar month during the 12 calendar month period preceding the Financial Close Date; and

(iv) Principal Project Company shall prepare a Financial Model Update in accordance with Section 4.7.2 (Updates to the Financial Model);

(b) City may change the amount or timing of the Milestone Payment, provided that Principal Project Company shall be entitled to recover from City the reasonably incurred costs associated with such process;

(c) City may increase the Base Capital MaxAP and/or Base IFM MaxAP by an amount required to mitigate the relevant Adverse Event, including by an amount greater than 10% of the aggregate of the Base Capital MaxAP and Base IFM MaxAP;

(d) Principal Project Company may:

(i) conduct negotiations for at least 30 days with any or all of Principal Project Company's existing Lenders to increase, renew or extend their commitments, as applicable, provided that, any material deviations from the terms and conditions of the original commitments in Principal Project Company's Financial Proposal may be accepted by Principal Project Company only with City's approval; or

(ii) conduct a timely, competitive process to obtain new financing commitments (a "**Project Debt Competition**") to supplement or replace any of the original financing commitments in Principal Project Company's Financial Proposal; in which case, any such negotiations or Project Debt Competition (A) shall be transparent and open to City and its advisors, and (B) shall have the key objective of obtaining debt financing for the Project at the lowest-cost commercially available (given the terms and conditions of the Contract Document) and on terms and conditions otherwise reasonably acceptable to Principal Project Company and City;

(e) upon the occurrence of an Affordability Event, Principal Project Company may elect to assume the cost and expense of that portion of the increase in the aggregate of the Base Capital MaxAP and Base IFM MaxAP that exceeds 10%; and/or

(f) either Party may take any other action mutually agreed upon by City and Principal Project Company.

3.4.3 The Parties acknowledge that the objective of the mitigation actions described in Section 3.4.2, and any others mutually agreed upon by the Parties, is to create circumstances allowing Financial Close to be achieved on terms that at a minimum will allow Principal Project Company to satisfy its obligation to obtain all financing required for the Project on terms and conditions substantially similar to those in its Financial Proposal. The Parties further acknowledge that if an Adverse Event set forth in clauses (i)-(j) of the definition of "Adverse Event" occurs, the objective of the time extension and mitigation actions described in Section 3.4.2 and any others mutually agreed upon by the Parties is for Principal Project Company to have an opportunity to address the impacts of such Adverse Event with its Lenders in order for Principal Project Company to comply with its obligations to achieve Financial Close by the Delayed Financial Close Date.

3.5 Permitted Excuses from Achieving Financial Close

3.5.1 With respect to an Adverse Event set forth in clauses (a)-(h) of the definition of "Adverse Event", Principal Project Company's obligation to achieve Financial Close by the Financial Close Deadline shall be excused if one or more events described in Section 3.4.1 has occurred, provided that:

(a) City notifies Principal Project Company that it will not take any action described under Section 3.4.2;

(b) City fails to provide Notice to Principal Project Company within 15 days of receipt of the Adverse Event Notice from Principal Project Company of City's decision to either take mitigation actions, or to not take mitigation actions;

(c) the Parties undertake one or more actions under Section 3.4.2, but the effect of such actions does not allow Principal Project Company to satisfy its obligation to obtain all financing required for the Project on terms and conditions substantially similar to those in its Financial Proposal;

(d) Principal Project Company has made good faith efforts to take the action described under Section 3.4.2(d) and Principal Project Company has diligently and timely conducted negotiations with existing Lenders and/or the Project Debt Competition but was unable to obtain sufficient financing to satisfy its obligations under this Agreement on terms and with conditions reasonably acceptable to the Parties; or

(e) Principal Project Company has negotiated in good faith with City to mutually agree on mitigation actions, but the Parties fail to agree on any action under Section 3.4.2.

3.5.2 With respect to an Adverse Event set forth in clauses (i)-(j) of the definition of "Adverse Event", Principal Project Company's obligation to achieve Financial Close by the Financial Close Deadline shall be excused if, following the occurrence of such Adverse Event until the Delayed Financial Close Date, a new Adverse Event set forth in clauses (a)-(h) occurs (in which case, the provisions of Section 3.5.1 shall apply to such new Adverse Event (but not with respect to the original Adverse Event set forth in clauses (i)-(j) of the definition of "Adverse Event").

3.5.3 With respect to an Adverse Event set forth in clauses (a)-(h) of the definition of "Adverse Event", Principal Project Company has no obligation to reach Financial Close during the period between delivery of an Adverse Event Notice and agreement of the Parties on the mitigation actions to be undertaken by each Party to achieve Financial Close. With respect to an Adverse Event set forth in clauses (i)-(j), Principal Project Company has no obligation to reach Financial Close during the period between delivery of an Adverse Event Notice and up to 120 days after such delivery, but otherwise shall remain obligated to reach Financial Close unless excused pursuant to Section 3.5.2.

3.6 No-Fault Termination

3.6.1 City may, by delivering to Principal Project Company a Notice specifying City's election to terminate and its effective date, terminate this Agreement prior to Financial Close if City determines, in its sole discretion, that termination is in City's best interest.

3.6.2 Either Party may terminate this Agreement, without fault or penalty, upon 15 days prior Notice to the other Party, if Financial Close is not achieved by the Financial Close Deadline or Delayed Financial Close Date, as applicable, and such failure is excused pursuant to Section 3.5 (Permitted Excuses from Achieving Financial Close).

3.6.3 With respect to a termination under Section 3.6.1 or Section 3.6.2:

(a) City shall return the Financial Close Security within five Business Days after termination; and

(b) Principal Project Company shall be entitled to Termination Compensation in an amount not to exceed $9,990,000 based on commercially reasonable evidence of Principal Project Company's costs incurred during (i) the PDA Term, and (ii) from the period commencing on the Effective Date and ending on the Early Termination Date, as indicated in City's Notice delivered pursuant to Section 3.6.1. Such payment shall be the exclusive compensation payable by City to Principal Project Company under this Agreement for a termination under Section 3.6.1 or Section 3.6.2.

3.6.4 Payment of Termination Compensation in accordance with Section 3.6.3(b) is conditioned upon City's receipt from Principal Project Company, within 30 days of termination of this Agreement under Section 3.6.1 or Section 3.6.2, of (i) a complete and compliant invoice requesting payment in the form set forth in Exhibit 17 (Section 3.6 Invoice); and (ii) all work product set forth in Section 3.6.5. Such Termination Compensation shall be due and payable no later than 30 Business Days following City's receipt of such invoice.

3.6.5 Payment of Termination Compensation in accordance with Section 3.6.3(b) is in consideration for ownership and title to all work product (including, subject to the terms of Section 21.4 (Intellectual Property), any Developed IP) produced by Principal Project Company related to the Project along with all IP Materials generated as of the date of Notice provided pursuant to Section 3.6.1 or Section 3.6.2, including (a) all written and electronic correspondence, exhibits, photographs, reports, printed material, tapes, disks, designs, concepts, ideas, technology, techniques, methods, processes, drawings, plans, specifications and other graphic and visual aids generated or developed by or on behalf of Principal Project Company during the Project procurement process and during the PDA Term, including aesthetic design concepts, interim design submittals, and other items delivered or submitted in any medium, media or format by or on behalf of Principal Project Company to City during the Project procurement process, during the PDA Term, or in connection with the Technical Proposal, and (b) all design, planning, materials, equipment, tools, supplies and other Work developed in connection with the Contract Documents.

3.7 Principal Project Company's Failure to Achieve Financial Close

3.7.1 If Financial Close is not achieved by the Financial Close Deadline or Delayed Financial Close Date, as applicable, then, unless such failure is excused under Section 3.5 (Permitted Excuses from Achieving Financial Close), City shall have the right to:

(a) terminate this Agreement in its entirety by written Notice to Principal Project Company with immediate effect; and/or

(b) draw and retain the full amount of the Financial Close Security, as City's sole remedy against Principal Project Company under this Agreement for Principal Project Company's failure to achieve Financial Close; provided, however, that, nothing herein shall prejudice any rights or remedies City may have for actions or breaches, other than failure to achieve Financial Close, caused by Principal Project Company under this Agreement or the Early Works Agreement, if any.

3.7.1.2 Exercising either remedy under this Section 3.7.1 will not prejudice any rights or remedies the City may have for other actions or breaches Principal Project Company causes under this Agreement or, if applicable, any Early Works Agreement.

3.7.2 City's right to draw upon the Financial Close Security is not intended to constitute a penalty, but is intended to be, and shall constitute, liquidated damages to compensate City for the cost of foregoing alternative opportunities and for other costs incurred by City in reliance upon Principal Project Company's agreement to enter into the transactions contemplated hereby.

ARTICLE 4. PRINCIPAL PROJECT COMPANY FINANCING; LENDERS' RIGHTS; REFINANCING; PRIVATE CAPITAL INVESTMENTS; FINANCIAL MODEL

4.1 Principal Project Company Right and Responsibility to Finance

4.1.1 Principal Project Company is solely responsible for obtaining and repaying, at its own cost and risk and without recourse to the City or SFMTA, all financing necessary for the Work that is the Principal Project Company's responsibility under the Contract Documents. Principal Project Company shall take all appropriate action to obtain the Project Debt and Committed Investment as described in the Financial Proposal on or before the Financial Close Deadline. If the Finance Plan includes any other tax-exempt financing, Principal Project Company bears all risks relating to securing a Conduit Issuer, receiving the necessary approvals and compliance with applicable federal requirements.

4.1.2 Principal Project Company may grant security interests in or assign the entire PPC's Interest (but not a portion of such interest) to Lenders for purposes of securing the Project Debt, subject to the terms of the Contract Documents. Principal Project Company shall not pledge or encumber the PPC's Interest, or any portion of such interest, to secure any indebtedness of any Person other than (a) Principal Project Company, (b) any special purpose entity that owns Principal Project Company but no other assets and has purposes and powers limited to the Project and Work, (c) a special purpose entity subsidiary owned by either Principal Project Company or an entity described in clause (b) of this Section 4.1.2, or (d) a Conduit Issuer.

4.1.3 Except as otherwise provided in Section 3.2.3 (Base Interest Rate Fluctuation and Credit Spread Risk Mitigation), Principal Project Company bears all risk of any changes in the interest rate, payment provisions, collateral requirements, financing charges, make whole amounts, hedge agreements, prepayment premiums, breakage charges or the other terms of Project Debt and Committed Investment.

4.1.4 Notwithstanding the foreclosure or other enforcement of any security interest created by a Security Document, Principal Project Company shall remain liable to City for the payment of all sums owing to City under this Agreement and the performance and observance of all of Principal Project Company's covenants and obligations under the Contract Documents.

4.2 No City or City Responsibility for Project Debt

4.2.1 All Project Debt or other obligations issued or incurred by a PPC-Related Entity in connection with this Agreement or the Project shall be issued or incurred only in the name of a PPC-Related Entity or a Conduit Issuer or other entity acting on behalf of a PPC-Related Entity as the ultimate obligor. Except as otherwise expressly provided in this Agreement, the City shall have no obligation to pay debt service on any Project Debt or any other debt issued or incurred by a PPC-Related Entity. The City shall have no obligation to join in, execute or guarantee any note or other evidence of indebtedness of a PPC-Related Entity, any other Financing Agreement or any Security Document (other than the Direct Agreement). Project Debt does not constitute indebtedness, or a pledge of the faith and credit, of City or any department of the City. The Lenders, individually or collectively, have no right to have taxes levied or compel appropriations by City, including the Board of Supervisors, for the payment of any or all of the amount of such principal of, premium, if any, and interest on Project Debt.

4.2.2 Except for a violation by City of its express obligations to Lenders in any Direct Agreement, no Lender is entitled to pursue any remedy against City, including any right to seek any damages or other amounts from the City, whether for Project Debt or any other amount.

4.2.3 Section 4.2.2 does not affect City's liability to Principal Project Company under Article 17 (Termination) for Termination Compensation that is measured in whole or in part by reference to outstanding Project Debt.

4.2.4 City shall have no obligation to any Lender under the Contract Documents, except to the extent of any express obligations of City to Lenders under any Direct Agreement or in any other instrument or agreement signed by City in favor of such Lender or Collateral Agent. This Section 4.2.4 does not preclude Lender enforcement of this Agreement against City where the Lender has succeeded to the PPC's Interest, whether by way of assignment or subrogation.

4.3 Lenders' Rights

4.3.1 This Agreement is exclusively for the benefit of City and Principal Project Company, and shall not provide any Lender with any remedy, claim, liability, reimbursement, cause of action or other right, except for the rights of any Lender as provided in any Direct Agreement.

4.3.2 The rights of City under Article 16 (Default; Remedies) and Article 17 (Termination) are subject to the terms of any Direct Agreement.

4.4 Refinancing

4.4.1 Right of Refinancing

City's prior written approval is required for all Refinancings other than Exempt Refinancings and Rescue Refinancings. City shall have no obligations or liabilities in connection with any Refinancing other than its obligations relating to Lender's rights in any Direct Agreement. If the Refinancing is with a new Lender, the new Lender may be added to an existing Direct Agreement or City shall enter into a new Direct Agreement with the new Lender, if such Lender so elects.

4.4.2 Notice of Refinancing

4.4.2.1 At least 60 days before the proposed date for closing any proposed Refinancing (except an Exempt Refinancing under clause (b), (c) or (d) of the definition of Exempt Refinancing), Principal Project Company shall submit to City a summary of the proposed Refinancing, together with a schedule setting forth the various activities, each with schedule durations, to be accomplished from commencement through the close of the proposed Refinancing.

4.4.2.2 Principal Project Company shall provide at least 30 days' advance Notice to City of any intended Exempt Refinancing under clause (b), (c) or (d) of the definition thereof, including facts and documents of such Exempt Refinancing which shall include, at a minimum, the documents described in Section 4.4.2.4 and the reason Principal Project Company considers it to be an Exempt Refinancing.

4.4.2.3 Within 20 days after receipt of the materials required under Section 4.4.2.2, City will review and provide Notice to Principal Project Company as to whether, in its opinion, the proposed Refinancing is an Exempt Refinancing.

4.4.2.4 At least 45 days before the proposed date for closing any Refinancing (except an Exempt Refinancing under clause (b), (c) or (d) of the definition of Exempt Refinancing), Principal Project Company shall:

(a) provide draft proposed Financing Agreements and Security Documents (or term sheets therefor, if drafts are not then available), available Refinancing Data, and any other submittals required by Exhibit 5C (Calculation of Refinancing Gain); and

(b) if applicable, provide Notice to City setting out the facts to support the basis for characterization of the transaction as an Exempt Refinancing or Rescue Refinancing.

4.4.2.5 Within 15 days after receipt of the materials required under Section 4.4.2.4, City will provide Notice to Principal Project Company of City's determinations regarding the following:

(a) whether the proposed Refinancing is an Exempt Refinancing or Rescue Refinancing;

(b) if the proposed Refinancing is neither an Exempt Refinancing or Rescue Refinancing, whether to approve or disapprove the proposed Refinancing; and

(c) if City will approve the proposed Refinancing, whether the Refinancing Gain requirements apply.

4.4.2.6 City's failure to deliver to Principal Project Company Notice of the determinations and selection within the time period set forth in Section 4.4.2.5 shall not prejudice City's right to disapprove the proposed Refinancing, to receive any portion of Refinancing Gain, or its selection of the means for payment of such portion.

4.4.2.7 At least 10 days before the proposed date for closing the Refinancing, Principal Project Company shall deliver to City substantially final drafts of the proposed Financing Agreements and Security Documents, together with updated versions of the Refinancing Data.

4.4.2.8 Within five Business Days after close of the Refinancing, Principal Project Company shall deliver to City copies of all signed Financing Agreements and Security Documents in connection with the Refinancing, and the final Refinancing Data.

4.4.2.9 Within 10 Business Days after close of the Refinancing, City and Principal Project Company shall meet and confer to agree upon the final calculation of the Refinancing Gain in accordance with Section 4.5 (Refinancing Gain). Once the final calculation is made, Principal Project Company shall pay City its portion of the Refinancing Gain in accordance with City's selected method of payment. If there is any dispute regarding the amount owing, Principal Project Company shall pay the undisputed amount to City and the amount in dispute shall be subject to resolution under the Contract Dispute Procedures.

4.4.3 Refinancing Limitations, Requirements and Conditions

4.4.3.1 If City renders any assistance or performs any requested activity in connection with a Refinancing apart from delivering a consent and estoppel certificate under any Direct Agreement, then concurrently with close of the Refinancing, and as a condition precedent to Principal Project Company's right to close the Refinancing, Principal Project Company shall reimburse City for Recoverable Costs incurred in connection with the Refinancing. City will deliver to Principal Project Company a written invoice and demand before the scheduled date of closing. If for any reason the Refinancing does not close, Principal Project Company shall reimburse City for Recoverable Costs incurred in connection with the proposed Refinancing within 10 days after City delivers to Principal Project Company a written invoice and demand for such costs.

4.4.3.2 Principal Project Company shall bear all risks for any Refinancing that negatively affects its Equity IRR, Key Ratios or financial performance.

4.5 Refinancing Gain

4.5.1 City shall be entitled to receive 50% of any Refinancing Gain attributable to any Refinancing other than an Exempt Refinancing. The Refinancing Gain amount shall be, calculated in accordance with Exhibit 5C (Calculation of Refinancing Gain).

4.5.2 Commencing at least 40 days before the proposed date for closing any Refinancing (except an Exempt Refinancing under clause (b), (c) or (d) of the definition of Exempt Refinancing), the Parties will negotiate in good faith to determine the method by which City will receive its portion of the Refinancing Gain, if applicable, which includes one or a combination of the following methods:

(a) a single payment on or about the date of the Refinancing in an amount less than or equal to any Distribution made on or about the date of Refinancing;

(b) a credit or payment by Principal Project Company to City that effectively reduces the Availability Payments over the remainder of the Term; or

(c) a combination of clauses (a)-(b).

4.6 Equity Requirements

Principal Project Company shall have and maintain a Construction Equity Ratio totaling not less than 5% throughout the period between the Financial Close Date and the Substantial Completion Date, except to the extent:

(a) City otherwise approves in writing, in its sole discretion;

(b) Principal Project Company shall reduce the amount of the Construction Equity Ratio below 5% as part of a workout of a breach or default under the Initial Financing Agreements or Initial Security Documents; or

(c) the amount of Construction Equity Ratio is reduced below 5% because Principal Project Company incurs additional Project Debt pursuant to a Refinancing.

4.7 Financial Model and Financial Model Updates

4.7.1 Model Update Event

4.7.1.1 Model Update Event means any of the following events:

(a) the implementation at Financial Close of the Base Interest Rate fluctuation and Credit Spread Risk Mitigation process pursuant to Section 3.2.3 (Base Interest Rate Fluctuation and Credit Spread Risk Mitigation);

(b) the implementation of any mitigation actions set forth in Section 3.4.2;

(c) a Compensable Delay Event or a Compensable Relief Event for which City owes Principal Project Company compensation pursuant to Sections 14.1.4 (Costs Payable for Compensable Delay Events), Section 14.1.6 (Costs Payable for Force Majeure Events During the D&C Term), Section 14.1.7 (Costs Payable for Unavoidable Delay Events During the D&C Term), or Section 14.2.4 (Costs Payable for Force Majeure During IFM Period), respectively, which City has elected to pay as an adjustment to the Availability Payments over the Term;

(d) an event for which City is entitled to compensation from Principal Project Company pursuant to Section 16.2 (City Remedies for PPC Default);

(e) a Refinancing resulting in a Refinancing Gain to which City is entitled to a share pursuant to Section 4.5 (Refinancing Gain); and

(f) any amendments to the Contract Documents that the Parties agree has a material effect on the Financial Model, including any amendments agreed to by the Parties between the Finance Plan Due Date and Financial Close.

4.7.1.2 Whenever a Model Update Event occurs (except as otherwise provided in this Agreement or where the Parties mutually agree otherwise), the financial consequence shall be determined in accordance with this Section 4.7 (Financial Model and Financial Model Updates).

4.7.2 Updates to the Financial Model

4.7.2.1 In connection with any Model Update Event that entitles either Party to the payment of any amount, Principal Project Company may, in consultation with City, prepare an updated Financial Model in accordance with this Section 4.7.2 (Updates to the Financial Model) (each, a "**Financial Model Update**") to reflect the financial impacts of such Model Update Event and calculate the amount due to either Party as a result of the Model Update Event. Principal Project Company may address more than one Model Update Event within a single Financial Model Update, provided that City may request interim versions of a Financial Model Update that address the impact of only a single Model Update Event. No Financial Model Update shall have any effect on the rights and obligations of the Parties under this Agreement until both Parties

have agreed in writing to accept it as an amendment to this Agreement pursuant to Section 4.7.3 (Replacement of Financial Model).

4.7.2.2 Principal Project Company shall propose the Financial Model Update by Notice to City giving the proposed revised Financial Model together with full and complete details and explanation of the assumptions and calculations used to reflect the financial impacts of the Model Update Event which may only include changes to Principal Project Company's cash revenues and expenses that arise directly from the Model Update Event and consequential changes to the Project Debt draw down schedule, funding and release of reserves, financing costs, debt service schedule and amounts, Committed Investment draw down schedule and Principal Project Company's Distributions schedule and amounts or any other impacts or consequential changes mutually agreed by the Parties.

4.7.2.3 A Financial Model Update:

(a) may incorporate only the following revisions:

(i) changes to Principal Project Company's cash revenues and expenses that arise directly from the Model Update Event; and

(ii) consequential changes to the Project Debt draw down schedule, funding and release of reserves, financing costs, debt service schedule and amounts, Committed Investment draw down schedule and Principal Project Company's Distributions schedule and amounts; and

(b) may not:

(i) incorporate other information or assumptions based on Principal Project Company's actual Project Financial Performance, except as permitted by Exhibit 5C (Calculation of Refinancing Gain) for a Financial Model Update related to a Refinancing; or

(ii) generally update projections through the end of the Term based on current market conditions.

4.7.2.4 Principal Project Company may amend the logic or formulae incorporated in a Financial Model Update to the extent necessary to permit adjustments to the Financial Model in accordance with this Section 4.7 (Financial Model and Financial Model Updates). However, if any amendment is to be made to the logic or formulae in a Financial Model Update, the Key Ratios in the Financial Model Update must be maintained at levels that are neither lower nor higher than the Key Ratios existing in the Financial Model then in effect, and the difference in the Equity IRR after and immediately before making such amendment may not be greater than one basis point (being 0.01%) or as may be agreed upon by the Parties.

4.7.2.5 Principal Project Company shall provide City with access, on an Open Book Basis, to the set of updated and revised assumptions and other data that comprise or are included in any Financial Model Update. Principal Project Company shall also provide a reconciliation and explanation of all the adjustments applied in the Financial Model Update. City may challenge the validity, accuracy or reasonableness of any Financial Model Update or any portion thereof

and may require Principal Project Company to correct any detected errors in the Financial Model Update or Financial Model, as applicable.

4.7.3 Replacement of Financial Model

4.7.3.1 Following mutual agreement by Principal Project Company and City on interim versions of a Financial Model Update, Principal Project Company shall deliver to City, in form and substance reasonably acceptable to City:

(a) the final version of the Financial Model Update and the related amended Financial Modeling Data, in the same form as the versions delivered pursuant to Section 3.3 (Post-Financial Close Requirements and Deliverables) or in such other form as may be agreed upon by the Parties;

(b) an updated model audit report related to such Financial Model Update in accordance with Section 4.7.4 (Financial Model Audits); and

(c) a form of written amendment that (i) effects the replacement of the then current Financial Model then in effect with the proposed Financial Model Update, and (ii) addresses all other amendments to this Agreement that may be required as a result of the Model Update Event and the amended Financial Model, including any required amendments to the definitions of Base Capital MaxAP, Base IFM MaxAP, Equity IRR and Key Ratios.

4.7.3.2 Upon approval by City of the materials provided under Section 4.7.4.1 and execution of the written amendment by the Parties, the Financial Model Update shall become the Financial Model for the purposes of this Agreement until further amended, as applicable. Each Financial Model in effect under this Agreement shall be assigned an exclusive identification number, using chronological sequencing, and shall be clearly marked with Principal Project Company's name, date of submittal, contract number and the words, "Financial Model for Escrow".

4.7.3.3 City reserves the right to approve any material changes in the debt structure (e.g., fixed or variable rate, bank financing or bond financing, call provisions) before Financial Close that constitute a deviation from the assumptions in Exhibit 3A (Financial Proposal). Material changes, as used in this Section 4.7.3.3, include (i) a change that differs materially from any commitments or provisions set forth in the Finance Plan; (ii) a change which would alter the risk allocations in this Agreement or any Key Contract; (iii) a change which could increase the liability of City for termination compensation in the event of a termination; (iv) a change that would modify the gearing of the financing; (v) a change that would result in an Affordability Event; (vi) a change that would cause a Delayed Financial Close Date; (vii) a change in any of the Security Documents; (viii) a change in the funding sources of Common Infrastructure; and/or (ix) a change under any of the conditions precedent to Financial Close under the Financing Documents.

4.7.3.4 In the event of a Contract Dispute about the Financial Model, the Financial Model or the immediately preceding Financial Model Update (as applicable) that is not being disputed (or, if there has been no undisputed Financial Model Update, the Financial Model) will remain in effect until such Contract Dispute is resolved or a new Financial Model Update is issued and not disputed. If a proposed Financial Model or Financial Model Update (as applicable) has not been disputed, or if any such Contract Dispute has been so resolved, the proposed Financial Model

or Financial Model Update (as applicable) will serve as the Financial Model or the current Financial Model Update (as applicable).

4.7.4 Financial Model Audits

4.7.4.1 Any model audit report delivered to City pursuant to Sections 3.3 (Post-Financial Close Requirements and Deliverables) and 4.7 (Financial Model and Financial Model Updates) shall be prepared by an independent audit firm with a nationally recognized reputation. The cost of a model audit report shall be paid solely by City if it is prepared in connection with a Financial Model Update related to a Model Update Event described in Section 4.7.1.1(c) or 4.7.1.1(f) when an amendment is proposed only by City. The cost of any other model audit report required hereunder shall be paid solely by Principal Project Company.

4.7.4.2 Principal Project Company shall bear the entire risk of any errors or omissions contained in the Financial Model and shall not be entitled to any compensation or other relief from City in relation to any loss or damage that it suffers as a result of such error or omission.

4.8 Escrow of Financial Model and Cost and Pricing Data

4.8.1 City and Principal Project Company shall, within 10 days after the Effective Date, jointly deposit the Base Case Financial Model in a locked cabinet at SFMTA or another location approved by City, with both Parties having a key to the cabinet. Replacement Financial Models shall be deposited within 10 days after the Parties have executed and delivered the amendment in accordance with Section 4.7.3 (Replacement of Financial Model).

4.8.2 The Parties acknowledge that the Cost and Pricing Data has been placed into escrow as provided in Section 4.8.1. Concurrently with approval of each Change Order or other amendment to the Contract Documents, Principal Project Company shall deposit in the Cost and Pricing Data escrow one copy of all documentary information used by Principal Project Company in connection with pricing for the Change Order or other amendment, including quotations from Contractors.

4.8.3 Principal Project Company represents and warrants that:

(a) the material initially delivered into escrow constitutes the Base Case Financial Model and Cost and Pricing Data provided in connection with the Financial Proposal and an authorized officer of Principal Project Company has personally examined the contents of the electronic file and/or electronic storage media, as applicable, and they are complete; and

(b) the Cost and Pricing Data constitutes all of the information used by Principal Project Company in determining the cost of the D&C Work, IFM Services and Renewal Work in preparation of the Implementation Proposal and, unless City agrees or directs otherwise, Principal Project Company shall not use any other Implementation Proposal preparation information in the negotiation of Change Orders or in connection with the potential resolution or settlement of Claims or Contract Disputes.

4.8.4 Whenever Principal Project Company makes an additional deposit of any replacement Financial Models or Cost and Pricing Data into escrow, Principal Project Company

shall certify to City in writing at the time of deposit that: (a) the material deposited into escrow constitutes the true replacement Financial Models or Cost and Pricing Data, as applicable; (b) an authorized officer of Principal Project Company has personally examined the contents of the deposit; and (c) the deposit is complete.

4.8.5 City may conduct a review of the Cost and Pricing Data in accordance with the procedure set forth in Section 4.8.6 to determine whether it is complete. In the event City determines that any Cost and Pricing Data is missing, City may request that Principal Project Company submit the missing data and Principal Project Company shall provide such Cost and Pricing Data within three Business Days of the request, and at that time it will be date stamped, labeled to identify it as supplementary information, and added to the escrowed Cost and Pricing Data. Principal Project Company shall have no right to add documents to the Cost and Pricing Data except as otherwise provided in this Section 4.8 (Escrow of Financial Model and Cost and Pricing Data).

4.8.6 Each of City and Principal Project Company shall have the right to examine, through one or more designated representatives, any and all components of the Financial Model and Cost and Pricing Data during the SFMTA's normal business hours. The Party undertaking an examination need not have or state a specific reason to examine such material. Without limiting the foregoing, the Parties recognize that examination of the escrowed material may assist in the negotiation of Change Orders, or may assist in the potential resolution or settlement of Claims or Contract Disputes.

4.8.7 City will provide Notice to Principal Project Company in writing at least two Business Days in advance of City's examination of escrowed material, and shall allow Principal Project Company to be present at the examination. City may make or retain copies of escrowed material, subject to terms reasonably necessary to protect the confidentiality and proprietary nature of the contents, as may be agreed upon by the Parties and subject to applicable Laws.

4.8.8 Subject to applicable Laws, the escrowed material is, and shall remain, the property of Principal Project Company or its Contractors.

4.8.9 Principal Project Company agrees that the Cost and Pricing Data is not part of the Contract Documents and that nothing in the Cost and Pricing Data shall change or modify the Contract Documents.

4.8.10 Either Party may introduce escrowed material into evidence in accordance with the Contract Dispute Procedures. The Parties shall promptly abide by any request from the court or other dispute resolver to receive, review and utilize the Financial Model and Cost and Pricing Data to assist the dispute resolver in its deliberations.

4.8.11 The escrow shall remain in effect throughout the Term and thereafter until final resolution of all Contract Disputes, subject to any mutual agreement of the Parties to retrieve and/or discard materials therein from time to time.

4.8.12 Principal Project Company shall not be entitled to any additional payment for compilation of materials to be deposited into escrow or any other Principal Project Company expenses for complying with this Section 4.8 (Escrow of Financial Model and Cost and Pricing Data).

ARTICLE 5. SUBMITTALS; MANAGEMENT SYSTEMS AND OVERSIGHT

5.1 Submittal Review Terms and Procedures

5.1.1 Terms and Procedures

Principal Project Company shall comply with the terms and procedures for Submittals review set forth in Exhibit 11 (Submittals Review Process). Except as set forth in this Agreement, including Exhibit 11 (Submittals Review Process), the standard for review and approval of design and construction Submittals that comply with the Technical Requirements shall be reasonable discretion; provided, however, that decisions regarding waivers, releases, consents, acceptance of Nonconforming Work, Deviations, PPC Change Requests and other matters that are not consistent with or comply with the Contract Documents shall be within City's sole discretion.

5.1.2 Conflicting Provisions

Exhibit 11 (Submittals Review Process) sets forth uniform terms and procedures for Submittals. In the event of any conflict between the provisions of Exhibit 11 (Submittals Review Process) and any other provisions of the Contract Documents or with the Project Management Plan concerning procedures with respect to submission, review, comment, approval, consent, determination, decision or other actions with respect to Submittals, Exhibit 11 (Submittals Review Process) shall exclusively govern and control the procedures, except to the extent that the conflicting provision expressly states that it supersedes Exhibit 11 (Submittals Review Process).

5.1.3 Limitations on Principal Project Company's Right to Rely

5.1.3.1 No action or failure to take action by or on behalf of City relating to Oversight (including review and approval of the Project Management Plan) or other act or omission of City shall:

(a) constitute an approval or acceptance by City of Principal Project Company's performance of its obligations in accordance with the Contract Documents;

(b) alter, waive, diminish, release or otherwise prejudice any rights, remedies or powers that City has under the Contract Documents or otherwise;

(c) limit Principal Project Company's obligation to perform the Work in accordance with the Contract Documents; or

(d) affect Principal Project Company's liabilities and obligations to fulfill the requirements of the Contract Documents (including its indemnity obligations).

5.1.3.2 Principal Project Company acknowledges and agrees that Oversight, including review, comment, exception, objection, rejection, approval, disapproval, acceptance, concurrence, certification or failure to conduct any such activity by City:

(a) is solely for the benefit and protection of City;

(b) does not relieve Principal Project Company of its responsibility for the selection and the competent performance of all PPC-Related Entities;

(c) does not relieve Principal Project Company from compliance with the requirements of the Contract Documents or create or impose upon City any liability, duty or obligation toward Principal Project Company to cause it to fulfill the requirements of the Contract Documents;

(d) shall not be deemed or construed as any kind of warranty, express or implied, by City;

(e) may not be relied upon by Principal Project Company or used as evidence in determining whether Principal Project Company has fulfilled the requirements of the Contract Documents;

(f) shall not relieve Principal Project Company from liability for, and responsibility to replace, Nonconforming Work (including Work based on Design Documents to the extent that they include a change, deviation, modification, alteration or exception from the Technical Requirements not approved as a Deviation) and to cure PPC Defaults;

(g) shall not be deemed or construed as any assumption of risk by City as to design, construction, equipping, supply, operations, maintenance, performance or quality of the Project or performance of the Work; and

(h) may not be asserted by Principal Project Company against City as a legal or equitable defense to, or as a waiver of or relief from, Principal Project Company's obligation to fulfill the requirements of the Contract Documents.

5.1.3.3 Notwithstanding the provisions of Sections 5.1.3.1 and 5.1.3.2, Principal Project Company may rely on Notices that City gives under this Agreement for purposes of confirming City's approval or consent to an event or matter, but without prejudice to any of City's other rights and remedies under this Agreement, including regarding compliance by Principal Project Company with the requirements of the Contract Documents.

5.1.3.4 Notwithstanding the provisions of Sections 5.1.3.1 and 5.1.3.2, Principal Project Company shall be entitled to rely on City's written approval of specific Deviations.

5.1.3.5 City's approval of Release for Construction Documents shall constitute approval of the design by City for purposes of Government Code section 830.6, but shall not be deemed to relieve Principal Project Company of liability for the design.

5.2 Project Management Plan

5.2.1 Principal Project Company shall comply with the Project Management Plan and its component parts, plans and other included at Exhibit 2 (Project Management Plan) and Good Industry Practice, including those requirements applicable to Quality Assurance and Quality Control.

5.2.2 Principal Project Company shall submit to City, in accordance with the procedures and timeline described in the Technical Requirements, any proposed changes or additions to or revisions of the Project Management Plan and its component parts.

5.2.3 Principal Project Company shall not commence any aspect of Construction Work before approval of the D&C Management Plan applicable to such Construction Work. Principal Project Company shall not commence any aspect of the IFM Services before approval of the relevant component parts, plans and other documentation of the IFM Management Plan applicable to the IFM Services.

5.2.4 If any part, plan or other documentation of the Project Management Plan refers to, relies on or incorporates any manual, plan, procedure or like document, then all such referenced or incorporated materials shall be submitted to City for review, marked to identify relevant provisions.

5.2.5 Principal Project Company shall monitor the Work and prescribe times for internal audits of the Project Management Plan, and shall carry out such internal audits at the times prescribed and shall promptly remedy all findings to City's satisfaction.

5.2.6 Principal Project Company shall comply with and cause all Contractors to comply with applicable requirements of the Project Management Plan.

5.2.7 Principal Project Company shall update the Project Management Plan in accordance with the Technical Requirements.

5.3 Quality Assurance, Quality Control, Generally

Principal Project Company is primarily responsible for all Quality Assurance and Quality Control activities (including self-monitoring activities) necessary to manage the Project. Principal Project Company shall undertake the primary aspects of Quality Assurance and Quality Control for the Project and the Work in accordance with the Project Management Plan, the Technical Requirements (including Section 1.4 of Division 1 of the Technical Requirements), other applicable provisions of the Contract Documents, Good Industry Practice and applicable Law. The foregoing shall not limit City's Oversight rights and quality assurance/quality control verification, all as set forth in this Agreement.

5.4 Oversight, Inspection and Testing

5.4.1 City shall have the right at all times to conduct Oversight as provided in this Section 5.4 (Oversight, Inspection, and Testing) and Division 6 of the Technical Requirements. Such Oversight may include assessments regarding compliance with the Contract Documents, Project Management Plan, and requirements of applicable Governmental Entities and applicable Law. City may designate any Person or Persons to carry out any Oversight on City's behalf.

5.4.2 City's Oversight rights include, at City's sole option, the following:

(a) monitoring and auditing Principal Project Company and its Books and Records to determine compliance with requirements of the Contract Documents and the Project Management Plan, including (i) audit review of compliance with

quality procedures and processes under PPC's Design Quality Plan, PPC's Construction Quality Plan and IFM Quality Management Plan, and (ii) audit review of Design Documents, Construction Documents, field work plans, land surveys, mapping, other data collection tasks, other Submittals and other Books and Records;

(b) conducting audits of all design and pre-design activities for the Project as needed to ascertain and evaluate Principal Project Company's design quality and safety control processes, including (i) review of engineering calculations, engineering reports, and findings, (ii) review of the work of Principal Project Company's environmental compliance personnel with the Environmental Compliance Plan, and (iii) review of certifications that Principal Project Company's Quality Control checks of final Construction Documents have been performed and documented, and that the Construction Documents conform to the requirements of the Contract Documents;

(c) conducting audits of all construction-related activities for the Project as needed to audit Principal Project Company's construction quality and safety control processes, including (i) auditing the services of Principal Project Company's accredited laboratories and associated testing devices and equipment, (ii) reviewing Principal Project Company's construction quality procedures, including conducting field monitoring and inspections as needed for audit purposes of construction activities, materials, and system components, as indicated in the Contract Documents, (iii) auditing Principal Project Company's records of materials, materials tests, materials certifications, and performance tests for Project systems, (iv) reviewing and investigating Project progress, Project quality, Deviations, Defects, and repair and replacement of Nonconforming Work, and (v) conducting field monitoring and inspections;

(d) conducting inspection and testing of materials or software, including witnessing factory tests, off-site lab tests, and first article inspection of manufactured items to verify Principal Project Company's compliance with testing frequencies and requirements, including (i) performance and acceptance testing, in the Contract Documents, and the Project Management Plan, (ii) the accuracy of the tests, inspections and audits performed in accordance with PPC's Design Quality Plan and PPC's Construction Quality Plan, and (iii) compliance of materials incorporated into the Project with the applicable requirements, conditions and standards of the Contract Documents, Regulatory Approvals, the Project Management Plan, IFM Quality Management Plan and applicable Law;

(e) accompanying Principal Project Company on physical inspections associated with Principal Project Company's Performance Monitoring, conducting its own performance inspections, assessing and scoring Principal Project Company's IFM Records, and assessing and rating the condition of elements;

(f) attending and witnessing Principal Project Company's other on-site and off-site tests and inspections, including system start-up and acceptance tests and

inspections, subject to the obligation to observe all applicable Safety Standards and requirements;

(g) reviewing Principal Project Company's certification of Record Documents and surveys;

(h) investigating, analyzing and reporting on Safety Compliance and performance of Safety Compliance Orders; and

(i) monitoring and auditing Principal Project Company's detection, reporting, response times and time to respond to and rectify breaches and failures for which Noncompliance Points may be assessed in accordance with Article 15 (Deductions and Noncompliance Points) and Exhibit 4 (Payment Mechanism).

5.4.3 City also has the right, but not the obligation, to conduct "over-the-shoulder" reviews of Design Documents and other Submittals. All such "over-the-shoulder" reviews conducted are for City's sole benefit.

5.4.4 Nothing in the Contract Documents shall preclude, and Principal Project Company shall not interfere with, any review, inspection or oversight of Submittals or of Work that any Authority Having Jurisdiction may desire to conduct in accordance with its agreements with City or applicable Law.

5.5 Testing and Test Results

5.5.1 All tests shall be carried out in accordance with Division 6 of the Technical Requirements, this Section 5.5 (Testing and Test Results) and all other applicable provisions of and the Contract Documents.

5.5.2 Principal Project Company shall develop a test recording system that permits ready retrieval of all test readings and shall provide information relating to tests proposed, test methodology and Test Reports to City on request.

5.5.3 City may attend and witness any tests and verifications to be conducted with respect to the Project. Principal Project Company shall provide to City all test results and reports (which shall be provided in electronic format in accordance with the Technical Requirements) within 10 Business Days after Principal Project Company or its Contractor receives them. With respect to continuous testing operations (such as concrete quality, structural concrete strengths, aggregate quality, compaction tests and material quality), Principal Project Company shall provide to City at regular intervals (at least weekly unless otherwise agreed) test summary sheets and statistical analyses indicating strength and quality trends.

5.5.4 Principal Project Company shall give City timely advance Notice (not less than 5 Business Days) of the date and specific location of such tests.

5.5.5 City's Authorized Representative and any other designee may attend any test and will give advance Notice (not less than one Business Day) of their intent to attend the test. Any materials or plant that fail(s) such tests shall be rejected.

5.5.6 Principal Project Company acknowledges that, where Principal Project Company's Work impacts a Utility or an element subject to the jurisdiction of an Authority Having Jurisdiction, then the affected Utility Owner or Authority Having Jurisdiction, as applicable, will have the same rights as City under this Section 5.5 (Testing and Test Results), subject to the same obligations that apply to City under Section 6.7.3.

5.6 Meetings

5.6.1 Principal Project Company shall conduct coordination and progress meetings with City, in accordance with Section 1.1.3 of Division 1 of the Technical Requirements during the course of design and construction, including any design and construction occurring during the IFM Period, and in accordance with the IFM Specifications during the performance of the IFM Services. At City's request, Principal Project Company shall require the Engineer of Record and Contractors responsible for or affected by such Work to attend the progress meetings. City and its designated representatives are authorized to attend all such meetings and are permitted to raise any questions, concerns or opinions without restriction.

5.6.2 The Parties shall hold any other meetings, at such times, frequency and locations, as applicable, as stated in the Technical Requirements.

5.6.3 City and Principal Project Company, through their respective Authorized Representatives, shall meet from time to time at the other Party's request to discuss and resolve issues relating to the Work.

5.6.4 Principal Project Company shall schedule all meetings with City at a date, time and place reasonably convenient to both Parties.

5.7 Reporting

5.7.1 Relating to the Work

5.7.1.1 Principal Project Company shall submit all reports relating to the Work in the form, with the content and within the time required under the Contract Documents.

5.7.1.2 Principal Project Company shall make available to City information relating to the status of the Work, including non-proprietary information relating to the design, engineering and construction, estoppel certificates, and such other matters as City may reasonably request in accordance with the Technical Requirements.

5.7.2 Financial Reporting

5.7.2.1 On the first anniversary of the Effective Date and on every subsequent anniversary thereof during the Term, Principal Project Company shall deliver to City certified copies of (a) Principal Project Company's most recent annual audited financial statements and (b) any other reporting and notifications provided to Lenders regarding material events (including any draws on Principal Project Company's debt service reserve account) under the Financing Documents.

5.7.2.2 From the Effective Date until the Final Acceptance Date, Principal Project Company shall deliver to City, on a monthly basis, certified copies of (a) Principal Project Company's draw requests to Lenders (including corresponding payment applications by Key Contractors to

Principal Project Company), and (b) the LTA's reports, which shall clearly state the D&C Percentage as of the date of the report, and the invoices approved by the LTA in connection with the foregoing, in each case, within two Business Days following delivery or receipt, as applicable, by Principal Project Company of the relevant documentation.

5.7.2.3 During the IFM Period, Principal Project Company shall, concurrently with delivery to any Lender and at least annually, deliver to City a budget for IFM Services for the upcoming year, actual costs incurred in performance of the IFM Services during the preceding year, together with any updates required by or delivered to any Lender.

ARTICLE 6. GENERAL PRINCIPAL PROJECT COMPANY OBLIGATIONS

6.1 Planning and Engineering Activities

Principal Project Company, through appropriately qualified and licensed design professionals, as identified in the Project Management Plan, shall furnish or cause to be furnished all planning and engineering activities appropriate for design and development of the Project in accordance with the Contract Documents and Good Industry Practice.

6.2 Project Site Conditions

6.2.1 Principal Project Company acknowledges and agrees that:

(a) it has investigated and satisfied itself as to the conditions affecting the D&C Work, including those bearing upon transportation, disposal, handling and storage of materials, availability of labor, supplies, materials, equipment, water, electric power, roads and uncertainties of weather or similar physical conditions at the Project Site, the conformation and conditions of the ground, and the character of equipment and facilities needed in connection with the D&C Work;

(b) it has satisfied itself as to the character, quality and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the Project Site, including the results of exploratory work (including investigations undertaken pursuant to the PDA) and other information publicly available or provided to Principal Project Company by City; and

(c) any failure by Principal Project Company to acquaint itself with the available information relating to the conditions affecting the D&C Work will not relieve Principal Project Company from responsibility for estimating properly the difficulty or cost of successfully performing the D&C Work and shall not be the basis of a Relief Event claim.

6.2.2 During the progress of the Work, if Principal Project Company encounters any Hazardous Materials or other Project Site conditions that may entitle Principal Project Company to claim that a Relief Event has occurred, then Principal Project Company shall provide Notice to City of the specific condition promptly before it is disturbed, or as soon as practicable afterwards, and before the affected Work continues. City shall promptly investigate such conditions.

6.3 Regulatory Approvals

6.3.1 CEQA Approval and NEPA Approval

6.3.1.1 The Parties acknowledge that City has obtained the CEQA Approval and Principal Project Company acknowledges receipt of a copy of the CEQA Approval. City is responsible for maintaining the CEQA Approval. City is responsible for costs of litigation relating to the CEQA Approval, subject to the exception provided in Section 6.3.4.2(d).

6.3.1.2 Principal Project Company shall provide support to City and undertake additional efforts as specified in Section 6.3.6.1 with respect to any modifications, renewals and extensions of the CEQA Approval, including those required as the result of Principal Project Company's design and Relief Events.

[Note: Assuming the NEPA Approval is obtained prior to Commercial Close, the below provisions will be deleted. If not, (i) these provisions shall remain; (ii) the Agreement or the TRs will include an assumed set of conditions, mitigations, etc.; and (iii) material changes in such assumed conditions, mitigations, etc. will be added as a Compensable Delay Event. PNC must include this type of language in its DB RFP and DB Contract as well]

6.3.1.3 The Parties acknowledge that City has not yet obtained the NEPA Approval. City is responsible for maintaining the NEPA Approval. City is responsible for costs of litigation relating to the NEPA Approval, subject to the exception provided in Section 6.3.4.2(d).

6.3.1.4 Given that the City has not yet obtained the NEPA Approval, performance by either Party of its obligations under this Agreement shall not limit:

(a) City's independent evaluation and sole discretion when conducting the environmental review process required for the NEPA Approval and preparing the NEPA environmental documents; or

(b) City's sole discretion to withhold issuance of NTP 2.

6.3.1.5 Principal Project Company acknowledges and agrees that City retains:

(a) sole discretion, exclusive control and decision-making authority over the description of the Project and any identification or evaluation of alternatives or mitigation measures for the purposes of NEPA; and

(b) sole discretion over whether to accept the Work, the Infrastructure Facility and Principal Project Company Submittals for purposes of the NEPA environmental review process.

6.3.1.6 Nothing contained in this Agreement commits, or shall be construed to commit, City to any proposed project or any Project alternative, modification, or mitigation regarding the Project (including a no-build alternative) until, unless and before the NEPA Approval is obtained and City approves the Project, alternative, modification or mitigation.

6.3.1.7 Principal Project Company shall have no right or obligation to perform, and shall not perform, any services or Work that would violate conflict of interest rules under NEPA regarding the preparation, review, revision and decisions on scope and content of the NEPA environmental documents. All references in this Agreement to Principal Project Company's involvement with the NEPA environmental review process or development of the NEPA environmental documents shall be subject to the limitation in the preceding sentence.

6.3.1.8 Unless and before the NEPA Approval is obtained, Principal Project Company may not undertake final design or construction Work.

6.3.2 Regulatory Approvals other than the CEQA Approval and the NEPA Approval

6.3.2.1 Principal Project Company shall obtain and maintain all Regulatory Approvals required for the Project and the Work, other than the CEQA Approval and the NEPA Approval, and shall bear the risk of obtaining such approvals and any delay in obtaining such approvals, except as provided in Section 6.3.4.1, as well as the risk of conditions imposed on performance of the Work by such approvals. Principal Project Company shall conduct all necessary environmental studies and prepare all necessary environmental documents in compliance with applicable Environmental Laws as needed to obtain Regulatory Approvals other than the CEQA Approval and the NEPA Approval, and shall obtain all necessary modifications, renewals and extensions thereof.

6.3.2.2 Principal Project Company shall pay all costs associated with obtaining Regulatory Approvals, other than the CEQA Approval and the NEPA Approval.

6.3.3 Copies to City

Within 10 days of submitting any application for a Regulatory Approval to a Governmental Entity (or any proposed modification, renewal, extension or waiver of a Regulatory Approval or provision thereof), Principal Project Company shall submit an electronic copy of same, together with any supporting studies, analyses and data, to City. Principal Project Company shall deliver to City true and complete copies of all new or amended Regulatory Approvals, other than the CEQA Approval and the NEPA Approval.

6.3.4 Certain Risks Relating to Regulatory Approvals

6.3.4.1 Except to the extent required as a direct result of (a) a City Change, (b) a City Fault, or (c) Major Approval Delay, Principal Project Company shall not be entitled to any Extra Work Costs, Financing Delay Costs, Delay Costs, time extensions or any other relief associated with securing Regulatory Approvals.

6.3.4.2 As between City and Principal Project Company, Principal Project Company shall bear all risk arising out of, relating to or resulting from:

(a) any differences between Principal Project Company's design for any portion of the Project and the design that served as the basis for the application for a Regulatory Approval, except to the extent required as a direct result of a City Change;

(b) any differences between the means and methods (including temporary works) Principal Project Company chooses for performance of the Work and those stated in, referred to or contemplated in the CEQA Approval and/or the NEPA Approval;

(c) any change in the Project due to Principal Project Company's design, except to the extent that the change was directly attributable to a Relief Event; and

(d) cost of litigation associated with Regulatory Approvals, including the CEQA Approval and the NEPA Approval, to the extent that the litigation arises, in

whole or in part, due to Principal Project Company's failure to comply with the requirements of the Regulatory Approval.

6.3.5 Changes to Regulatory Approvals

If Principal Project Company wishes to obtain, modify, renew or extend any Regulatory Approvals, Principal Project Company shall first comply with, and obtain any consent or waiver required in accordance with, then-existing agreements between City and other Governmental Entities.

6.3.6 City Assistance with Regulatory Approvals.

6.3.6.1 Principal Project Company may, by Notice to City, request City's reasonable assistance and cooperation in obtaining modifying, renewing or extending any Regulatory Approvals (including any modification, renewal or extension of an existing Regulatory Approval required as the result of Principal Project Company's design or construction methods). Upon receipt of such a Notice and agreement of the Parties regarding the scope of, and budget for, assistance to be provided as described in Section 6.3.6.2, City will reasonably assist and cooperate with Principal Project Company in seeking to obtain the Regulatory Approvals, including joining in conferences and meetings with the Governmental Entities with jurisdiction, and providing Principal Project Company data, information and documents available to City and relevant to the application for the Regulatory Approvals

6.3.6.2 City and Principal Project Company shall work jointly to establish a scope of work and budget for City's Recoverable Costs (which shall be limited to reasonable out-of-pocket costs) incurred in connection with the assistance and cooperation that City agrees to provide in connection with modifications to Regulatory Approvals under Section 6.3.6.1. Subject to an agreed upon scope of work and budget and to any rights of Principal Project Company in the case of a Relief Event, Principal Project Company shall fully reimburse City for such Recoverable Costs incurred in providing such assistance and cooperation, including those incurred to conduct further or supplemental environmental studies.

6.3.6.3 Assistance provided by City under Section 6.3.6.1 shall not include any obligation to:

(a) coordinate and work with elected and other public officials as necessary and appropriate;

(b) act as the lead agency and directly coordinate with such Governmental Entities;

(c) take a position which City believes to be inconsistent with the Contract Documents, the Project Management Plan, applicable Law, Regulatory Approval(s), the requirements of Good Industry Practice, or City policy;

(d) take a position that is not usual and customary for City to take in addressing similar circumstances affecting its own projects (except for usual and customary arrangements that are incompatible with the Project's public-private contracting methodology);

(e) take a position that increases the risk, obligations or liabilities of City; or

(f) refrain from concurring with a position taken by a Governmental Entity if City believes that position to be proper.

6.3.6.4 Notwithstanding any assistance provided by City in accordance with Section 6.3.6.1, Principal Project Company shall remain responsible for, and bear all risks and costs associated with, obtaining all Regulatory Approvals, except as otherwise expressly provided in the Contract Documents.

6.3.7 Regulatory Approvals in City's Name

6.3.7.1 Certain Regulatory Approvals are required to be applied for or issued in City's name and/or require City to directly coordinate with such Governmental Entities in connection with obtaining Regulatory Approvals. With respect to such approvals, City will assist and cooperate with Principal Project Company following receipt of a request under Section 6.3.6.1, and the Parties shall proceed in accordance with Section 6.3.6.2 Principal Project Company shall lead all actions and efforts to apply for and obtain the Regulatory Approval including: (a) conducting necessary field investigations, (b) preparing mitigation analyses and studies and plans, (c) preparing surveys and required reports, applications and other documents in form approved by City, and (d) joint coordination and joint discussions and attendance at meetings with the applicable Governmental Entity.

6.3.7.2 Principal Project Company shall be solely responsible for obtaining all Regulatory Approvals required in connection with, and for compliance with applicable Laws with respect to, Temporary Areas.

6.3.8 Major Approval Delay

6.3.8.1 Principal Project Company shall make diligent efforts to obtain the cooperation of each Governmental Entity as necessary for the issuance of any Major Approval. Principal Project Company is responsible for verifying the progress of each Governmental Entity's review and progress towards granting such Major Approval. Principal Project Company shall provide Notice to City within five days after the occurrence of any of the following: (a) Principal Project Company reasonably believes for any reason that any Governmental Entity will not issue the Major Approval in a manner consistent with the timely completion of the Project or in accordance with Law, the Regulatory Approvals or the Contract Documents, (b) Principal Project Company becomes aware that any Governmental Entity is not cooperating in a timely manner to issue the Major Approval in accordance with the Contract Documents, or (c) any other dispute arises between Principal Project Company and such Governmental Entity with respect to the Major Approval, despite Principal Project Company's diligent efforts to obtain such Governmental Entity's cooperation or otherwise resolve such dispute. Such Notice may include a request that City assist in resolving the dispute or in otherwise obtaining the Governmental Entity's timely cooperation. Principal Project Company shall provide City with such information as City reasonably requests regarding the Governmental Entity's failure to cooperate and the effect of any resulting delay on the Project Schedule. After delivering Notice to City, Principal Project Company shall continue to use diligent efforts to pursue the Governmental Entity's cooperation.

6.3.8.2 If Principal Project Company requests assistance of City pursuant to Section 6.3.8.1, the following provisions apply:

(a) Principal Project Company shall provide evidence satisfactory to City, in its good faith determination, that (i) the time for obtaining the Major Approval in the Project Schedule (including any Major Approval Deadline) was, in its inception, a reasonable amount of time for completion of such work, (iii) Principal Project Company has made, and continues to make, diligent efforts to obtain the Governmental Entity's cooperation and commenced coordination at the earliest time, including during the PDA Term (including submitting and actively pursuing applications for the Major Approval, taking into account the Project Schedule), (iv) Principal Project Company has submitted a fully compliant and complete request and application to the applicable Governmental Entity in accordance with applicable Law and the policies and procedures of such Governmental Entity; (v) Principal Project Company has paid in full all fees and charges required for the review, consultation and issuance of the Major Approval by the applicable Governmental Entity; (vi) Principal Project Company has satisfied all other conditions to the commencement of review by the applicable Governmental Entity in accordance with applicable Law and the policies and procedures of such Governmental Entity; and (vii) the Governmental Entity is not cooperating (clauses (a)(i) through (v) above are referred to herein as the "Major Approval Conditions to Assistance").

(b) Following receipt by City of satisfactory evidence, City shall take such reasonable steps as City may reasonably determine to obtain the cooperation of the Governmental Entity with respect to the Major Approval or resolve the dispute; provided, however, City shall have no obligation to prosecute any legal proceedings, or to exercise any other legal remedy available to it under Law or existing contract, unless City elects to do so in its sole discretion. City may, at its sole discretion, participate in the resolution of any dispute between Principal Project Company and such Governmental Entity, whether or not requested to do so by Principal Project Company.

(c) Without limiting City's obligations under clause (b) above, if City holds contractual rights that might be used to enforce the Governmental Entity's obligation to cooperate, City shall have the right not to exercise those rights. The decision not to exercise those rights shall be in the sole discretion of City.

6.3.8.3 Any assistance provided by City shall not relieve Principal Project Company of its sole and primary responsibility for the satisfactory compliance with its obligations under the Contract Documents and its obligations with respect to obtaining any Major Approval.

6.3.8.4 Major Approval Delay shall only apply to an unreasonable and unjustified delay by a Governmental Entity in connection with a Major Approval beyond the Major Approval Deadline following receipt by City of proper Notice pursuant to Section 6.3.8.1, provided that all of the "Major Approval Conditions to Assistance" described in Section 6.3.8.2 have been satisfied.

6.3.8.5 Notwithstanding the foregoing, the term "Major Approval Delay" does not include and is not intended to address (i) City Changes relating to a Major Approval, the impact of which will be addressed in a Change Order, (ii) any Governmental Approvals other than a Major Approval; (iii) additional work associated with a Project design change unless such design change is as a direct and sole result of a City Change, Compensable Delay Event or Unavoidable Delay Event

(excluding Major Approval Delay); (iv) any event which results from or arises out of the actions or omissions of any PPC-Related Entity or any PPC Fault; or (v) any delay or impact relating to or arising out of the failure by any PPC-Related Entity to undertake the coordination activities with the Governmental Entity contemplated by the Predevelopment Agreement or based on the results of a Reasonable Investigation (even if such delay otherwise would have been considered a Major Approval Delay but for such failure). Principal Project Company shall not rely upon any proposed schedules, durations or deadlines, if any, included in the Reference Documents with respect to a Major Approval, and Principal Project Company may not base any Claims for a time extension or additional compensation upon such proposed schedules, durations, and deadlines.

6.3.8.6 Subject to the limitations and restrictions in this Section 6.3.8 (Major Approval Delay) and Articles 13 (General Provisions Applying to Delay Events and Relief Events) and 14 (Compensation and Other Relief for Delay Events and Relief Events), any Contract Deadline(s) affected by a Major Approval Delay shall be extended in accordance with, and subject to, Section 14.1.3.

6.3.8.7 Principal Project Company shall not be entitled to extension of any Contract Deadline or other relief for a Major Approval Delay pursuant to Section 6.3.8 (Major Approval Delay) or otherwise unless all of the following conditions are satisfied (in addition to satisfaction of any conditions specified in Section 6.3.8 ((Major Approval Delay)):

(a) Principal Project Company has timely satisfied the "Major Approval Conditions to Assistance" requirements described in Section 6.3.8.2;

(b) Principal Project Company has provided evidence satisfactory to City that (i) Principal Project Company took advantage of Float available early in the Project Schedule for coordination activities with respect to the Governmental Entity to which the Major Approval relates, (ii) Principal Project Company has fulfilled its obligation to coordinate with the Governmental Entity to prevent or reduce such delays, and (iii) Principal Project Company has otherwise made diligent efforts to obtain timely performance by the Governmental Entity but has been unable to obtain such timely performance;

(c) There exist no circumstances which have delayed or are delaying the Major Approval, other than those that fit within the definition of a Major Approval Delay; and

(d) The delay is otherwise allowable under Articles 13 (General Provisions Applying to Delay Events and Relief Events) and 14 (Compensation and Other Relief for Delay Events and Relief Events).

6.3.8.8 Principal Project Company shall not be entitled to any Extra Work Costs, Delay Costs or for any other increased costs or Claims attributable to delays described in this Section 6.3.8 (Major Approval Delay).

6.4 Compliance with Laws

6.4.1 Applicable Laws

6.4.1.1 Principal Project Company shall comply with, and require that all Contractors comply with, all applicable Laws, including those set forth or described in Exhibit 16 (Federal, State and City Requirements).

6.4.1.2 All provisions required by applicable Laws to be included in this Agreement are incorporated by reference in this Agreement.

6.4.2 Environmental Compliance

6.4.2.1 Without limiting the generality of Section 6.4.1.1, Principal Project Company shall comply with, and require that all Contractors comply with, all Environmental Laws.

6.5 Compliance with Regulatory Approvals

Throughout the Term and the course of the Work, Principal Project Company shall:

(a) comply with all commitments, obligations, responsibilities, conditions and requirements imposed by all Regulatory Approvals, except, with respect to Environmental Approvals only, those obligations, commitments and responsibilities of City that are expressly allocated to City or a Third Party and are expressly excluded from Principal Project Company's scope of Work;

(b) undertake all actions required by, or necessary to maintain in full force and effect all Regulatory Approvals to be obtained by Principal Project Company; and

(c) comply with and implement, and cause Contractors to comply with and implement, all mitigation, monitoring, and reporting measures listed in the CEQA MMRP and the NEPA document or associated decision document, as applicable.

6.6 Communication and Public Outreach

6.6.1 Principal Project Company shall prepare and implement City's Public Outreach Plan developed pursuant to Section 1.15 of Division 1 of the Technical Requirements and Division 9 of the Technical Requirements.

6.6.2 Principal Project Company is prohibited from making any public announcement or disclosure with respect to the Project, whether for publication in the press, radio, television or any other medium, unless Principal Project Company has obtained City's prior written approval.

6.7 Coordination, Cooperation and Access

6.7.1 Principal Project Company shall coordinate and cooperate with City, Third Parties, Utility Owners, Other Contractors and Governmental Entities with jurisdiction in matters relating to the Work, including facilitating their Oversight of the Work, as applicable, including pursuant

to Sections 1.12 and 1.13 of Division 1 of the Technical Requirements. Principal Project Company shall coordinate and cooperate with Other Contractors that may be carrying out work within the Project Site or in the land adjoining or near the Project Site.

6.7.2 Principal Project Company shall provide City and City's representatives with:

(a) safe and unrestricted access to the Project Site and the Project at all times; and

(b) safe access during normal business hours to Principal Project Company's Project offices, operations buildings, and Temporary Areas.

6.7.3 Notwithstanding anything to the contrary in this Agreement, whenever City or its representatives are present on the Project Site and production facilities, including while conducting Oversight, they will abide by the applicable Contractor's reasonable, non-discriminatory safety policies and practices and will take appropriate measures to avoid unreasonable interference with normal construction activity or normal operation and maintenance activity.

6.7.4 Principal Project Company shall not interfere with the work of or cause any delay to any Other Contractors that may be carrying out work within the Project Site or in the land adjoining or near the Project Site and will allow them reasonable access to the Project Site, provided that Principal Project Company shall not be in breach of this Section 6.7.4 for any temporary interruption to the work of any Other Contractors that (a) has been agreed to in advance in accordance with procedures agreed to by Principal Project Company, such contractor and any relevant Third Party; or (b) is reasonably necessary in accordance with Law and Good Industry Practice to respond to emergencies creating an immediate and serious threat to public health, safety, security or the Environment.

6.8 Intentionally Deleted

6.9 Safety Compliance

6.9.1 City may from time to time issue Safety Compliance Orders to Principal Project Company with respect to the Project to implement Safety Compliance.

6.9.2 Promptly upon City obtaining Actual Knowledge of any circumstance or information relating to the Project that, in City's reasonable judgment, is likely to result in a Safety Compliance Order, City will provide Notice to Principal Project Company regarding the issue. Except in the case of an Emergency, City will consult with Principal Project Company before issuing a Safety Compliance Order concerning the risk to public or worker safety, alternative compliance measures, cost impacts, and the availability of Principal Project Company resources to fund the Safety Compliance work.

6.9.3 Where a Governmental Entity or other regulatory authority other than City directs a Safety Compliance Order, in order for Principal Project Company to comply with the Safety Compliance Order, City shall issue a corresponding Safety Compliance Order to Principal Project Company.

6.9.4 Principal Project Company shall implement each Safety Compliance Order as expeditiously as reasonably possible following its issuance. Principal Project Company shall diligently prosecute the work necessary to achieve such Safety Compliance until completion.

6.10 Law Enforcement and Security

6.10.1 Law Enforcement Services

6.10.1.1 Principal Project Company acknowledges and agrees that law enforcement agencies, including City in its regulatory capacity, are empowered to enforce all applicable Laws and to enter the Project, and that any person engaged by City to provide law enforcement services has the authority to enter the Project, at any and all times to carry out their duties. Principal Project Company shall ensure that law enforcement agencies have necessary access to the Project to carry out their duties, power and jurisdiction.

6.10.1.2 City shall not have any liability or obligation to Principal Project Company arising out of, relating to or resulting from the failure of law enforcement agencies to provide services, or any of their, or their respective agents' or employees', acts, omissions, negligence or misconduct in providing services, except to the extent such failure, act, omission, negligence or misconduct otherwise qualifies as a Compensable Delay Event Relief under clause (i) of the definition thereof or a Compensable Relief Event under clause (d) of the definition thereof. The general indemnity in Section 10.6.1 (General Indemnity) shall not apply to the extent that a claim, cause of action, suit, legal or administrative proceeding or any other occurrence, loss or damage of the type listed in Section 10.6.1 (General Indemnity) is directly attributable to actions of a law enforcement agency designated by City to provide services for the Project, and is not due to any PPC Fault.

6.10.2 Security

6.10.2.1 Principal Project Company is responsible for the security of the Project and safety of the workers and public within the Project Site and the Infrastructure Facility during the performance of the D&C Work. During the IFM Period, Principal Project Company is responsible for protecting the Infrastructure Facility from damage and providing safe operation of the Infrastructure Facility.

6.10.2.2 Principal Project Company shall comply with all rules, directives and guidance of the U.S. Department of Homeland Security and other comparable agencies, and shall coordinate and cooperate with all Governmental Entities providing security, first responder and other public emergency response services.

6.11 Warranties

6.11.1 Warranties for SFMTA O&M Facilities

6.11.1.1 Principal Project Company warrants each SFMTA O&M Facility against Defects during the period commencing on Substantial Completion of the Project and ending two years thereafter. The general warranty contained in this Section 6.11.1.1 is in addition to any express warranties provided for elsewhere in the Contract Documents. Principal Project Company warrants with respect to the SFMTA O&M Facilities that:

(a) the Construction Work shall be free of Defects, except to the extent that such Defects are inherent in prescriptive specifications included in the Contract Documents;

(b) materials and equipment furnished by or on behalf of any PPC-Related Entity under the Contract Documents shall be of good quality and when installed, shall be new;

(c) equipment furnished by or on behalf of any PPC-Related Entity shall be in good working condition;

(d) the Work shall meet all of the requirements of the Contract Documents and Good Industry Practice;

(e) the Work shall be free of Deviations that have not been approved by City; and

(f) the Project shall be fit for use for the intended function as contemplated by the Contract Documents.

6.11.1.2 Principal Project Company shall perform, at Principal Project Company's sole cost and expense, warranty Work for any SFMTA O&M Facilities Defect:

(a) with respect to which City delivers written Notice to Principal Project Company within the applicable warranty period; or

(b) of which Principal Project Company otherwise has Actual Knowledge before the expiry of the applicable warranty period.

6.11.1.3 Principal Project Company shall commence the applicable SFMTA O&M Facility warranty Work within 14 days of written Notice of the relevant SFMTA O&M Facilities Defect from City or Principal Project Company's Actual Knowledge thereof, whichever is earlier; or such shorter period as may be designated by City for emergency repairs. Principal Project Company shall thereafter diligently complete the SFMTA O&M Facility warranty Work as soon as reasonably practicable and promptly provide Notice to City in writing of completion of same.

6.11.1.4 If Principal Project Company fails to commence or pursue with diligence and complete the SFMTA O&M Facility warranty Work as required, City may provide written Notice of such failure to the Principal Project Company. If the Principal Project Company's failure continues for three Business Days after the City delivers this Notice, the City may, in its sole discretion, perform the SFMTA O&M Facility warranty Work, and Principal Project Company shall reimburse City within seven days after any written demand from City for Recoverable Costs incurred by City in connection with the performance of the SFMTA O&M Facility warranty Work, including any related reasonable attorneys' and consultants' fees and expenses.

6.11.1.5 In the event of an emergency constituting an immediate hazard to health or safety of Building Occupants or City property due to an SFMTA O&M Facilities Defect, City may undertake, at Principal Project Company's sole cost and expense and without prior Notice, all work necessary to correct such hazardous condition(s).

6.11.1.6 Before expiry of the applicable warranty period, Principal Project Company shall execute and deliver to City a written assignment, in form and substance reasonably acceptable to City, of all Principal Project Company's and Contractors' right, title and interest in and to all warranties, and to the extent assignable, claims and causes of action held by Principal Project Company or its Contractors against Third Parties, concerning the SFMTA O&M Facilities.

6.11.2 Contractor Warranties and Guaranties

6.11.2.1 Principal Project Company shall obtain from all Contractors representations, warranties, guarantees and obligations in accordance with Good Industry Practice for work of similar scope and scale, with respect to design, materials, workmanship, equipment, tools and supplies furnished by all such Contractors and Suppliers, which shall extend not only to Principal Project Company but also to City and any Utility Owner or Authority Having Jurisdiction for whom Work is being performed. The warranties from Key Contractors shall be for such periods as specified in the Technical Requirements or, if not specified, a period of not less than two years from the date of the Certificate of Substantial Completion. All representations, warranties, guarantees and obligations of Key Contractors: (a) shall be written so as to survive all City and any Third Party inspections, tests and approvals; and (b) shall provide that upon expiration or any earlier termination of this Agreement before the expiration of such representations, warranties, guarantees and obligations they shall automatically be for the benefit of and enforceable by City and its successors and assigns, and any Utility Owner or Authority Having Jurisdiction for whom Work is being performed, subject to the rights of the Lenders as provided in any Direct Agreement.

6.11.2.2 To the extent that any Contractor warranty or guaranty is voided after termination of this Agreement by reason of Principal Project Company's negligence or failure to comply with the requirements of the Contract Documents in incorporating material or equipment into the Project, Principal Project Company shall correct any Defects which would otherwise have been covered by such warranty.

6.11.2.3 Contractor warranties are in addition to all rights and remedies available under the Contract Documents or applicable Law, and shall not limit Principal Project Company's liability or responsibility imposed by the Contract Documents or applicable Law with respect to the Work, including liability for design Defects, construction Defects, strict liability, breach, negligence, willful misconduct or fraud.

6.11.2.4 Principal Project Company hereby assigns to City all warranties and guaranties under each Contract, as well as Principal Project Company's rights under the Contracts, effective as of the end of the Term.

6.11.3 Warranties for Utility Owners and Authorities Having Jurisdiction

If required by the Utility Owner or Authority Having Jurisdiction, as applicable, Principal Project Company shall provide, or obtain and ensure performance under as if Principal Project Company provided, warranties and guaranties, for all Work performed for Utility Owners and Authorities Having Jurisdiction, for two years after the date of acceptance of such work by the Utility Owner or Authority Having Jurisdiction, as applicable or such longer term as provided in any agreement with the Utility Owner or Authority Having Jurisdiction, for the benefit (with rights of enforcement) of such Utility Owner or Authority Having Jurisdiction. City shall have, and shall

be identified as a third party beneficiary of the right to enforce, all such warranties and guaranties of such work. Upon acceptance of such work by the Utility Owner or Authority Having Jurisdiction, as applicable, and delivery of an assignment of the relevant warranty and guaranty rights to the Principal Project Company shall be relieved of responsibility for maintenance of such work.

6.12 Maintain Good Standing

6.12.1 Principal Project Company shall remain qualified to do business in the State and remain in and maintain good standing and shall undertake all actions to do so, including continued timely submission of all required information and payments when due to the California Secretary of State, Franchise Tax Board, Internal Revenue Service, or any other applicable agency or entity. Principal Project Company shall immediately provide Notice to City if it is no longer duly qualified and in good standing.

6.12.2 Principal Project Company shall ensure that each Key Contractor shall remain duly qualified to do business in the State and in good standing throughout the term of the Key Contract and immediately provide Notice to City if a Key Contractor is no longer duly qualified or in good standing.

ARTICLE 7. DESIGN AND CONSTRUCTION

7.1 General Obligations of Principal Project Company Concerning D&C Work

7.1.1 Principal Project Company shall:

(a) expeditiously and diligently progress performance of the D&C Work to achieve Substantial Completion by the Substantial Completion Deadline;

(b) carry out or do all things necessary to perform the D&C Work and design and construct the Infrastructure Facility in accordance with the Contract Documents and Good Industry Practice;

(c) ensure the Infrastructure Facility meets the requirements of the Contract Documents, including that the Infrastructure Facility be constructed in compliance with the San Francisco Green Build Code (Chapter 7 (Green Building Requirements for City Buildings) of the San Francisco Environment Code) and achieve LEED Gold certification**;**

(d) provide maintenance and other services as described in the Contract Documents;

(e) ensure adequate materials, equipment and resources are available to ensure compliance with the requirements of the Contract Documents under normal conditions and reasonably anticipated abnormal conditions;

(f) ensure all materials and equipment are of good quality and new unless otherwise expressly stated;

(g) ensure, as of the Substantial Completion Date, the Construction Work shall be free of Defects, errors and omissions, except as may be set out in the Punch List (which shall be fully resolved as of Final Acceptance of the Infrastructure Facility);

(h) ensure, as of the Substantial Completion Date, the Design Work meets each of the requirements set out in this Agreement;

(i) ensure the Project Site is kept in a safe, secure, neat and clean condition at all times;

(j) cooperate with City and Authorities Having Jurisdiction in all matters relating to the D&C Work, including their Oversight of D&C Work;

(k) remove and replace Nonconforming Work and/or materials, whether discovered or rejected by City or Principal Project Company, or otherwise remedy such Nonconforming Work and/or materials in an acceptable manner and in accordance with the requirements of the Contract Documents; and

(l) pay all direct and indirect costs for all Utility services required to perform and complete the D&C Work in accordance with the requirements of the Contract Documents.

7.2 Performance, Design and Construction Standards

7.2.1 Principal Project Company shall construct and equip the Infrastructure Facility in accordance with the Project's Release for Construction Documents, taking into account the Project Site limits and other constraints affecting the Project.

7.2.2 The Project design and construction shall be subject to certification in accordance with the procedures contained in the approved PPC's Design Quality Plan and PPC's Construction Quality Plan.

7.2.3 Principal Project Company shall use reasonable efforts to identify and provide Notice to City of any specifications or other provisions in the Technical Requirements that are erroneous, create a potentially Unsafe Condition, or may be inconsistent with Good Industry Practice or applicable Law. Such Notice must include a request for City approval of a Deviation or changes to the provision that Principal Project Company believes are necessary to render it correct, safe and consistent with Good Industry Practice and applicable Law. If Principal Project Company commences or continues any D&C Work affected by the change after the need for the change was known, or should have been known through the exercise of reasonable care, Principal Project Company shall bear any additional costs and time associated with redoing the D&C Work already performed.

7.2.4 After Commercial Close, City may modify relevant provisions of the Technical Requirements to incorporate any changed, added or replaced Standards and Specifications applicable to the D&C Work by delivering a City Change to Principal Project Company.

7.3 Design Implementation

Principal Project Company, through appropriately qualified professional engineers and architects registered and licensed in the State and identified in Principal Project Company's Project Management Plan, shall furnish designs, plans and specifications in accordance with the Contract Documents. Principal Project Company shall cause the architect(s) of record and/or Engineer(s) of Record for the Project to sign and seal all Final Design Documents.

7.4 Schedule, Deadlines, Notices to Proceed and Commencement of Work

7.4.1 Project Schedule

7.4.1.1 Subject to occurrence of a Delay Event resulting in an extension of time in accordance with this Agreement, if any, Principal Project Company represents and warrants that, as of the Effective Date, its Project Schedule represents a practical schedule to complete performance of the Work through Final Acceptance and is consistent with applicable deadlines.

7.4.1.2 Between the Effective Date and the earlier of NTP2 and approval of Principal Project Company's Project Schedule in accordance with Section7.4.1.3, Principal Project Company shall perform the Work in accordance with the Initial Schedule.

7.4.1.3 Principal Project Company shall submit to City, for City review and approval, a proposed detailed Project Schedule in accordance with Section 1.2 of Division 1 of the Technical Requirements and Exhibit 11 (Submittal Review Process).

7.4.1.4 Upon City's approval, the detailed Project Schedule becomes the Project Schedule and Principal Project Company shall perform the remaining Work in accordance with such Project Schedule.

7.4.1.5 The Parties shall use the Project Schedule for planning and monitoring the progress of the D&C Work. The Project Schedule shall include the deadlines for Substantial Completion and Final Acceptance of the Infrastructure Facility.

7.4.1.6 Principal Project Company shall not be limited in the sequencing or staging of the D&C Work, except to the extent that the Contract Documents or applicable Law imposes limitations.

7.4.1.7 Principal Project Company acknowledges and agrees that the Contract Deadlines provide reasonable and adequate time to perform the Work required within the Contract Deadlines, subject only to Principal Project Company's rights to obtain time extensions under Article 14 (Compensation and Other Relief for Delay Events and Relief Events).

7.4.2 Float

7.4.2.1 All Float contained in the Project Schedule, or as generated during the course of the Work, shall be a project resource and available to both City and Principal Project Company, and shall not be considered as time for exclusive use or benefit of either City or Principal Project Company. Principal Project Company shall cause each Prime Contractor to acknowledge Float to be available to City as well as Principal Project Company as needed to absorb delay caused by Delay Events or other events, achieve interim completion dates and achieve Contract Deadlines.

7.4.2.2 All Float shall be identified as such in the Project Schedule on each affected schedule path. City shall have the right to examine the identification of (or failure to identify) Float on the Project Schedule in determining whether to approve the Project Schedule. Once identified, Principal Project Company shall monitor, account for and maintain Float in accordance with critical path methodology.

7.4.3 Commencement of Non-Construction Work

Except as provided in Section 7.4.6 (Work Before NTP 1), Principal Project Company shall not commence any Work until City has issued NTP 1 authorizing commencement of non-Construction Work. City shall promptly issue NTP 1 when all of the conditions set forth in Exhibit 15A (Conditions to NTP 1 - Commencement of Non-Construction Work) have been satisfied.

7.4.4 Commencement of Construction Work

Principal Project Company shall not commence any portion of the Construction Work until City has issued NTP 2 authorizing commencement of the applicable portion of Construction Work.

City shall promptly issue NTP 2 when all of the conditions set forth in Exhibit 15B (Conditions to NTP 2 - Commencement of Construction Work) have been satisfied.

7.4.5 References in the Technical Requirements to Standards and Specifications relating to the D&C Work shall mean the most recent editions in effect as of the Setting Date, unless expressly provided otherwise.

7.4.6 Work Before NTP 1

7.4.6.1 Except as provided in Section 7.4.6.2 and as may be provided pursuant to any Early Works Agreement between Principal Project Company and City, Principal Project Company shall not perform any Work prior to NTP 1.

7.4.6.2 Before NTP 1, Principal Project Company shall perform all Work required to achieve Financial Close, and otherwise undertake all efforts to satisfy the conditions set forth in Exhibit 15A (Conditions to NTP 1 - Commencement of Non-Construction Work). If Financial Close fails to occur, City shall have no obligation to reimburse Principal Project Company for any of its costs incurred relating to this Agreement, other than payments allowed under Section 3.6 (No-Fault Termination).

7.5 Acquisition of Real Property

7.5.1 Additional Acquisitions

7.5.1.1 If Principal Project Company identifies any property that is not subject to Section 7.5.1.2 but that Principal Project Company seeks to add to the Project Site to accommodate Principal Project Company's particular design or for Principal Project Company's convenience in performing the Work, then Principal Project Company may submit to City a request for acquisition of additional property interests and related documentation as reasonably requested by City. In such event, Principal Project Company shall prepare and submit to City for review and approval new or revised surveys, legal descriptions, a preliminary title report and a copy of all encumbrances of record, draft site plats, design and other appropriate documentation of basis of acquisition and justification of acquisition. Principal Project Company's request shall include an analysis identifying alternative approaches that could be adopted to avoid the need for the acquisition, including use of retaining walls and other design modifications. Following delivery of a request under this Section 7.5.1.1:

(a) City will review the request and supporting documentation and will determine whether the proposed acquisition appears to be appropriate for the Project, whether any additional information or documentation is necessary for the acquisition, and the anticipated schedule for the acquisition;

(b) upon agreement between City and Principal Project Company regarding the acquisition of any additional property, Principal Project Company shall support the acquisition as requested by City; and

(c) prior to acquisition of any additional property interests under this Section 7.5 (Acquisition of Real Property), Principal Project Company shall provide to City any additional documentation required by City for the acquisition.

7.5.1.2 If City chooses to acquire property proposed for acquisition by Principal Project Company pursuant to Section 7.5.2.1 ("**Additional Properties**"), City will proceed with the acquisition, subject to this Section 7.5 (Acquisition of Real Property). In all situations, City has no obligation to acquire any Additional Property.

7.5.1.3 Principal Project Company shall be responsible for the cost to acquire Additional Properties, together with all costs and expenses incurred by City in connection with acquiring Additional Properties. In paying all such costs and expenses, Principal Project Company is not acquiring, and shall not be deemed to be acquiring, any interest in real property for Principal Project Company. Such costs and expenses shall include:

(a) the cost of acquisition services, relocation services and associated document preparation costs;

(b) the cost of relocation assistance in accordance with applicable Law;

(c) the cost of condemnation proceedings, including attorneys' and expert witness fees, and all fees and expenses for production of exhibits, transcripts, photos and other documents and materials;

(d) the acquisition price of the Additional Properties and associated appraisals, costs, settlements, offers of judgment, court awards or judgments, including pre-judgment and post-judgment interest, costs, attorney's fees, claims for loss of business goodwill and any other consideration for the Additional Properties;

(e) the cost of permanent or temporary acquisition of leases, easements, rights of entry, licenses and other interests in real property, including for drainage, temporary work space, Temporary Areas, and any other convenience of Principal Project Company;

(f) the cost of permitting; and

(g) closing costs in accordance with City policies.

7.5.1.4 City will submit statements to Principal Project Company regarding Recoverable Costs relating to acquisition of Additional Properties, not more often than monthly. Principal Project Company shall reimburse City for Recoverable Costs within 30 days of receipt of an invoice. In addition to any other remedy, City shall have the right to curtail or suspend acquisition activities if Principal Project Company for any reason fails to pay any such invoice in full when due. City will resume acquisition activities promptly after delinquent amounts are paid in full with interest.

7.5.1.5 Principal Project Company shall bear all risk of delays related to acquisition of Additional Properties and the risk that an Additional Property is not able to be acquired. Each Additional Property shall become part of the Project Site only upon City's written Notice to Principal Project Company indicating that the Additional Property has been acquired and that City grants Principal Project Company access to the Additional Property.

7.5.1.6 Principal Project Company shall not be entitled to any compensation or any extension of any Contract Deadline under the Contract Documents or otherwise entitled to make a Claim as a result of (i) site conditions associated with any Additional Properties (including those relating to Hazardous Materials, differing site conditions, or Utilities)

7.5.2 Temporary Interests in Property

7.5.2.1 Principal Project Company shall be solely responsible for acquisition of any temporary interests in property that Principal Project Company determines is necessary, desirable or advisable to obtain in connection with the Project or the Work. Principal Project Company shall pay directly the cost to acquire, maintain, operate, and/or dispose of all such property interests. If the property is within the limits of any real property scheduled for acquisition by City or is intended to be used for permanent improvements, or if Principal Project Company intends to request City to acquire such real property, Principal Project Company shall coordinate with City and shall not negotiate with the owner(s) of such interests except with express permission of City and in compliance with applicable Law.

7.5.2.2 City shall have no obligation to acquire temporary interests in property. Principal Project Company shall solely bear the risk of any delays and cost impacts related to acquisition of temporary interests, regardless of whether City agrees to undertake any such acquisition.

7.5.2.3 Principal Project Company shall promptly provide Notice to City regarding all temporary interests in property that it or any of its Contractors acquires in the vicinity of the Project.

7.5.3 Property Acquisitions and Scheduling Work

7.5.3.1 Principal Project Company's Project Schedule shall not provide for any Work to be done on any Additional Properties acquired or to be acquired in accordance with Section 7.5.1 (Additional Acquisitions) until after City has granted Principal Project Company access to the Additional Property in writing.

7.5.3.2 Concurrently with the initial review of the Project Schedule, Principal Project Company and City shall meet to discuss:

(a) Principal Project Company's access requirements associated with planned activities and the extent to which delay in access to property identified for acquisition under Section 7.5.1 (Additional Acquisitions) is likely to affect a Critical Path;

(b) what efforts (if any) could reasonably be undertaken by the Parties to accelerate acquisition of any critical real property interests;

(c) whether schedule delays may be avoided by providing access to property subject to conditions or restrictions;

(d) whether any changes should be made to the Project Schedule; and

(e) whether anticipated covenants, conditions and restrictions affecting access will affect Principal Project Company's ability to perform Work as scheduled, and how to mitigate any such problems.

7.5.3.3 Principal Project Company shall coordinate with City regarding:

(a) completion of Project design and identification of final site requirements and construction impacts;

(b) any adjustments to the Project Schedule necessary to reflect City's expected timeline to acquire any property identified for acquisition under Section 7.5.1 (Additional Acquisitions); and

(c) any design features that may impact properties for which no property acquisition is contemplated, with the goal of avoiding damages to properties not previously identified and addressed.

7.6 Utilities, Utility Adjustments and Utility Delay

7.6.1 Utilities to Serve Facility

7.6.1.1 Principal Project Company shall be solely responsible for obtaining and implementing all new Utility services needed for the Infrastructure Facility, and must timely submit the appropriate applications to obtain electricity, water, sewer, cable, etc. This work expressly includes obtaining electricity and power from PG&E for the Project, including all applications and coordination required to obtain such Utility services.

7.6.1.2 City shall, from time to time as required, enter into contracts with Energy suppliers for the supply of Energy to the Infrastructure Facility and shall be responsible for all payments due pursuant to such supply contracts. For avoidance of doubt, the Infrastructure Facility's electricity, natural gas, water, and other such Utility bills will be sent to City and City will be responsible for paying such utility bills. Principal Project Company will be provided with copies of the invoices.

7.6.2 Principal Project Company's General Responsibilities

7.6.2.1 Principal Project Company shall be responsible for all Utility Adjustments required by the Project.

7.6.2.2 City agrees to cooperate as reasonably requested by Principal Project Company in advancing Utility Adjustments, including attendance at negotiation sessions and review with Utility Owners. Principal Project Company shall timely keep City informed of the status of any such negotiations.

7.6.2.3 Principal Project Company shall bear the sole risk, cost and schedule impact of Utility Adjustments other than, subject to Articles 13 (General Provisions Applying to Delay Events and Relief Events) and 14 (Compensation and Other Relief for Delay Events and Relief Events), as a direct result of a City Change or Relief Event.

7.6.3 Avoiding Utility Adjustments and Minimizing Costs

7.6.3.1 Principal Project Company shall minimize Utility Adjustments in the design and construction of the Infrastructure Facility and costs for which Principal Project Company may be entitled to additional compensation pursuant to the Contract Documents, including by taking into account existing Utilities (and their location) in its design and working around existing Utilities (including existing PG&E poles at or adjacent to the Project Site), including through its construction sequencing, means and methods. If a Utility Adjustment could have been avoided through Principal Project Company undertaking a Reasonable Investigation prior to the Setting Date, Principal Project Company shall bear the full risk and liability associated with such Utility Adjustment, irrespective of any other provisions in this Agreement that might provide compensation, time or other relief in connection with such Utility Adjustment.

7.6.3.2 Principal Project Company shall reimburse City for any costs City incurs as a result of Principal Project Company's failure to comply with the requirements of this Section 7.6.3 (Avoiding Utility Adjustments and Minimizing Costs).

7.6.4 Allocation of Work Responsibility

7.6.4.1 The allocation of responsibility for performing Utility Adjustment design, construction, and/or materials procurement for each Utility Adjustment as between Principal Project Company and the Utility Owner shall be determined in accordance with Section 1.13 of Division 1 of the Technical Requirements (including pursuant to the Utility Coordination Work Plan and Utility Project Execution Plan). For purposes of this Section 7.6 (Utilities, Utility Adjustments and Utility Delay) and Section 1.13 of Division 1 of the Technical Requirements, references to responsibility for performing Utility Adjustment design and construction include all tasks customarily associated therewith; provided, however, that Principal Project Company shall be responsible for all coordination with Utility Owners that is necessary in order to accomplish the Utility Adjustments in compliance with the requirements of the Contract Documents.

7.6.4.2 Principal Project Company is responsible for scheduling all Utility Adjustments so as allow for the issuance of NTP 2 as soon as practicable and to meet all applicable Contract Deadlines, without regard to whether a Utility Adjustment is performed by Principal Project Company or by the affected Utility Owner (or its contractors). Accordingly, under no circumstances shall any reallocation of responsibility for Utility Work between Principal Project Company and a Utility Owner be considered grounds for a time extension hereunder.

7.6.4.3 No increase or decrease in compensation payable to Principal Project Company shall be made pursuant to this Section 7.6.4 (Allocation of Work Responsibility) on account of any change in the allocation of responsibility for Incidental Utility Work, or any other matter for which the Contract Documents specify how liability, cost or risk is to be allocated between City and Principal Project Company.

7.6.5 Utility Adjustment Costs

7.6.5.1 Principal Project Company is responsible for all costs of the Utility Work, including costs of acquiring Utility easements and costs with respect to relinquishment or acquisition of Utility Owner property interests, but excluding (a) costs attributable to Utility Betterments, for which the Utility Owner is responsible and which are not paid to Utility Owner by City; and (b)

any other costs for which the Utility Owner is responsible under Law which are not paid to Utility Owner by City. Principal Project Company shall fulfill this responsibility either by performing the Utility Work at its own cost, if permitted by the Utility Owner, or by reimbursing the Utility Owner for the Utility Owner's performance of the Utility Work, in accordance with Section 7.6.5.4. Principal Project Company shall bear the costs due to the Utility Owner and all costs and expenses associated therewith, including the costs of Utility Owner inspections and any overtime charges incurred by the Utility Owner. Principal Project Company is solely responsible for collecting directly from the Utility Owner any amount due to Principal Project Company for Utility Betterment costs or other costs incurred by Principal Project Company for which the Utility Owner is responsible, whether under Law or otherwise.

7.6.5.2 If for any reason Principal Project Company is unable to collect any amounts due to Principal Project Company from any Utility Owner, then as between City and Principal Project Company, (a) City shall have no liability for such amounts, (b) Principal Project Company shall have no right to collect such amounts from City or to offset such amounts against amounts otherwise owing from Principal Project Company to City, and (c) Principal Project Company shall have no right to stop Work, sue for *mandamus*, demand or plead in any court for City's participation in resolution of any dispute with the Utility Owner, or seek to exercise any other remedies against City on account of the Utility Owner's failure to pay.

7.6.5.3 Principal Project Company shall maintain a complete set of records for the costs of Utility Work performed (whether incurred by Principal Project Company or by the Utility Owner), in a format reasonably satisfactory to City and in sufficient detail for analysis. For both Utility Owner costs and Principal Project Company costs, the totals for each cost category shall be shown in such manner as to permit comparison with the categories stated on the estimate. Principal Project Company. All records with respect to Utility Work shall comply with the record keeping and audit requirements of the Contract Documents.

7.6.5.4 To the extent that City is required to initially pay a Utility Owner for any costs related to Utility Owner's performance of Utility Work under this Section 7.6.5 (Utility Adjustment Costs), Principal Project Company, on a monthly basis, shall reimburse City for any costs incurred in connection with such Utility Work. The amounts reimbursed shall be due and payable within 10 days after receipt of City's invoice for such Utility Work. City, in its sole discretion, may also deduct the amount to be reimbursed from any payment due and payable to Principal Project Company should Principal Project Company fail to reimburse City for such Utility Work.

7.6.6 Incidental Utility Work

Notwithstanding any contrary provision of the Contract Documents, Principal Project Company shall be responsible for all Incidental Utility Work without regard to the allocation of Work responsibility otherwise established pursuant to this Section 7.6 (Utilities, Utility Adjustments and Utility Delay). Without limiting the provision of Section 7.6.2.3, Principal Project Company also shall be responsible for furnishing all designs for Incidental Utility Work that Principal Project Company performs, unless such designs are included among that portion of the Utility Work to be performed by the Utility Owner. Principal Project Company shall not be entitled to any adjustment in its compensation or Contract Deadlines on account of costs incurred, cost savings or delays associated with the performance of Incidental Utility Work by Principal Project Company or by any Utility Owner.

7.6.7 Bonds and Insurance; Security for Utility Adjustment Costs

7.6.7.1 All Utility Work shall automatically be covered by the Payment Bonds and Performance Bonds described in Section 10.2 (Performance Security) and by the insurance described in Section 10.1 (Insurance).

7.6.7.2 Principal Project Company shall satisfy all requirements of Utility Owners to provide security for reimbursement of Utility Adjustment costs to which the Utility Owner is entitled and that are the responsibility of Principal Project Company hereunder.

7.6.8 Utility Investigation by Principal Project Company

7.6.8.1 During the PDA Term, Principal Project Company has undertaken an investigation of Utilities affecting the Project Site, including Utilities located on, in, under, around or impacting the Project Site and the Project. Principal Project Company represents and warrants that it has analyzed Reference Documents, diligently commenced coordination concerning Utility Adjustments (including submitting and actively pursuing relocation applications to Utility Owners with respect to impacted Utilities, taking into account the Project Schedule), contacted and made inquiries of Utility Owners, performed substantial surface inspections of the Project Site and undertaken such additional inspections, including substantial subsurface utility investigations, as it deems appropriate and as are required by the Contract Documents and in keeping with Good Industry Practice to verify, fully and accurately identify all Utilities (including contacting and accessing Non-Dig Alert Utilities), addressing all field conditions, and validating the Utility Information. Principal Project Company acknowledges that its rights to any compensation, time or other relief in connection with Utilities, Unidentified Utilities, Utility Adjustments and Utility Delay is conditioned on the accuracy of the foregoing representations and warranties.

7.6.8.2 Except as otherwise provided in Sections 7.6.9 (Claims for Inaccuracies in Utility Information) and 7.6.13 (Utility Delays), the Parties specifically intend by Section 7.6 (Utilities, Utility Adjustments and Utility Delay) to delegate to Principal Project Company the obligation to perform all responsibilities with respect to identification of all Utilities and to allocate to Principal Project Company all risk of increased costs and time of the Utility Work resulting from inaccuracies in the reputed locations of such facilities (and in any other relevant information with respect to such facilities).

7.6.9 Claims for Inaccuracies in Utility Information

7.6.9.1 If during performance of Construction Work, Principal Project Company encounters any Non-Dig Alert Utilities located at the Project Site that requires a Utility Adjustment, and such Utility is (i) an Unidentified Utility; (ii) not a Service Line; and (iii) not identified or reflected in whole or in part in the Utility Information, then, subject to the provisions of Articles 13 (General Provisions Applying to Delay Events and Relief Events) and 14 (Compensation and Other Relief for Delay Events and Relief Events), Principal Project Company shall be entitled to a Change Order to compensate Principal Project Company for any material increase in Principal Project Company's actual direct costs of performing the Utility Work that is directly attributable to undertaking the Utility Adjustment of the Non-Dig Alert Utility. The amount of such Change Order shall be determined in accordance with Article 14 (Compensation and Other Relief for Delay Events and Relief Events).

7.6.9.2 Principal Project Company shall not be entitled to any compensation pursuant to this Section 7.6.9 (Claims for Inaccuracies in Utility Information) or otherwise for any of the following:

(a) Increased costs of the Work attributable to Unidentified Utilities and Non-Dig Alert Utilities, to the extent that the existence of the facility was known to Principal Project Company as of the Setting Date or could have been inferred from a Reasonable Investigation or otherwise from the presence of other facilities, such as buildings, meters, junction boxes, manholes or identifying markers, visible during a surface inspection of the area conducted prior to the Effective Date;

(b) Increased costs of the Work attributable to Unidentified Utilities and Non-Dig Alert Utilities where Principal Project Company failed to provide timely Notice in accordance with Articles 13 (General Provisions Applying to Delay Events and Relief Events) and 14 (Compensation and Other Relief for Delay Events and Relief Events);

(c) Increased costs of the Work attributable to Unidentified Utilities and Non-Dig Alert Utilities that can be Protected in Place or removed rather than physically relocated;

(d) Any additional costs incurred by Utility Owners (that are not reimbursable or payable to the Utility Owner) as a result of the Unidentified Utility;

(e) Increased costs of the Utility Work attributable to all other Utilities that are not Unidentified Utilities or Non-Dig Alert Utilities; and

(f) Delay and disruption damages, except as specifically set forth in the Contract Documents.

7.6.10 Changes in Design

7.6.10.1 For purposes of this Section 7.6.10 (Changes in Design), a Project design change impacting Utility Adjustments is a change that (a) requires a Utility Adjustment that was not listed in the Utility Information; or (b) necessitates acquisition of a Utility Easement not included in the real property rights comprising the Project Site.

7.6.10.2 Inasmuch as Principal Project Company is both furnishing the design of and constructing the Project, Principal Project Company may have opportunities to reduce the costs of certain portions of the Work, which may increase the costs of certain other portions of the Work or of Utility Work to be performed by Utility Owners. In considering such opportunities, Principal Project Company shall consider the impact of Project design changes on Utility Adjustments with the overall goal of minimizing the necessity for Utility Adjustments to the extent practical, in compliance with Section 7.6.3 (Avoiding Utility Adjustments and Minimizing Costs). Accordingly, except for cost increases or decreases resulting from City Changes in Project design affecting Utility Work, and notwithstanding any other contrary provision of the Contract Documents, the following rules shall apply with respect to Project design changes during the course of the Project which either reduce the nature or extent of or eliminate any Utility Adjustment, or result in unanticipated Utility Adjustments or an increase in the nature, extent, or costs of anticipated Utility Adjustments:

(a) Principal Project Company shall not be entitled to extension of any Contract Deadline on account of delays resulting from any such design changes (including delays in acquisition of Utility Easements by City or Utility Owners);

(b) Principal Project Company shall not be entitled to any increase in compensation for any additional costs which Principal Project Company incurs as a result of such design changes (including additional costs of Utility Work, the costs of any additional Work on other aspects of the Project undertaken in order to facilitate the avoidance or minimization of Utility Adjustments, and/or increased costs resulting from any Project Site conditions associated with Utility Easements made necessary by such design changes); and

(c) If City incurs any additional costs as a result of such design changes (including any increases in amounts owed by City to Utility Owners, e.g., for work which is unusable or which must be redone), then Principal Project Company shall reimburse City for such costs within 10 days after receipt of City's invoice therefor, or in the sole discretion of City, City may deduct the amount of reimbursement due from any payment due and payable to Principal Project Company under the Contract Documents should Principal Project Company fail to reimburse City for such costs.

This Section 7.6.10 (Changes in Design) shall not apply to any changes in design made to accommodate any Change in Law.

7.6.11 Utility Betterments

Principal Project Company shall be responsible for addressing any requests by Utility Owners that Principal Project Company design and/or construct a Utility Betterment. Notwithstanding any other provision of this Section 7.6 (Utilities, Utility Adjustments and Utility Delay), no Work, Utility Adjustments or other Utility-related items initially included in the Work shall be considered a Utility Betterment. Any Utility Betterment performed as part of a Utility Adjustment, whether by Principal Project Company or by the Utility Owner, shall be subject to the same standards and requirements as if it were a necessary Utility Adjustment. Under no circumstances shall Principal Project Company proceed with any Utility Betterment that is incompatible with the Project or is not in compliance with applicable Law, the Regulatory Approvals or the Contract Documents, including the Contract Deadlines. Under no circumstances will Principal Project Company be entitled to any additional compensation or time extension under the Contract Documents as the result of any Utility Betterment, whether performed by Principal Project Company or by the Utility Owner. Principal Project Company shall provide City with such information, analyses, and certificates as City may request in order to determine compliance with this Section 7.6.11 (Utility Betterments).

7.6.12 Failure of Utility Owners to Cooperate

7.6.12.1 Principal Project Company shall make diligent efforts to obtain the cooperation of each Utility Owner as necessary for the Project. Principal Project Company is responsible for verifying the progress of each Utility Owner's work. Principal Project Company shall provide Notice to City within five days after the occurrence of any of the following: (a) Principal Project Company reasonably believes for any reason that any Utility Owner would not undertake or

permit Utility Work in a manner consistent with the timely completion of the Project or in accordance with Law, the Regulatory Approvals or the Contract Documents, (b) Principal Project Company becomes aware that any Utility Owner is not cooperating in a timely manner to provide agreed-upon work or approvals in accordance with the Contract Documents, or (c) any other dispute arises between Principal Project Company and a Utility Owner with respect to the Project, despite Principal Project Company's diligent efforts to obtain such Utility Owner's cooperation or otherwise resolve such dispute. Such Notice may include a request that City assist in resolving the dispute or in otherwise obtaining the Utility Owner's timely cooperation. Principal Project Company shall provide City with such information as City reasonably requests regarding the Utility Owner's failure to cooperate and the effect of any resulting delay on the Project Schedule. After delivering Notice to City, Principal Project Company shall continue to use diligent efforts to pursue the Utility Owner's cooperation.

7.6.12.2 If Principal Project Company requests assistance of City pursuant to Section 7.6.12.1, the following provisions apply:

(a) Principal Project Company shall provide evidence satisfactory to City, in its good faith determination, that (i) the subject Utility Work is necessary, (ii) the time for completion of the Utility Adjustment in the Project Schedule (including any Major Utility Adjustment Deadline) was, in its inception, a reasonable amount of time for completion of such work, (iii) Principal Project Company has made, and continues to make, diligent efforts to obtain the Utility Owner's cooperation and commenced coordination at the earliest time, including during the PDA Term (including submitting and actively pursuing Utility Adjustment applications to Utility Owners with respect to impacted Utilities, taking into account the Project Schedule), (iv) the representation and warranty set forth in Section 7.6.8.1 was true and accurate as of the Effective Date; and (v) the Utility Owner is not cooperating (clauses (a)(i) through (v) above are referred to herein as the "Conditions to Assistance").

(b) Following receipt by City of satisfactory evidence, City shall take such reasonable steps as City may reasonably determine to obtain the cooperation of the Utility Owner or resolve the dispute; provided, however, City shall have no obligation to prosecute eminent domain or other legal proceedings, or to exercise any other legal remedy available to it under Law or existing contract, unless City elects to do so in its sole discretion. City may, at its sole discretion, participate in the resolution of any dispute between Principal Project Company and a Utility Owner, whether or not requested to do so by Principal Project Company.

(c) Without limiting City's obligations under clause (b) above, if City holds contractual rights that might be used to enforce the Utility Owner's obligation to cooperate, City shall have the right not to exercise those rights. The decision not to exercise those rights shall be in the sole discretion of City.

7.6.12.3 Any assistance provided by City shall not relieve Principal Project Company of its sole and primary responsibility for the satisfactory compliance with its obligations under the Contract Documents and its obligations with respect to timely completion of all necessary Utility Adjustments.

7.6.13 Utility Delays

7.6.13.1 Except as set forth in clause (b), below, the term "Utility Delay" shall mean:

(a) Any unreasonable and unjustified delay by a Utility Owner in connection with a Utility Adjustment relating to an Unidentified Utility beyond the date set forth in the approved Project Schedule (including any update to the Project Schedule submitted and approved following identification of the Unidentified Utility) following receipt by City of proper Notice pursuant to Section 7.6.12.1, provided that all of the "Conditions to Assistance" described in Section 7.6.12.2 have been satisfied.

(b) Any Major Utility Adjustment Delay following receipt by City of proper Notice pursuant to Section 7.6.12.1, provided that all of the "Conditions to Assistance" described in Section 7.6.12.2 have been satisfied.

(c) Notwithstanding the foregoing, the term "Utility Delay" does not include and is not intended to address (i) City Changes relating to Utilities, the impact of which will be addressed in the Change Order, (ii) any Utility Adjustments other than (x) Major Utility Adjustments beyond the Major Utility Adjustment Deadline or (y) as a direct result of a City Change, Unidentified Utility or Unavoidable Delay Event (excluding Utility Delay); (iii) additional work associated with a Project design change as described in Section 7.6.10 (Changes in Design); (iv) any event described in this Section 7.6.13.1 which results from or arises out of the actions or omissions of any PPC-Related Entity or any PPC Fault; or (v) any delay or impact relating to or arising out of the failure by any PPC-Related Entity to undertake the coordination activities with Utilities contemplated by the Predevelopment Agreement or based on the results of a Reasonable Investigation (even if such delay otherwise would have been considered Utility Delay but for such failure). Principal Project Company shall not rely upon any proposed schedules, durations or deadlines, if any, included in the Reference Documents with respect to Utility Adjustments, and Principal Project Company may not base any Claims for a time extension or additional compensation upon such proposed schedules, durations, and deadlines.***[As noted in the definitions of Major Utility Adjustment/Major Utility Adjustment Deadline/Major Utility Adjustment Delay, City will consider deletion of (v) if and when PNC has engaged with utilities and developed a list of Major Utility Adjustments and durations which City has approved]***

7.6.13.2 Subject to the limitations and restrictions in this Section 7.6.13 (Utility Delays) and Articles 13 (General Provisions Applying to Delay Events and Relief Events) and 14 (Compensation and Other Relief for Delay Events and Relief Events), any Contract Deadline(s) affected by a Utility Delay shall be extended in accordance with, and subject to, Section 14.1.3. Furthermore, if two Utility Delays occur that are concurrent with each other but are not concurrent with any other delay, then the period of concurrent delay shall be considered a Utility Delay but shall only be counted once for purposes of any time extension.

7.6.13.3 Principal Project Company shall not be entitled to extension of any Contract Deadline or other relief for a Utility Delay pursuant to Section 7.6.13.2 or otherwise unless all of the following conditions are satisfied (in addition to satisfaction of any conditions specified in Section 7.16.13.1):

(a) The Utility Adjustment is solely associated with an Unidentified Utility or a Major Utility Adjustment Delay;

(b) Principal Project Company has timely satisfied the "Conditions to Assistance" requirements described in Section 7.6.12.2;

(c) If applicable, Principal Project Company has provided a reasonable Utility Adjustment plan to the Utility Owner that has been approved by City;

(d) Principal Project Company has provided evidence satisfactory to City that (i) Principal Project Company took advantage of Float available early in the Project Schedule for coordination activities with respect to the Utility(ies) to which such Utility Delay relates, (ii) Principal Project Company has fulfilled its obligation to coordinate with the Utility Owner to prevent or reduce such delays, and (iii) Principal Project Company has otherwise made diligent efforts to obtain timely performance by the Utility Owner but has been unable to obtain such timely performance;

(e) There exist no circumstances which have delayed or are delaying the affected Utility Adjustment(s), other than those that fit within the definition of a Utility Delay; and

(f) The delay is otherwise allowable under Articles 13 (General Provisions Applying to Delay Events and Relief Events) and 14 (Compensation and Other Relief for Delay Events and Relief Events).

7.6.13.4 Principal Project Company shall not be entitled to any Extra Work Costs, Delay Costs or for any other increased costs or Claims attributable to delays described in this Section 7.6.13 (Utility Delays).

7.6.14 Utility-Related Claims; Additional Restrictions on Change Orders Relating to Utility Adjustments

In addition to all of the other requirements and limitations contained in this Section 7.6 (Utilities, Utility Adjustments and Utility Delay), and Articles 13 (General Provisions Applying to Delay Events and Relief Events) and 14 (Compensation and Other Relief for Delay Events and Relief Events), Principal Project Company's entitlement to any relief relating to Utility Adjustments shall be subject to the restrictions and limitations set forth in this Section 7.6.14 (Utility-Related Claims; Additional Restrictions on Change Orders Relating to Utility Adjustments).

7.6.14.1 Principal Project Company shall provide documentation satisfactory to City showing that the required analysis was performed and an appropriate determination made regarding the need for the Utility Adjustment, and shall also bear the burden of proving that the amount of any additional costs and/or time incurred by Principal Project Company are both necessary and reasonable.

7.6.14.2 To the extent compensation is permitted under this Section 7.6 (Utilities, Utility Adjustments and Utility Delay), any relief increasing compensation to Principal Project Company pursuant to this Section 7.6 (Utilities, Utility Adjustments and Utility Delay) shall include only the incremental costs arising from the circumstances giving rise to such relief, i.e., the amount

payable shall take into account the costs that would have been incurred absent such circumstances and a credit shall be allowed for any avoided costs.

7.6.14.3 Principal Project Company shall not be entitled to any increase in compensation for any costs of coordinating with Utility Owners.

7.6.15 FTA Requirements

The Project is funded in part with funds made available by the Federal Transit Administration. In carrying out the Utility Adjustments, Principal project Company shall comply with all Laws as necessary for Utility Adjustments to be eligible for reimbursement from such funding.

7.7 Hazardous Materials Management; Risk Allocation

7.7.1 Hazardous Materials Management

7.7.1.1 Except as otherwise provided in this Section 7.7.1 (Hazardous Materials Management), Principal Project Company shall, as part of the Work, perform, or cause to be performed, all Hazardous Materials Management required in connection with the Project in accordance with applicable Law, Regulatory Approvals, the approved Environmental Protection Program, and all applicable provisions of the Contract Documents.

7.7.1.2 Principal Project Company shall have the following duties to identify, avoid, minimize and mitigate adverse monetary and non-monetary impacts to the Project and to City relating to Hazardous Materials:

(a) Principal Project Company shall adopt design and construction techniques for the Project, using Good Industry Practice, that avoid, to the extent reasonably practicable, the need for Hazardous Materials Management;

(b) when performing Hazardous Materials Management, Principal Project Company shall use Good Industry Practice, including design modifications and construction techniques, to minimize costs (including long-term costs) of Hazardous Materials Management; and

(c) Principal Project Company shall use appropriately trained personnel to conduct Hazardous Materials Management activities.

7.7.1.3 Principal Project Company shall promptly provide Notice to City of any Hazardous Materials encountered in connection with the Project, the Project Site or the Work that require (a) reporting or Notice to any Governmental Entity and/or (b) taking any response action (e.g., evaluating and addressing the circumstances and location of the Hazardous Materials) under applicable Law, Regulatory Approvals, the approved Environmental Protection Program and the Contract Documents, as applicable. A Notice provided under this Section 7.7.1.3 shall advise City of any obligation to provide Notice to Governmental Entities under applicable Law. Principal Project Company shall make all such reports, or deliver all such Notices, to any Governmental Entity with respect to Hazardous Materials encountered in connection with the Project, the Project Site or the Work, providing concurrent Notice and copies of such reports and Notices to City.

7.7.1.4 Procedures and Compensation for Hazardous Materials Management

(a) Principal Project Company shall manage, treat, handle, store, remediate, remove, transport (where applicable), document and dispose of all Hazardous Materials and perform all other aspects of Hazardous Materials Management as appropriate, in accordance with applicable Law, Regulatory Approvals, the approved plans required to be provided under Section 01 35 44 of Division 10 of the Technical Requirements, and this Agreement.

(b) Principal Project Company is prohibited from starting Hazardous Material removal Work without a City-approved Hazardous Materials Submittal as described in Section 02 80 13 of Division 10 of the Technical Requirements. Principal Project Company shall not conduct any sampling or analysis of suspected building materials without prior permission from the City. The time utilized and costs incurred by Principal Project Company to undertake and obtain City approval of such Hazardous Materials Submittals shall not be eligible for relief, time extension or compensation under this Agreement.

(c) Except where Principal Project Company is required to take immediate action under the Contract Documents or applicable Law, Principal Project Company shall afford City the opportunity to inspect sites containing Hazardous Materials and to consult with Principal Project Company about the recommended approach before any Hazardous Materials Management or other action is taken which would inhibit City's ability to ascertain the nature and extent of the contamination.

(d) Where management, treatment, handling, storage, remediation, transport, documentation or disposing of Hazardous Materials constitutes a Hazardous Materials Event, Section 14.1.5 (Additional Limits Relating to Hazardous Materials Event During D&C Period) and Section 14.2.5 (Additional Limits Relating to Hazardous Materials Event During IFM Period) shall apply regarding Principal Project Company's rights to potential compensation and extension of any Contract Deadline.

7.7.1.5 If Principal Project Company fails to undertake the Hazardous Materials Management required under this Section 7.7.1 (Hazardous Materials Management) within a reasonable time after discovery of Hazardous Materials, taking into consideration the nature and extent of the contamination and action required and the potential impact upon Principal Project Company's schedule for use of and operations on the Project Site, City may provide Notice to Principal Project Company that City will undertake the Hazardous Materials Management. If Principal Project Company fails to remedy the failure within 3 Business Days following provision of a Notice under this Section 7.7.1.5:

(a) City may itself undertake Hazardous Materials Management actions or procure a contractor to perform such work, in which case City will do so in accordance with all applicable Environmental Laws;

(b) Principal Project Company shall reimburse City on a current basis, within 10 days of request, for Recoverable Costs from fines, penalties or other

assessments against City or the Project by Governmental Entities due to Principal Project Company's delay or failure to undertake the Hazardous Materials Management), so long as City has performed in accordance with Section 7.7.1.5(a); and

(c) City shall have no liability or responsibility to Principal Project Company arising out of, relating to or resulting from City's Hazardous Materials Management actions and such actions shall not constitute a Relief Event or other basis for a Claim.

7.7.1.6 In the event of an emergency constituting an immediate hazard to health or safety of Building Occupants or City property due to Principal Project Company's failure to undertake the Hazardous Materials Management required under this Section 7.7.1 (Hazardous Materials Management), City may undertake, at Principal Project Company's sole cost and expense and without prior Notice, all work necessary to correct such hazardous condition(s).

7.7.2 Additional Hazardous Materials Obligations of Principal Project Company

7.7.2.1 Principal Project Company shall avoid exacerbating Hazardous Materials (including Pre-Existing Hazardous Materials as well as new Releases) in, on, under or migrating from the Project Site. For purposes of determining liability, as between City and Principal Project Company, under Sections 7.7.1.4(a) and 7.7.1.4(c), Principal Project Company shall only be liable for exacerbation of Hazardous Materials arising out of or relating to PPC Fault.

7.7.2.2 Principal Project Company shall take all reasonable efforts to ensure that no act or omission of any PPC-Related Entity will result in an unlawful Release of Hazardous Materials to or into wastewater, storm or sanitary sewer systems, surface water, air, soils or groundwater in, on, under or migrating from the Project Site.

7.7.3 Hazardous Materials Generator Responsibilities

7.7.3.1 As between Principal Project Company and City, City shall be considered the generator and assume generator responsibility for Hazardous Materials, other than any PPC Release, and City shall not assert that Principal Project Company has legal responsibility for such Hazardous Materials (other than a PPC Release) as a generator. City has approval rights of Principal Project Company's selection of the destination facility to which Hazardous Materials, other than any PPC Release, will be transported.

7.7.3.2 With regard to Hazardous Materials other than any PPC Release, City shall comply with the applicable standards for generators including those found at 40 CFR Part 262, including the responsibility to sign manifests and other waste tracking records for the transport of Hazardous Materials.

7.7.3.3 Sections 7.7.3.1 and 7.7.3.2 shall not preclude or limit any rights, remedies or defenses that City or Principal Project Company may have against any Governmental Entity or other third parties, including prior owners, lessees, and licensees nor shall Sections 7.7.3.1 and 7.7.3.2 be interpreted as an admission of City's liability as to any Governmental Entity or other third parties, or otherwise preclude City from asserting to any Governmental Entity or other third parties that another entity, other than Principal Project Company or City, is the generator of any

Hazardous Materials. Notwithstanding the foregoing, Principal Project Company (and not City) shall be considered the generator with respect to any PPC Release.

7.8 Substantial Completion

7.8.1.1 The City and Principal Project Company mutually agree that time is of the essence with respect to the dates and times specified in this Agreement.

7.8.1.2 Principal Project Company shall achieve Substantial Completion on or before the Substantial Completion Deadline. Failure to achieve Substantial Completion by the Long Stop Date is a PPC Default under Section 16.1.1(c).

7.8.1.3 The conditions to Substantial Completion are set forth in Exhibit 15C (Conditions to Substantial Completion).

7.8.1.4 Approximately six calendar months before the date on which Principal Project Company expects to achieve Substantial Completion, Principal Project Company shall provide to City its anticipated schedule to achieve Substantial Completion. Principal Project Company shall promptly advise City if at any time Principal Project Company determines that its anticipated schedule to achieve Substantial Completion will change. Principal Project Company shall provide an updated schedule to City 21 days before the date Principal Project Company expects to achieve Substantial Completion. Principal Project Company's schedule shall include, at a minimum, dates when Principal Project Company will submit all remaining documentation and evidence required by Exhibit 15C (Conditions to Substantial Completion) and the Technical Requirements with respect to Substantial Completion.

7.8.1.5 When Principal Project Company determines that it has satisfied all conditions to Substantial Completion, it shall deliver to City a request for Certificate of Substantial Completion, in a form reasonably acceptable to City, stating the date that Principal Project Company determined it satisfied all conditions in Exhibit 15C (Conditions to Substantial Completion). Together with the request for Certificate of Substantial Completion, Principal Project Company shall submit a Punch List of items to be completed as a condition precedent to achievement Final Acceptance, obtain approval from Utility Owners and Authorities Having Jurisdiction of any Punch List items affecting Utilities and elements subject to the jurisdiction of an Authority Having Jurisdiction and obtain City's acceptance of the Punch List. The Punch List shall not include any items that adversely affect the safety, use or operability of the Project.

7.8.1.6 During the 14-day period following the receipt of such request for Certificate of Substantial Completion:

(a) Principal Project Company and City shall meet and confer to facilitate City's determination of whether Principal Project Company has met the conditions for Substantial Completion; and

(b) City will conduct an inspection of the Project, review the applicable Final Design Documents, Construction Documents and other Submittals and conduct such other investigations as may be necessary to evaluate whether Substantial Completion has been achieved.

7.8.1.7 As soon as reasonably practicable and, in any event, no later than 21 days after receipt of Principal Project Company's Notice under Section 7.8.1.5, City's Authorized Representative shall inspect, in conjunction with Principal Project Company, the D&C Work and City's Authorized Representative shall either:

(a) if City's Authorized Representative agrees that Substantial Completion has been achieved, issue the Certificate of Substantial Completion to Principal Project Company within 10 days after the inspection:

(i) certifying that Substantial Completion has taken place;

(ii) stating the Substantial Completion Date;

(iii) listing any Punch List items which, in its opinion, remains to be performed; and

(iv) setting out reasonable details of the work remaining to be performed to achieve Final Acceptance; or

(b) if Substantial Completion has, in City's opinion, not been achieved, issue a Notice to Principal Project Company within 10 days after the inspection:

(i) listing the work which, in its opinion, remains to be performed to achieve Substantial Completion; or

(ii) stating in its opinion, that Substantial Completion is so far from being achieved that it is not practicable to provide a list of the type referred to in Section 7.8.1.7(b)(i).

7.8.1.8 Principal Project Company shall give Notice to City's Authorized Representative when Principal Project Company considers that the work listed in a Notice issued by City's Authorized Representative under Section 7.8.1.7(b)(i) has been completed.

7.8.1.9 Sections 7.8.1.4 through 7.8.1.8 will apply in respect of any new Principal Project Company Notice under Section 7.8.1.8 in the same way as if it were the original Notice given under Section 7.8.1.4.

7.8.1.10 City's Authorized Representative's opinion as to whether Substantial Completion has been achieved will not be restricted by any Notice, list or opinion which City previously provided to Principal Project Company under Section 7.8.1.7(b)(i).

7.8.1.11 In the event that the Principal Project Company and City disagree as to whether or not Substantial Completion has been achieved, the Substantial Completion Date, the list of work remaining to be performed or the list of or estimated cost to perform Punch List items, City and Principal Project Company will meet to resolve such dispute, failing which such dispute shall be resolved in accordance with **Error! Reference source not found.** (Contract Dispute Procedures).

7.8.1.12 Notwithstanding any other provision of this Agreement, City is under no obligation to certify Substantial Completion or commence the payment of Availability Payments prior to the

original Substantial Completion Deadline, regardless of whether Substantial Completion has been achieved prior to the original Substantial Completion Deadline.

7.9 Final Acceptance

7.9.1.1 Promptly after achieving Substantial Completion, Principal Project Company shall perform all remaining D&C Work, including expeditiously and diligently correcting all of the Punch List items specified pursuant to Section 7.8.1.7(a)(iii), to achieve Final Acceptance by the Final Acceptance Deadline.

7.9.1.2 The conditions to Final Acceptance are set forth in Exhibit 15D (Conditions to Final Acceptance).

7.9.1.3 When Principal Project Company determines that it has satisfied all conditions to Final Acceptance, it shall provide a certification to City, in a form reasonably acceptable to City, stating the date that Principal Project Company determined that it satisfied all the conditions in Exhibit 15D (Conditions to Final Acceptance).

7.9.1.4 Within 21 days after receipt of Principal Project Company's Notice under Section 7.9.1.3, City's Authorized Representative shall inspect, in conjunction with Principal Project Company, the D&C Work and shall either:

(a) if City's Authorized Representative agrees that Final Acceptance has been achieved, issue a Certificate of Final Acceptance to Principal Project Company within 15 days after the inspection certifying that Final Acceptance has taken place and the Final Acceptance Date; or

(b) if in City's Authorized Representative's opinion, Final Acceptance has not been achieved, issue a Notice to Principal Project Company within 15 days after the inspection listing the work it believes remains to be performed to achieve Final Acceptance.

7.9.1.5 Without limiting Principal Project Company's other obligations under this Agreement, immediately upon receipt of a Notice under Section 7.9.1.4(b), Principal Project Company shall expeditiously and diligently progress performance of the work specified in the Notice.

7.9.1.6 Principal Project Company shall give Notice to City's Authorized Representative when Principal Project Company considers that the work listed in City's Authorized Representative's Notice under Section 7.9.1.4(b) has been completed.

7.9.1.7 Sections 7.9.1.4 through 7.9.1.6 will apply in respect of any new Principal Project Company Notice under Section 7.9.1.6 in the same way as if it were the original Notice under Section 7.9.1.4

7.9.1.8 City's Authorized Representative's opinion as to whether Final Acceptance has been achieved will not be restricted by any:

(a) Certificate of Substantial Completion, Notice, list or opinion already provided under this Agreement; or

(b) warranty provided by any PPC-Related Entity.

7.9.1.9 In the event that City and Principal Project Company disagree as to whether or not Final Acceptance has been achieved or the Final Acceptance Date, City and Principal Project Company will meet to resolve such dispute, failing which such dispute shall be resolved in accordance with **Error! Reference source not found.** (Contract Dispute Procedures).

7.10 Responsibility for Loss or Damage

7.10.1 The D&C Work includes having full charge and care of the Project Site and the D&C Work (including bearing risk of loss and damage to the D&C Work and Project Site) through Substantial Completion (or in the case of any Punch List Items, Final Acceptance), except to the extent that City or Third Parties have accepted elements of the D&C Work and expressly assumed responsibility for maintenance of such elements.

7.10.2 Principal Project Company shall take every reasonable precaution against Loss or damage to any part of the Project from any cause, whether arising from the performance or nonperformance of the D&C Work.

7.10.3 For so long as Principal Project Company bears the risk of loss and damage to D&C Work under Section 7.10.1, Principal Project Company shall repair, restore and replace Losses or damages to such D&C Work occasioned by any cause, subject to potential relief in accordance with, and subject to, clause (r) of the definition of "Compensable Delay Event". Principal Project Company shall ensure that such work is performed in accordance with the Contract Documents and applicable Law.

7.10.4 Principal Project Company shall repair, restore and replace any Losses or damages to City property other than the D&C Work caused by any PPC-Related Entity.

7.11 Nonconforming Work

7.11.1 Obligation to Replace Nonconforming Work

Principal Project Company shall perform all Work in conformity with the Contract Documents. If Principal Project Company has not performed the Work in conformity with the Contract Documents, then, in addition to any other remedies available to City, City may direct Principal Project Company to, and Principal Project Company shall, remove and replace or otherwise remedy the Nonconforming Work. Principal Project Company shall not be entitled to make a Claim in connection with such D&C Work except as it relates to a dispute regarding whether Principal Project Company had performed the D&C Work in conformity with the Contract Documents.

7.11.2 Remedial Plan for Nonconforming Work

7.11.2.1 Promptly after Nonconforming Work is identified but no later than 10 Business Days after the earlier of (i) Notice from City to Principal Project Company; and (ii) Principal Project Company first obtains Actual Knowledge of such Nonconforming Work, Principal Project Company shall submit a remedial plan to City, for review and approval, describing the error or Defect giving rise to the Nonconforming Work and describing Principal Project Company's planned remedial action. Such proposal shall address Infrastructure Facility integrity,

aesthetics, operational impact on City including MOT, impact on the public, Building Occupants and any applicable Governmental Entities, maintainability, the effect on the Project Schedule and other relevant issues.

7.11.2.2 If City determines that a proposed plan of correction may infringe upon Infrastructure Facility integrity, operations or maintainability, then City may elect to perform a technical assessment of Principal Project Company's proposal. City shall provide Notice to Principal Project Company promptly upon determining that an assessment is required, and shall take reasonable efforts to expedite the assessment. Should City elect to perform any such technical assessment, (a) if so requested by City, Principal Project Company shall not proceed with the remedial plan until City has conducted its technical assessment and provided prior approval of the remedial plan and (b) Principal Project Company shall not be entitled to make any Claim in connection with the technical assessment or reasonable delay in the remedial plan pending City's approval.

7.11.3 City's Remedies

7.11.3.1 City shall have the right and authority to cause Nonconforming Work to be removed, replaced or otherwise remedied and to withhold or deduct the costs from any monies due or that become due to Principal Project Company under the Contract Documents upon (a) any failure of Principal Project Company to provide a proposed remedial plan as described in Section 7.11.2.1 and obtain City's approval thereof, or (b) any failure of Principal Project Company to comply with City's direction under this Agreement relating to any safety issue, including Safety Compliance Orders.

7.11.3.2 In addition to the right to cause the removal, replacement or remedy of the Nonconforming Work, at the request of Principal Project Company or upon its failure to remove, replace or otherwise remedy the Nonconforming Work within the timelines set forth in this Agreement, City may, in its sole discretion, accept such Nonconforming Work and receive reimbursement in an amount equal to the greater of: (a) the amount deemed appropriate by City (acting in good faith) to provide compensation for future impacts, maintenance and/or other costs relating to the Nonconforming Work, or (b) 100% of Principal Project Company's cost savings associated with its failure to perform the Work in accordance with the requirements of the Contract Documents.

7.12 Design and Construction of Joint Development Alternatives

Nothing contained in this Agreement shall obligate City to design and construct any Joint Development Alternative or utilize Principal Project Company or any PPC-Related Entity in connection with the design and construction of any Joint Development Alternative.

7.13 FF&E During D&C Period

7.13.1 Selection and Procurement of PPC-Furnished FF&E

7.13.1.1 Principal Project Company shall:

(a) update the Equipment List from time to time as appropriate to:

(i) reflect decisions made during the design development process;

(ii) ensure that like PPC-Furnished FF&E are grouped together;

(iii) address any comments provided by the City's Authorized Representative with respect to PPC-Furnished FF&E in accordance with Exhibit 11 (Submittals Review Process); and

(iv) ensure that Principal Project Company provides PPC-Furnished FF&E as necessary to satisfy the requirements of this Agreement;

(b) defer final selection of those items of PPC-Furnished FF&E which have high technical obsolescence risk to a time as close as reasonably possible to Substantial Completion, to better ensure that Principal Project Company will provide the most technically up to date items of such PPC-Furnished FF&E as of Substantial Completion; and

(c) procure and provide the PPC-Furnished FF&E, as it may be amended in accordance with this Section 7.13.1 (Selection and Procurement of PPC-Furnished FF&E) or as a result of a Change Order.

7.13.1.2 Unless necessary to meet its obligations under Section 7.13.1(a)(iv) or to carry out a Change Order, Principal Project Company shall not decrease the quantity or provide PPC-Furnished FF&E of a lesser quality (which may be determined based on attributes such as specification, brand, and place of manufacture) than an item identified in the Equipment List as of the Effective Date.

7.13.2 Selection of City-Furnished Equipment and Existing FF&E

7.13.2.1 City will select City-Furnished Equipment and identify Existing FF&E to be included in the Infrastructure Facility and update the Equipment List when reasonably required by Principal Project Company prior to Substantial Completion.

7.13.2.2 Principal Project Company shall defer as long as reasonably possible the time for City to select the City-Furnished Equipment and identify the Existing FF&E.

7.13.2.3 City will procure the City-Furnished Equipment identified in the Equipment List, as it may be amended as a result of a Change Order.

7.13.3 Installation of PPC-Furnished FF&E

Principal Project Company shall install or locate (as applicable depending on whether the FF&E is loose or fixed) all items of PPC-Furnished FF&E within the Project Site in accordance with the Release for Construction Documents and so that the Infrastructure Facility meets the requirements of the Principal Project Documents. If the Release for Construction Documents do not identify locations for the placement of loose items of PPC-Furnished FF&E, Principal Project Company shall locate such items in accordance with direction from City's Authorized Representative.

7.13.4 Installation of City-Furnished IT/Comms FF&E

7.13.4.1 Principal Project Company must provide City or its authorized representative continued and uninterrupted access to the IT/Comms Site for no less than 14 consecutive days prior to the commencement of commissioning and testing of the Infrastructure Facility ("**City Access Period**") for the City to install the City-Furnished IT/Comms FF&E. The access provided shall be sufficient for City to complete such installation and transition and shall comply with the conditions in Section 1.11.7 of Division 1 of the Technical Requirements.

7.13.4.2 Provided City complies with Project Site safety standards, Principal Project Company shall have no entitlement to make any claim against City for any delay to the Work caused by any access to or work undertaken by City under Section 7.13.5.1. Principal Project Company shall be entitled to relief in accordance with, and subject to, clause (n) of the definition of "Compensable Delay Event" in connection with City's access or work undertaken by City under Section 7.13.5.1.

7.13.4.3 Subject to Section 7.13.4.4, City shall install City-IT/Comms FF&E to the IT/Comms Site during the City Access Period.

7.13.4.4 City will release Principal Project Company from all claims and liability in connection with the transfer of and installation of the City-IT/Comms FF&, except to the extent that Principal Project Company or a PPC-Related Entity (i) damages such FF&E or (ii) fails to comply with its obligations under this Agreement concerning such FF&E.

7.13.5 Commissioning of FF&E for Substantial Completion

7.13.5.1 Following installation of the PPC-Furnished FF&E and the City-Furnished IT/Comms FF&E, Principal Project Company shall commission and undertake all tests of the Infrastructure Facility, in accordance with the requirements of this Agreement and Division 6 of the Technical Requirements to achieve the requirements of Substantial Completion.

7.13.5.2 City will release Principal Project Company from all claims and liability in connection with the City-Furnished IT/Comms FF&E, to the extent that Principal Project Company is unable to successfully commission or undertake tests of such FF&E in accordance with the requirements of this Agreement and Division 06 of the Technical Requirements, except to the extent that the failure of such FF&E is caused by an act or omission of Principal Project Company or a PPC-Related Entity.

7.14 Move-In

7.14.1 General

As provided in Section B.25 (Move-In Services) of the IFM Specifications, Principal Project Company shall plan, coordinate, manage and execute the physical Move-In of the Infrastructure Facility, including Existing FF&E and City Furnished Equipment (excluding City-Furnished IT/Comms FF&E), following Substantial Completion in accordance with the Move-In Plan and in coordination with the Move-In Subcommittee ("**Move-In**").

7.13.4.4 City will release Principal Project Company from all claims and liability in connection with the transfer of and installation of the City Furnished Equipment and Existing

FF&E, except to the extent that Principal Project Company or a PPC-Related Entity (i) damages such FF&E or (ii) fails to comply with its obligations under this Agreement concerning such FF&E.

7.14.2 Move-In Subcommittee

7.14.2.1 The move-in subcommittee (the "Move-In Subcommittee") shall consist of three representatives of each Party. Members of the Move-In Subcommittee may invite, on prior notice to all members, such other advisors and consultants as they require from time to time to attend meetings and provide briefings to the Move-In Subcommittee.

7.14.2.2 The Move-In Subcommittee shall assist the Parties by promoting cooperative and effective communication with respect to matters related to the Move-In, including issues related to the move-in into the Infrastructure Facility, the City Access Periods and the transfer and installation of all Existing FF&E.

7.14.2.3 The primary role of the Move-In Subcommittee shall be to oversee and coordinate the Move-In in a timely and efficient manner and in accordance with the Project Schedule.

7.14.2.4 The Move-In Subcommittee shall be responsible for receiving and reviewing all matters related to the Move-In.

7.14.2.5 The members of the Move-In Subcommittee may adopt such procedures and practices for the conduct of the activities of the Move-In Subcommittee as they consider appropriate from time to time.

7.14.2.6 Unless otherwise agreed, the Move-In Subcommittee shall operate only until the Final Acceptance Date.

7.14.3 Move-In Resource

7.14.3.1 Principal Project Company shall, at least 24 months prior to Substantial Completion, prepare and submit to City a list of prospective candidates, including from existing resources, (each a "Move-In Resource Candidate") for appointment as Move-In Resource, each of which must have experience planning and executing staff and logistical transitions in projects of similar size, scope and complexity in the United States.

7.14.3.2 Subject to Section 24.17(c), Principal Project Company shall conduct a competitive bid process for the selection of the Move-In Resource from among the Move-In Resource Candidates, which bid process shall be completed by no later than 18 months prior to the Scheduled Substantial Completion Date. Principal Project Company shall consult with City in the design and implementation of such competitive bid process, including the development of the evaluation criteria, and shall accommodate any reasonable request of City with respect thereto. City may participate in the evaluation and selection of the successful Move-In Resource Candidate for appointment as Move-In Resource. City may, but is not required to, retain the Move-In Resource at City's cost to plan, coordinate, manage and execute the transition from the Existing Facilities to the Infrastructure Facility.

ARTICLE 8. INFRASTRUCTURE FACILITY MAINTENANCE

8.1 General

8.1.1 General Obligations

8.1.1.1 Principal Project Company is responsible for performance of IFM Services in accordance with requirements specified in the Contract Documents, including the IFM Management Plan approved by City during the PDA Term.

8.1.1.2 Principal Project Company shall ensure that:

(a) all IFM Services is performed in accordance with all applicable Laws, Regulatory Approvals and Good Industry Practice, as it may evolve over time;

(b) the Infrastructure Facility remains safe, fit for use for the intended functions, meets the requirements of the Contract Documents, remains free of Defects and meets the minimum performance standards for operations as specified in the Contract Documents, including the Technical Requirements, throughout the IFM Period;

(c) (i) all materials and equipment furnished during the IFM Period are of good quality and new and (ii) all Infrastructure Facility components and related consumables obtained as part of the IFM Services and supplied during the IFM Period are of good quality and new and fit for their intended purpose in accordance with the Contract Documents; and

(d) all IFM Services is performed in accordance with the IFM Plan and City-approved plans required in the IFM Specifications.

8.1.1.3 Principal Project Company shall monitor compliance of the IFM Services with the requirements of Contract Documents and provide Notice to City if any noncompliance occurs.

8.1.1.4 Principal Project Company shall cooperate with City (and Authorities Having Jurisdiction as applicable) in all matters relating to the IFM Services and required availability of the Infrastructure Facility, including any Oversight with respect to operation and maintenance of the Project.

8.1.1.5 Principal Project Company shall obtain, maintain, repair and replace elements of the Infrastructure Facility, except SFMTA O&M Facilities, as appropriate throughout the duration of the IFM Period, including maintenance, repair and replacement of consumable and life-expired items and rehabilitation of the Infrastructure Facility, except SFMTA O&M Facilities.

8.1.1.6 Principal Project Company shall, in keeping with Good Industry Practice, implement or incorporate Technology Enhancements for the Infrastructure Facility throughout the duration of the IFM Period, at no cost to City, to the extent such enhancements are (a) scheduled in the IFM Management Plan, or (b) needed to correct Defects in the Work. To the extent that the City directs the Principal Project Company to implement or incorporate Technology Enhancements in circumstances other than those set forth above, such direction shall be considered a City Change.

8.1.1.7 City shall pay all direct and indirect costs for all Utility services relating to the operation and maintenance, throughout the Term, of the Infrastructure Facility in accordance with the Contract Documents.

8.1.2 Changes in Standards and Specifications

8.1.2.1 The Parties anticipate that, from time to time, the Standards and Specifications will be changed, added or replaced, which may be implemented through revisions to existing standards and specifications or through new standards and specifications.

8.1.2.2 Any Renewal Work required to be performed by Principal Project Company shall be performed in compliance with the then current Standards and Specifications. City may, through a City Change, require Principal Project Company to comply with updated Standards and Specifications prior to the date set forth in Principal Project Company's Renewal Work Schedule for Renewal Work affected by the updated Standards and Specifications.

8.1.3 Hazardous Materials Management

Principal Project Company shall comply with Section 7.7 (Hazardous Materials Management; Risk Allocation) throughout the IFM Period.

8.1.4 Utility Accommodation

8.1.4.1 Principal Project Company acknowledges that from time to time during the course of the IFM Period, Utility Owners will apply for additional utility permits to install new Utilities that may affect the Project Site, or to modify, repair, upgrade, relocate or expand existing Utilities within the Project Site.

8.1.4.2 Throughout the IFM Period, Principal Project Company shall monitor Utilities and Utility Owners within the Project Site for compliance with applicable Utility permits, easements, and applicable Law, and shall use diligent efforts to obtain the cooperation of each Utility Owner having Utilities within the Project Site. Principal Project Company shall promptly provide Notice to City if (a) Principal Project Company believes that any Utility Owner is not complying with the terms of a Utility permit, easement, or applicable Law affecting a Utility within the Project Site, or (b) any other dispute arises between Principal Project Company and a Utility Owner with respect to a Utility within the Project Site, despite Principal Project Company having exercised its diligent efforts to obtain the Utility Owner's cooperation. If Principal Project Company, despite diligent efforts, is unable to resolve any dispute with a Utility Owner, Principal Project Company may request City to provide reasonable assistance. Following delivery of such a request the Parties shall consult regarding measures to be undertaken.

8.2 Principal Project Company Inspection, Testing and Reporting

8.2.1 Principal Project Company shall carry out inspections and tests in accordance with the Technical Requirements and IFM Management Plan. Principal Project Company shall use the results of such inspections and tests to develop and update the IFM Management Plan, to maintain asset condition and service levels, and to develop programs of maintenance and Renewal Work to minimize the effect of IFM Services on City employees, residents, and other members of the public.

8.2.2 Principal Project Company shall submit all reports relating to the IFM Services, including the IFM annual reports, in the form, with the content and within the time required under the Contract Documents.

8.2.3 The inspections and reports described above are in addition to maintenance of the Failure Event and Noncompliance Event database and related reports under Section 15.3.1 (Noncompliance Database).

8.3 Responsibility for Loss or Damage

8.3.1 The IFM Services includes having full charge and care of the Infrastructure Facility, except for the SFTMA O&M Facilities, from the date of Substantial Completion of the Infrastructure Facility through the end of the IFM Period.

8.3.2 Principal Project Company shall take reasonable precautions against Loss or damage to the Infrastructure Facility and other improvements and assets within the Project Site due to any cause.

8.3.3 Principal Project Company shall repair, restore and replace all Losses or damages to the Infrastructure Facility, excluding the SFMTA O&M Facilities. Principal Project Company shall ensure that such work is performed in accordance with the Contract Documents and applicable Law.

8.3.4 If any repair, restoration or replacement of the Infrastructure Facility building envelope or exterior grounds is required due to Vandalism, Principal Project Company shall be responsible for the first $150,000 of costs incurred in the aggregate per calendar year (the "**Annual Vandalism Deductible**") to perform such repair, restoration or replacement. The Annual Vandalism Deductible shall be index-linked and increased by the Escalation Factor calculated in accordance with Section 2 of Exhibit 4B (Availability Payment Mechanism).

8.3.5 For each calendar year of the Term, City will compensate Principal Project Company through a Change Order for costs incurred by Principal Project Company in performing repairs, restoration or replacements due to Vandalism that exceed the Annual Vandalism Deductible, if there are any such costs. If any repair, restoration or replacement of the Infrastructure Facility building interior, excluding any SFMTA O&M Facilities, is required due to Vandalism, such repair, restoration or replacement will be treated as a City Change.

8.3.6 Principal Project Company shall repair, restore and replace any Losses or damages to City property other than the Infrastructure Facility caused by any PPC-Related Entity.

8.4 Renewal Work; IFM Management Plan

8.4.1 Performance of Renewal Work

8.4.1.1 Principal Project Company shall diligently perform Renewal Work as and when necessary to comply with the Contract Documents, including the Handback Requirements. Principal Project Company shall use the IFM Management Plan developed in accordance with the Technical Requirements as the principal guide for scheduling and performing Renewal Work; except that Principal Project Company may perform Renewal Work not identified in IFM Management Plan as necessary to maintain compliance with the Contract Documents, subject

to scheduling the performance of such Renewal Work at times agreed to by City, in its reasonable discretion.

8.4.1.2 If, at any time, Principal Project Company has failed to perform the Renewal Work in accordance with the then current IFM Management Plan and applicable requirements of the Contract Documents (including the Technical Requirements, including Section E of the IFM Specifications), and performance of such Renewal Work is required to ensure continued performance of the Project in accordance with the Contract Documents, City may give written Notice thereof to Principal Project Company. If Principal Project Company has failed to complete the Renewal Work within 30 days after City delivers such Notice, then City shall have the right to perform and complete such Renewal Work at the expense and for the account of Principal Project Company, and to deduct from payments otherwise payable to Principal Project Company by City under this Agreement to pay the costs of such action. The foregoing remedy is in addition to any other remedies available to City under the Contract Documents on account of such failure, including the assessment of Noncompliance Points, and City's right to intervene immediately and without Notice to address Safety Compliance.

8.4.2 IFM Management Plan

As a condition to Substantial Completion pursuant to Exhibit 15C (Conditions to Substantial Completion), Principal Project Company shall prepare and submit to City for review and approval an IFM Management Plan updated in accordance with the IFM Specifications.
Coordination of Operations and Maintenance Responsibilities

At Principal Project Company's request from time to time, City will, at no cost to City, reasonably assist Principal Project Company in seeking the cooperation and coordination of any Authority Having Jurisdiction with respect to Principal Project Company's IFM Services. The objectives of such assistance will be to minimize disruptions to transit operations, City employees, residents, and traffic and ensure that all IFM activities are carried out in accordance with then-current maintenance standards and then-current traffic management standards, practices and procedures of such Authorities Having Jurisdiction.

8.5 Handback

8.5.1 Handback Condition

8.5.1.1 Principal Project Company shall diligently perform and complete all Renewal Work required to be performed and completed before the Termination Date, based on the required adjustments and changes to the IFM Management Plan resulting from the inspections and analysis under this Section 8.5.

8.5.1.2 Upon the Termination Date, Principal Project Company shall surrender the Project, including any Upgrades, to City, in the condition and meeting all of the requirements of the Handback Requirements.

8.5.1.3 In the event of early termination of this Agreement, Principal Project Company shall only be required to comply with the requirements of this Section 8.5 (Handback) to the extent that any Renewal Work was scheduled to have been performed before the Early Termination Date.

8.5.2 Independent Engineer

8.5.2.1 The Parties must select an Independent Engineer to:

(a) perform joint technical reviews and handback inspections in accordance with Section 8.5.4;

(b) make a determination regarding the estimated Handback Work costs in accordance with Section 8.5.4.2(h); and

(c) verify in accordance with Section 8.5.5 (Handback Assessment) whether the Handback Requirements have been met.

8.5.2.2 Prior to each Review Date, Principal Project Company must, in consultation with City, establish the schedule and process for the selection of an Independent Engineer for purposes of the Independent Engineer roles contemplated in Section 8.5.2.1. Principal Project Company must develop the solicitation package and draft contract terms, subject to approval by City, and Principal Project Company must set the solicitation schedule with the goal of selecting the Independent Engineer 6 months prior to each Review Date.

8.5.2.3 The solicitations required under Section 8.6.2 (Independent Engineer) must include issuance of a request for competitive proposals from a list of firms approved by City, review of proposals by the Parties, a joint determination regarding which firm is the best qualified to provide Independent Engineer services, and negotiation of a fair and reasonable price for performance of such services. If negotiations fail with the highest ranked firm, the Parties may elect to terminate negotiations and proceed with the next highest ranked firm. This process must be followed until a firm is selected to serve as the Independent Engineer. If the Parties fail to reach agreement regarding selection of the Independent Engineer, or regarding acceptable terms of the agreement with the Independent Engineer, the Claim must be subject to resolution under Article 18 (Contract Dispute Procedures).

8.5.2.4 The Independent Engineer will be appointed jointly by the Parties and will act independently from and not as an agent of either Party. Any advisor of City, a PPC-Related Entity, or a Lender is deemed to have an organizational conflict of interest and not eligible to respond to the solicitation.

8.5.2.5 Each Party is responsible for its own costs related to the Independent Engineer solicitation processes. The Parties will be equally responsible for all amounts payable under the terms of the agreement with the Independent Engineer.

8.5.3 Handback Reserve Amount

8.5.3.1 Within 30 days of the commencement of the 26th Contract Year, and annually thereafter to the end of the IFM Period, Principal Project Company shall calculate the Handback Reserve Amount and prepare and deliver to City a report that:

(a) specifies Principal Project Company's estimate of the Handback Reserve Amount based on the inspections and the updated Handback Renewal Work Plan provided for under Section 8.5.4.2(h)~~8.5.4.2(h)~~; and

(b) details how Principal Project Company's estimated Handback Reserve Amount was calculated.

8.5.3.2 Within 15 Business Days of receipt of each report described in Section 8.5.3.1, City will review the report and provide a Notice to Principal Project Company setting forth its determination of the Handback Reserve Amount, including supporting materials.

8.5.3.3 Following delivery of each update and report, the Parties shall meet to discuss whether any changes should be made to the scope or schedule for performance of the Handback Renewal Work or to the Handback Reserve Amount.

8.5.4 Joint Technical Review and Handback Inspections and Report

8.5.4.1 The Parties and the Independent Engineer shall schedule and conduct joint technical inspections of the Infrastructure Facility:

(a) within 90 days following the Substantial Completion Date;

(b) each 5 year anniversary after the Substantial Completion Date; and

(c) the 25th anniversary of the Effective Date of this Agreement ("**Handback Inspection**"),

each of the above constitutes a "**Review Date**".

8.5.4.2 Within 30 days following each Review Date, the Independent Engineer must produce and deliver to City a report (the "**Condition Report**") for review and approval in accordance with Exhibit 11 (Submittal Review Process). The Condition Report shall:

(a) identify the condition of the Infrastructure Facility and the Project Site and each element for which Principal Project Company is responsible under the Agreement;

(b) compare the condition of each element with the current Infrastructure Facility standard requirements in the IFM Specifications;

(c) compare the actual Renewal Work replacement with the approved Handback Renewal Work Plan;

(d) identify and documents deficiencies in the current condition or Renewal Work replacement activities and makes recommendations on actions required to bring the condition and Renewal Work replacement activities to the current required standard;

(e) provides the FCI index as of the time of the Joint Technical Review;

(f) determines and verifies the condition of all elements and their Residual Lives;

(g) adjusts, to the extent necessary based on inspection and analysis, element Useful Lives, ages, Residual Lives; and

(h) in the case of the Handback Inspection, (a) determines the Handback Renewal Work required to be performed and completed before the Termination Date, based on the Handback Requirements for Residual Life at the conclusion of the Term, the foregoing adjustments and the foregoing changes to the IFM Management Plan; and (b) includes an estimate and details of the costs to perform the Handback Work and the Renewal Work ("**Handback Reserve Amount**").

8.5.4.3 Principal Project Company must update the IFM Management Plan following each inspection of the Infrastructure Facility in accordance with Section 8.5.4.2 and deliver the updated plan to City for City's review and approval in accordance with Exhibit 11 (Submittal Review Process). Such update shall include a plan to rectify identified deficiencies, schedule of activities and any process or administrative changes and maintenance and Renewal Work activities. All planned activities related to updated IFM Management Plan must be completed within a maximum of 12 months from receipt of the applicable Condition Report.

8.5.4.4 The Parties shall undertake a subsequent inspection of the remediation work completed by Principal Project Company in connection with the updated IFM Management Plan and, if required, issue a revised Condition Report.

8.5.5 Handback Assessment

8.5.5.1 In the case of the Handback Inspection, when Principal Project Company determines that it has satisfied the Handback Requirements, it shall provide a certification to City and Independent Engineer, in a form reasonably acceptable to City, stating the date that Principal Project Company determined that it satisfied the Handback Requirements.

8.5.5.2 During the 30-day period following receipt of such certification:

(a) Principal Project Company, Independent Engineer, and City shall meet and confer to facilitate City's determination of whether Principal Project Company has met the Handback Requirements;

(b) Independent Engineer will conduct a final inspection of the Project, review the Handback Renewal Work Plan and any other relevant Submittals and conduct such other investigations as may be necessary to evaluate whether the Handback Requirements have been met; and

(c) Independent Engineer shall (i) deliver a report of findings and determination to Principal Project Company and City stating in Independent Engineer's opinion whether Principal Project Company has met the Handback Requirements; or (ii) provide Notice to Principal Project Company stating the reasons why the Handback Requirements have not been met.

8.5.5.3 Within 10 days after City's receipt of a report given by Independent Engineer under Section 8.6.5.2(c) stating that the Handback Requirements have been met, City will either:

(a) provide Notice to Principal Project Company that it concurs with the Independent Engineer's determination that the Handback Requirements have been met; or

(b) provide Notice to Principal Project Company regarding the reasons why City believes the Handback Requirements have not been met.

8.5.5.4 If Independent Engineer provides Notice under Section 8.5.5.2(c)(ii), then Principal Project Company shall take appropriate steps to satisfy the remaining conditions and provide a certification under Section 8.5.5 once the conditions have been satisfied and otherwise repeat the process described in this Section 8.5.5 until City provides Principal Project Company the notice described in Section 8.5.5.3(a).

8.5.5.5 The findings of the Independent Engineer shall be inadmissible and given no weight during the Article 18 (Contract Dispute Procedures) process.

8.5.6 City Right to Self-Perform and Recover Costs

If City determines that the Project does not comply with any Handback Requirement, or Handback Renewal Work is not timely or properly performed, City may provide Principal Project Company Notice of such failure(s). Principal Project Company shall have 15 days from the date the City delivers this Notice to rectify such failure(s) to City's satisfaction; provided, however, that if (i) the nature of such rectification is such that the rectification cannot with diligence be completed within such 15 day period; (ii) such failure does not relate to a matter of public or facility safety or an Emergency; and (iii) Principal Project Company has commenced and is diligently pursuing meaningful steps to rectify immediately after receiving the Notice of such failure(s), Principal Project Company shall have such additional period of time, up to a maximum period of 60 days from the date City delivers the Notice, as is reasonably necessary to diligently effect such rectification. If Principal Project Company fails to rectify such failure(s) within this period, then, in addition to City's rights under the Contract Documents, City may bring the Project into compliance with such Handback Requirement(s) and Principal Project Company shall be liable for City's Recoverable Costs incurred in performing that Work. In recovering such amounts, City may (a) reduce any Availability Payment then due and owing from City to Principal Project Company, (b) invoice Principal Project Company for such amount, as a lump sum payment, (c) set off such amount against any other amount then due and owing from City to Principal Project Company, (d) draw against funds withheld under this Section 8.5 (Handback) or against the letter of credit described in Section 8.6.5 (Handback Requirements Letters of Credit), (e) require funds in the reserve account described in Section 8.5.7 (Handback Requirements Reserve Account) to be used to pay for required Renewal Work, or (f) any combination of clauses (a) through (e).

8.5.7 Spare Parts

Principal Project Company must comply with the requirements with respect to Spare Parts as set out in Section F.1.2(2) of the IFM Specifications.

8.6 Handback Requirements Reserve Account

8.6.1 Establishment

8.6.1.1 Within 30 days of the commencement of the 26th Contract Year, Principal Project Company shall establish a reserve account (the "**Handback Requirements Reserve Account**") exclusively available for the uses set forth in Section 8.6.3 (Use of Handback Requirements Reserve Account). Principal Project Company shall provide to City the details regarding the

account, including the name, address and contact information for the depository institution and the account number, and shall provide Notice to City regarding any change made from time to time to any such details and the effective date of such change immediately upon or prior to such change taking effect. City shall have a first priority perfected security interest in the Handback Requirements Reserve Account, and the right to receive monthly account statements directly from the depository institution. Principal Project Company shall deliver such Notices to the depository institution and execute such documents as may be required to establish and perfect City's interest in the Handback Requirements Reserve Account under the Uniform Commercial Code as adopted in the State.

8.6.1.2 In lieu of Principal Project Company establishing the Handback Requirements Reserve Account, Principal Project Company may deliver to City one or more Handback Requirements Letters of Credit on the terms and conditions set forth in Section 8.6.5 (Handback Requirements Letters of Credit) and Section 10.4 (Letters of Credit).

8.6.2 Funding

8.6.2.1 Within 30 days after the date of City's first Notice delivered to Principal Project Company pursuant to Section 8.5.3.2, Principal Project Company shall deposit to the Handback Requirements Reserve Account an amount equal to the Handback Reserve Amount specified in such Notice. If, at any time after the initial deposit of funds into the Handback Requirements Reserve Account, City determines, in its good faith discretion, that the balance of funds held in the Handback Requirements Reserve Account may be insufficient to pay for the Handback Renewal Work (as amended) yet to be performed or paid for, then City may give Notice to Principal Project Company setting forth the insufficient amount and requiring Principal Project Company to replenish the Handback Requirements Reserve Account with additional funds necessary to make up the insufficiency. Principal Project Company shall deposit such additional funds into the Handback Requirements Reserve Account not later than ten Business Days after such Notice from City. If after recalculation of the Handback Reserve Amount following any of the annual inspections provided for in Section 8.5.4 (Joint Technical Review and Report), the amount on deposit in the Handback Requirements Reserve Account exceeds the percentage of the Handback Reserve Amount required to be on deposit in the Handback Requirements Reserve Account in accordance with Section 8.6.2.1 on such calculation date, Principal Project Company shall be entitled to draw any surplus amount and no further deposits shall be made until the next inspection and determination of the Handback Reserve Amount.

8.6.2.2 If Principal Project Company disputes, in good faith, any Handback Reserve Amount specified by City in City's Notices delivered to Principal Project Company pursuant to Section 8.5.3.2, Principal Project Company shall fund the full portion (including the disputed amount) of the Handback Reserve Amount pending resolution of the Contract Dispute in accordance with **Error! Reference source not found.** (Contract Dispute Procedures).

8.6.2.3 Funds held in the Handback Requirements Reserve Account may be invested and reinvested only in securities, obligations, bonds, funds, instruments or other investments listed under California Government Code section 16430 ("**Eligible Investments**"). Eligible Investments in the Handback Requirements Reserve Account must mature during the Term, and the principal of such Eligible Investments must be available for withdrawal at any time during the Term without penalty. Any interest earned on funds held in the Handback Requirements Reserve Account shall be earned on behalf of the Principal Project Company.

8.6.2.4 If Principal Project Company fails to make the deposits required pursuant to this Section 8.6.2 (Funding), when due, City shall be entitled to deduct the amount required to be deposited from the Quarterly Availability Payments due to Principal Project Company and shall deposit such amount to the Handback Requirements Reserve Account on behalf of Principal Project Company.

8.6.2.5 If the amount on deposit in the Handback Requirements Reserve Account at any time exceeds the current calculation of the Handback Reserve Amount, Principal Project Company may withdraw any surplus amount in excess of the current calculation.

8.6.3 Use of Handback Requirements Reserve Account

8.6.3.1 Principal Project Company shall be entitled to draw funds from the Handback Requirements Reserve Account in such amounts and at such times as needed only to pay for the Handback Renewal Work as required by the Handback Renewal Work Plan. Amounts in the Handback Requirements Reserve Account can only be used for the purposes described in this Section 8.6.3.1 and are not available as security for repayment of Project Debt or making Distributions, except as permitted by Section 8.7.4.1. The use of amounts in the Handback Requirements Reserve Account by Principal Project Company for any purpose other than as permitted in this Section 8.6.3.1 shall be a PPC Default.

8.6.3.2 Before drawing funds from the Handback Requirements Reserve Account, Principal Project Company shall give written Notice to City of the amount to be drawn and the purpose for which funds will be used. City shall have 10 Business Days from the date of the receipt of such Notice to disapprove the draw from the Handback Requirements Reserve Account. City may disapprove the draw only if the requested amount and/or purposes for which the funds will be used do not comply with the Handback Renewal Work Plan. If City fails to disapprove the draw within the 10 Business Day period following receipt of Notice, Principal Project Company shall be entitled to draw funds in the manner described in the Notice to City.

8.6.4 Disbursement of Handback Requirements Reserve Account on Completion of Handback Renewal Work or Earlier Termination

8.6.4.1 Following completion of the Handback Renewal Work and after the expiration of the Term, any remaining Handback Requirements Reserve Balance shall be drawn and retained by Principal Project Company.

8.6.4.2 If this Agreement is terminated for any reason before the completion of the Handback Renewal Work, any remaining Handback Requirements Reserve Balance shall be drawn and retained by City. ***[PNC TO PROVIDE SUGGESTED SPECIFIC DRAFTING TO ADDRESS ISSUE REGARDING THAT IT IS NOT IN A WORSE POSITION IF IT USES LOC VS. CASH]***

8.6.5 Handback Requirements Letters of Credit

8.6.5.1 In lieu of establishing the Handback Requirements Reserve Account, Principal Project Company may deliver to City one or more letters of credit (each, a "**Handback Requirements Letter of Credit**"), on the terms and conditions set forth in this Section 8.6.5 (Handback Requirements Letter of Credit) and Section 10.4 (Letters of Credit). The Handback Requirements Letter of Credit shall name City as the sole beneficiary and shall not provide for any other dual or multiple beneficiaries. Principal Project Company shall execute, and shall

cause the financial institution issuing the Handback Requirements Letter of Credit to execute, such documents as may be required to establish and perfect City's interest in the Handback Requirements Letter of Credit under the Uniform Commercial Code as adopted in the State, which interest shall be a first priority security interest as provided in Section 8.6.1.1 If the Handback Requirements Reserve Account has been previously established, Principal Project Company at any time thereafter may substitute one or more Handback Requirements Letters of Credit for all or any portion of the amounts required to be on deposit in the Handback Requirements Reserve Account, on the terms and conditions set forth in this Section 8.6.5 (Handback Requirements Letters of Credit).

8.6.5.2 Upon receipt of the required substitute Handback Requirements Letter of Credit, City shall authorize the release to Principal Project Company of amounts in the Handback Requirements Reserve Account equal to the face amount of the substitute Handback Requirements Letter of Credit. If the face amount of all Handback Requirements Letters of Credit is less than the total amount required to be funded to the Handback Requirements Reserve Account before expiration of the Handback Requirements Letter of Credit, Principal Project Company shall be obligated to pay, when due, the shortfall into the Handback Requirements Reserve Account. Alternatively, Principal Project Company may deliver a Handback Requirements Letter of Credit with a face amount equal to at least the total amount required to be funded to the Handback Requirements Reserve Account during the period up to the expiration of the Handback Requirements Letter of Credit, or may deliver additional Handback Requirements Letters of Credit or cause the existing Handback Requirements Letter of Credit to be amended to cover the shortfall before deposits of the shortfall to the Handback Requirements Reserve Account are due.

8.6.5.3 City shall have the right to draw on the Handback Requirements Letter of Credit, without prior Notice to Principal Project Company, for the reasons set forth in Sections 10.4.1.3(a), (b) and (c) and Section 8.6.4.2.

8.6.5.4 Except when drawing upon the Handback Requirements Letter of Credit in accordance with Section 8.6.4.2, City shall deposit the proceeds from drawing on the Handback Requirements Letter of Credit into the Handback Requirements Reserve Account.

8.6.6 Coordination with JDA Project Companies and Joint Development Alternatives

Principal Project Company acknowledges and agrees that one or more Joint Development Alternatives may be constructed prior to or following Substantial Completion. Principal Project Company shall not interfere with the work of or cause any delay to any JDA Project Company that may be carrying out work within the Project Site or in the land adjoining or near the Project Site, including with respect to the Joint Development Alternatives, and will allow them reasonable access to the Project Site, provided that Principal Project Company shall not be in breach of this Section 8.7.6 (Coordination with JDA Project Companies and Joint Development Alternatives) for any temporary interruption to the work of any JDA Project Company that (a) has been agreed to in advance in accordance with procedures agreed to by Principal Project Company, such contractor for the Joint Development Alternative and any relevant Third Party; or (b) is reasonably necessary in accordance with Law and Good Industry Practice to respond to emergencies creating an immediate and serious threat to public health, safety, security or the Environment.

8.7 IFM Operations Committee

8.7.1 As provided in Section B.9.1.2 (IFM Operations Committee) of the IFM Specifications, the IFM Operations Committee shall be responsible for receiving and reviewing matters related to operational interface and communications for IFM Services, including Maintenance Services and Renewal Work, and SFMTA O&M Services; and

8.7.2 Any unanimous decision of the IFM Operations Committee shall be final and binding on the Parties. If the IFM Operations Committee is unable to reach a unanimous decision, either Party may refer the matter for resolution in accordance with Article 18 (Contract Dispute Procedures). The findings of the IFM Operations Committee shall be inadmissible and given no weight during the Article 18 (Contract Dispute Procedures) process.

8.8 FF&E During IFM Period

8.8.1 Title and Responsibility for Risk

8.8.1.1 Subject to Section 2.4.3 (Passage of Title), City will own all FF&E during the IFM Period.

8.8.2 Maintenance and Replacement of FF&E During IFM Period

8.8.2.1 Until the end of the IFM Period, Principal Project Company shall maintain, replace and repair all PPC-Maintained FF&E.

8.8.2.2 Where Principal Project Company is required to replace PPC-Maintained FF&E, the replacement FF&E must:

(a) meet standards relative to the current market commensurate with standards relative to the market for the FF&E being replaced as of the original purchase date;

(b) be consistent with Good Industry Practices for quality, durability, materials and technology;

(c) have a design life equal to or greater than the terms of the PPC-Maintained FF&E being replaced; and

(d) not increase costs payable by City (as compared with PPC-Maintained FF&E where alternative FF&E is readily available on comparable terms and would not have such an effect).

8.8.2.3 Subject to Section 8.9.2.4 and Section 6.11, City will, during the Term:

(a) replace and repair Existing FF&E and maintain, replace and repair City-Furnished Equipment and Office/Admin and Training Spaces FF&E if an item:

(i) is exhibiting continuous faults; or

(ii) is leading to faults which are causing continual disruptions to IFM Services as a result of being worn or tired

(b) notify Principal Project Company of Existing FF&E, or City-Furnished Equipment (as applicable) being replaced; and

(c) in connection with replacements and repairs under Section 8.9.2.3(a), ensure that the replacement Existing FF&E, Office/Admin and Training Spaces FF&E or City-Furnished Equipment (as applicable) do not increase the cost to Principal Project Company or any PPC-Related Entity of performing the IFM Services.

8.8.2.4 The replacement and repair of the Existing FF&E, Office/Admin and Training Spaces FF&E or City-Furnished Equipment in accordance with Section 8.9.2.3 will be at City's cost unless the need to replace the Existing FF&E or City-Furnished Equipment is due to any PPC Fault or the failure of Principal Project Company or any PPC-Related Entity to comply with Principal Project Company's obligations under this Agreement with respect to that Existing FF&E or City-Furnished Equipment, including Section 6.11. In such case, the replacement costs will be an obligation due and payable by Principal Project Company to City.

8.8.2.5 Principal Project Company shall:

(a) provide all equipment for IFM Services;

(b) ensure all items of FF&E and equipment for IFM Services are securely stored to prevent unauthorized access and to ensure that the health and safety of the public or City are not adversely affected;

(c) ensure all items of FF&E are accounted for and present on the completion of each activity or use;

(d) ensure all fuel to be used in the performance of the IFM Services is dispensed and accounted for via the use of a log book;

(e) ensure machinery and dispensing mechanisms have lockable fuel caps; and

(f) advise City promptly and no later than three days after Principal Project Company becomes aware of any item of FF&E or equipment for IFM Services which has not been accounted for, and cooperate with City in conducting all necessary procedures to establish and take steps to ensure that items will be accounted for properly in the future;

(g) develop a tools management and safety policy and submit said policy for review in accordance with Exhibit 11 (Submittals Review Process); and

(h) maintain records of FF&E and FM Services Equipment audits and make such records available to City on request.

8.9 Energy Management

8.9.1 Independent Energy Auditor

8.9.1.1 After the second anniversary, but no later than the third anniversary, of the Final Acceptance Date, the Parties shall appoint an Independent Energy Auditor to:

(a) provide an initial report inclusive of operating assumptions, current Weather Data and energy model simulation files regarding the IFM Facility's energy performance for the purposes of establishing the Annual Energy Target in accordance with Section 3 (Calculation of Annual Energy Target) of Exhibit 12 (Energy Management); and

(b) provide an updated report, as a result of agreed operating changes to the Infrastructure Facility, to determine the adjusted Annual Energy Target in accordance with Section 3 (Calculation of Annual Energy Target) of Exhibit 12 (Energy Management)

8.9.1.2 Principal Project Company shall, in consultation with, and subject to the approval of, City, establish the schedule and process for the selection of an Independent Energy Auditor for purposes of the Independent Energy Auditor roles contemplated in Section 3 (Calculation of Annual Energy Target) of Exhibit 12 (Energy Management). Principal Project Company shall develop the solicitation package and draft contract terms, subject to approval by City, and Principal Project Company shall set the solicitation schedule with the goal of selecting the Independent Energy Auditor at least one month prior to the second anniversary of the Final Acceptance Date, and as agreed between the Parties in accordance with Section 3.2.2 of Exhibit 12 (Energy Management).

8.9.1.3 The solicitations required under this Section 8.9.1 (Independent Energy Auditor) shall include issuance of a request for competitive proposals from a list of firms approved by City, review of proposals by the Parties, a joint determination regarding which firm is the best qualified to provide Independent Energy Auditor services, and negotiation of a fair and reasonable price for performance of such services. If negotiations fail with the highest ranked firm, the Parties may elect to terminate negotiations and proceed with the next highest ranked firm. This process shall be followed until a firm is selected to serve as the Independent Energy Auditor. If the Parties fail to reach agreement regarding selection of the Independent Energy Auditor, or regarding acceptable terms of the agreement with the Independent Energy Auditor, the Claim shall be subject to resolution under Article 18 (Contract Dispute Procedures).

8.9.1.4 The Independent Energy Auditor will be appointed jointly by the Parties and will act independently from and not as an agent of either Party. Any member or advisor of City, a PPC-Related Entity, or a Lender is deemed to have an organizational conflict of interest and not eligible to respond to the solicitation.

8.9.1.5 Each Party is responsible for its own costs related to the Independent Energy Auditor solicitation processes. The Parties will be equally responsible for all amounts payable under the terms of the agreement with the Independent Energy Auditor.

8.9.2 External Energy Auditor

8.9.2.1 On an as needed basis during the IFM Period, the City, in its sole discretion, may select an External Energy Auditor to:

(a) undertake an energy audit of the Bus Yard inclusive of both SFMTA O&M Services and IFM Services; and

(b) provide operational recommendations related to energy savings and maintenance considerations for Bus Yard inclusive of both SFMTA O&M Services and IFM Services

8.9.2.2 If the City asks PPC to undertake the solicitation of the External Energy Auditor:

(a) Principal Project Company shall, in agreement with City, establish the schedule and process for the selection of an External Energy Auditor. Principal Project Company shall develop the solicitation package and draft contract terms, subject to approval by City, and Principal Project Company shall set the solicitation schedule with the goal of selecting the External Energy Auditor, and as agreed between the Parties in accordance with Section 3.2.2 of Exhibit 12 (Energy Management).

(b) The solicitations required under this Section 8.9.2.2 (External Energy Auditor) shall include issuance of a request for competitive proposals from a list of firms approved by City, review of proposals by the Parties, a joint determination regarding which firm is the best qualified to provide External Energy Auditor services, and negotiation of a fair and reasonable price for performance of such services. If negotiations fail with the highest ranked firm, the Parties may elect to terminate negotiations and proceed with the next highest ranked firm. This process shall be followed until a firm is selected to serve as the External Energy Auditor. If the Parties fail to reach agreement regarding selection of the Independent Energy Auditor, or regarding acceptable terms of the agreement with the Independent Energy Auditor, the Claim shall be subject to resolution under Article 18 (Contract Dispute Procedures).

8.9.2.3 If the City undertakes the solicitation of the External Energy Auditor by itself, the City will determine its procurement process in its sole discretion.

8.9.2.4 The External Energy Auditor will be appointed by the City and will act independently from and not as an agent of City. Any advisor or member of City, a PPC-Related Entity, or a Lender is deemed to have an organizational conflict of interest and not eligible to respond to the solicitation.

8.9.2.5 City will be responsible for all costs related to the External Energy Auditor solicitation processes and all amounts under the terms of the agreement with the External Energy Auditor.

8.9.2.6 Principal Project Company shall, promptly and reasonably, provide any information necessary for the External Energy Auditor to reasonably undertake its obligations in providing the services in accordance with Section 8.9.2.1

8.9.2.7 Principal Project Company shall comply with the operational recommendations of the External Energy Auditor at its own cost in accordance with Section 6 (External Energy Auditor) of Exhibit 12 (Energy Management).

8.9.3 Failure to meet LEED Requirements

8.9.3.1 In the event that LEED BD+C Gold Rating, including the mandatory 12x EAc2 Optimize Energy Performance credits, is not obtained within 12 months after the Substantial Completion Date, other than as a sole and direct result of any affirmative act or omission of City or unless unreasonably withheld by USGBC or an equivalent body, Principal Project Company shall pay to City liquidated damages in the amount of $100,000. In the event that LEED BD+C Gold Rating, including the mandatory 12x EAc2 Optimize Energy Performance credits, is not obtained within 24 months after the Final Acceptance Date, other than as a sole and direct result of any affirmative act or omission of City or unless unreasonably withheld by USGBC or an equivalent body, such event shall be a PPC Default pursuant to Section 16.

8.9.3.2 Principal Project Company shall submit all necessary documentation to achieve LEED BD+C Gold within 6 months after the Substantial Completion Date.

8.9.3.3 The Parties agree that such liquidated damages are not a penalty but represent a genuine and reasonable pre-estimate of the damages that the City will suffer as a result of the happening of the specified event and would be difficult or impossible to quantify upon the happening of the specified event. Such payment shall constitute full and final settlement of all damages that may be claimed by the City as a result of a failure by Project Company to achieve LEED BD+C Gold Rating and the minimum credit requirements and, for greater certainty, a failure by Project Co to achieve LEED BD+C Gold Rating shall not result in a PPC Default Event provided that such liquidated damages are promptly paid. The Parties agree that such liquidated damages shall be payable whether or not City incurs or mitigates its damages, and that City shall not have any obligation to mitigate any such damages.

ARTICLE 9. CONTRACTING AND LABOR PRACTICES

9.1 Disclosure of Contracts and Contractors

9.1.1 The provisions of this Section 9.1 (Disclosure of Contracts and Contractors) apply with respect to (a) Prime Contracts and lower tier Contracts entered into by Prime Contractors, excluding personal services contracts and contracts with Suppliers other than Key Contractors, and (b) Contracts with Affiliates, regardless of the nature or tier of the Contract.

9.1.2 With each Monthly Report required during the D&C Period and each Infrastructure Facility monthly report required during the IFM Period, Principal Project Company shall provide City with a list of all Contracts, including, for each Contract, (a) the name of the Contractor (indicating the Contractor is an Affiliate, if applicable), (b) a summary of the scope of work, and (c) the dollar value. If the Contract includes Construction Work or Renewal Work, include assurance that the prevailing wage for labor, as specified in the Contract Documents, is paid for all labor performed under such Contract.

9.1.3 Principal Project Company shall allow City full access to all Contracts and records regarding Contracts and shall deliver to City, (a) within 10 days after execution, copies of all Key Contracts, guarantees thereof and amendments and supplements to Key Contracts and guarantees thereof, and (b) within 10 days after receipt of a request from City, copies of all other Contracts (including amendments and supplements) as may be requested.

9.2 Responsibility for Work, Contractors and Employees

9.2.1 Principal Project Company may enter into one or more Contracts with Contractors to perform portions of the Work.

9.2.2 The retention of Contractors by Principal Project Company does not relieve Principal Project Company of its responsibilities under this Agreement or for the quality of the Work or materials or services provided by it.

9.2.3 Each Contract shall include (a) terms sufficient to ensure both the acknowledgement of and compliance by the Contractor with the applicable requirements of the Contract Documents and to ensure that City has the ability to exercise its rights specified in the Contract Documents, (b) those terms that are specifically required by the Contract Documents to be included in such Contract, and (c) all applicable Laws.

9.2.4 Principal Project Company shall require each Contractor to familiarize itself with the requirements of any and all applicable Laws and the conditions of any required Regulatory Approvals.

9.2.5 Nothing in this Agreement will create any contractual relationship between City and any Contractor. No Contract entered into by or under Principal Project Company shall impose any obligation or liability upon any Indemnitee to any Contractor or any of its employees. Principal Project Company shall include, or cause to be included, a provision in all Contracts acknowledging the same.

9.2.6 Principal Project Company shall supervise and be fully responsible for any PPC Fault while performing Work under this Agreement or while on the Project Site, as though Principal Project Company directly employed all such individuals.

9.2.7 If City has reasonable cause to disapprove of an employee of any PPC-Related Entity, Principal Project Company shall remove such employee within 10 Business Days after receipt of written Notice from City of such disapproval.

9.3 Key Contracts; Contractor Qualifications

9.3.1 Key Contract Approvals, Amendments and Termination; Use of and Change in Key Contractors

9.3.1.1 Principal Project Company shall provide City, for City's review and comment, draft copies of (a) any Key Contracts not executed before the Effective Date and (b) proposed material amendments to Key Contracts (regardless of whether the Key Contract to be amended was executed before the Effective Date). Such drafts shall be provided at least 30 days before execution of a Key Contract or an amendment to a Key Contract, as applicable. Any proposed amendment to required terms described in Section 9.3.2 (Key Contract Provisions) shall be considered a material amendment.

9.3.1.2 Except as otherwise approved by City, Principal Project Company shall retain, employ and utilize the firms and organizations identified in the Implementation Proposal to fill the roles designated therein.

9.3.1.3 Principal Project Company shall not terminate or permit termination of any Key Contract or permit any substitution, replacement or assignment of any Key Contractor, except with City's prior approval; provided, however, that City's prior approval is not required in the event of (a) any termination of this Agreement where City elects not to assume Principal Project Company's future obligations under such Key Contract, (b) any suspension, debarment, disqualification or removal (distinguished from ineligibility due to lack of financial qualifications) of the Key Contractor, or (c) any agreement for voluntary exclusion of the Key Contractor, from bidding, proposing or contracting with any federal, State or local department or agency. City agrees to act reasonably with respect to approval of a replacement in the case of material uncured default by the Key Contractor under the Key Contract.

9.3.2 Key Contract Provisions

9.3.2.1 Each Key Contract shall comply with the requirements set forth in Exhibit 14 (Key Contract Provisions).

9.4 Prompt Payment to Contractors

Principal Project Company shall comply, and shall cause each Contractor to comply, with the provisions of Business and Professions Code section 7108.5, California Civil Code sections 8122-8138, and any other applicable Law relating to prompt payment of contractors and/or subcontractors and waivers and releases by them of stop payment notices and payment bond rights.

9.5 Key Personnel

Principal Project Company shall:

(a) retain, employ and utilize the individuals specifically listed in the Implementation Proposal, and retain, employ and utilize individuals qualified for the positions described in Section 1.1.4 of Division 1 of the Technical Requirements to fill Key Personnel positions for the relevant period identified in the Technical Requirements; Principal Project Company acknowledges that if City reasonably determines that an individual is not qualified for a Key Personnel position, Principal Project Company shall at City's request replace that individual with one that meets the required qualifications;

(b) not change or substitute any such individuals except due to retirement, death, disability, incapacity, or voluntary or involuntary termination of employment, or as otherwise approved by City under Section 9.5(c);

(c) promptly provide Notice to City of any proposed replacement for any Key Personnel position. City shall have the right to review the qualifications and character of each individual to be appointed to a Key Personnel position and shall act reasonably in approving or disapproving use of such individual in such position before the commencement of any Work by such individual;

(d) cause each Key Person to dedicate the full amount of time necessary for the proper prosecution and performance of the Work, as more specifically described in Section 1.1.4 of Division 1 of the Technical Requirements;

(e) commit each Key Person to the Project in accordance with Section 1.1.4 of Division 1 of the Technical Requirements;

(f) provide City with office and cell phone numbers and email addresses for each Key Person. City may contact Key Personnel 24 hours per day, seven days per week;

(g) ensure that the Project Manager identified in the Implementation Proposal or otherwise approved by City (i) will have full responsibility for the prosecution of the D&C Work, (ii) will act as agent and be a single point of contact in all matters relating to the D&C Work on behalf of Principal Project Company at least until Final Acceptance, (iii) will be present (or ensure that his or her approved designee is present) at the construction site at all times that Construction Work is performed, and (iv) will be available to respond promptly to City; and

(h) ensure that the Quality Program Manager identified in the Implementation Proposal or otherwise approved by City (i) will have full responsibility for quality assurance and quality control with respect to D&C Work until Final Acceptance, (ii) is present (or his or her approved designee is present) at the construction site at all times that Construction Work is performed, and (iii) will be available to respond promptly to City.

9.5.1 Key Personnel Deductions

9.5.1.1 If an individual filling a Key Personnel role is not available for, or actively involved in, the performance of the Work per their position requirement as required in Section 1.1.4 of Division 1 of the Technical Requirements, as determined by City in its good faith discretion, then:

(a) Principal Project Company acknowledges and agrees that City and the Project will suffer significant and substantial damages and that it is impracticable and extremely difficult to ascertain and determine the actual damages which would accrue to City in such event;

(b) Subject to Section 9.5.2 (Limitations on Deductions for Unavailability of Key Personnel), Principal Project Company shall pay City a Key Personnel deduction as follows, for each position held by such individual, as deemed compensation to City for such damages:

Category	KEY PERSONNEL DEDUCTION
Project Manager	$150,000
Deputy Project Manager	$75,000
Design Manager	$75,000
Construction Manager	$75,000
IFM Manager	$75,000
Quality Program Manager	$75,000
Project Safety Representative	$75,000
Construction Superintendent	$75,000
Third Party and Utility Coordinator Manager	$75,000

and

(c) Principal Project Company agrees to pay a further Key Personnel deduction for all Key Personnel in the amount of 50% of the applicable amounts listed under Section 9.5.1.1(b) for each 6 calendar month period where any Key Personnel position is vacant or not being fulfilled in accordance with this Agreement as determined by City.

9.5.1.2 Principal Project Company agrees that the Key Personnel deductions payable in accordance with Section 9.5.1.1 are liquidated damages, not a penalty and are reasonable under the circumstances existing as of the Effective Date. The Parties have agreed to liquidated damages under this Section 9.5.1 (Key Personnel Deductions) in order to fix and limit Principal Project Company's costs and to avoid later Contract Disputes over what amounts of damages are properly chargeable to Principal Project Company.

9.5.1.3 City may deduct amounts owing from Principal Project Company to City under Section 9.5.1.2 from amounts owing from City to Principal Project Company under this

Agreement (including the Milestone Payment), or to collect such liquidated damages from the Performance Bond.

9.5.2 Limitations on Deductions for Unavailability of Key Personnel

9.5.2.1 Principal Project Company is not liable for liquidated damages under Section 9.5.1.1 if:

(a) Principal Project Company removes or replaces such personnel at the direction of City; or

(b) An individual filling a Key Personnel position is unavailable because of the application of applicable Law, or due to death, disability, family leave, retirement, injury or no longer being employed by the applicable PPC-Related Entity (provided that moving to an affiliated company or a Subcontractor is not considered grounds for avoiding liquidated damages),

provided Principal Project Company promptly proposes to City a replacement for such personnel for review and approval within 30 days of unavailability, in the case of Sections 9.5.2.1(a) or 9.5.2.1(b).

9.5.2.2 Principal Project Company may replace the Principal Project Company's Project Manager not more frequently than every three years during the IFM Period without incurring liquidated damages under Section 9.5.1 (Key Personnel Deductions), but only if Principal Project Company replaces the outgoing Principal Project Company's Project Manager with a City-approved replacement before the outgoing individual vacates the position.

9.5.2.3 Upon approval of any Key Personnel replacement, the new individual shall be considered a Key Personnel for all purposes under this Agreement, including this Section 9.5.2 (Limitations on Deductions for Unavailability of Key Personnel).

9.5.3 Skilled Personnel; Removal at City Direction

All individuals performing the Work shall have the skill and experience and any licenses or certifications required to perform the Work assigned to them. If City determines, in its good faith discretion, that any individual employed by Principal Project Company or by any Subcontractor is not performing the Work in a proper, safe and skillful manner, then at the written request of City, Principal Project Company or such Subcontractor shall promptly remove such individual and such individual shall not be re-employed on the Project without the prior written approval of City, in its good faith discretion. If Principal Project Company or the Subcontractor fails to remove such individual or individuals or fails to furnish skilled and experienced personnel for the proper performance of the Work, then City may, in its good faith discretion, suspend the affected portion of the Work for cause by delivery of Notice of such suspension to Principal Project Company. Such suspension shall in no way relieve Principal Project Company of any obligation contained in the Contract Documents or entitle Principal Project Company to a time extension, compensation or other Change Order. Once compliance is achieved, as determined by City, City will deliver Notice to Principal Project Company and Principal Project Company shall be entitled to and shall promptly resume the Work. If City's determination is later found to not have

been exercised in good faith, such suspension shall be considered a suspension for convenience.

9.6 DBE Participation

[NOTE TO PNC: DBE PROVISIONS/PROGRAM UNDER DEVELOPMENT]

9.6.1 Principal Project Company shall either achieve or demonstrate it has exercised good faith efforts to achieve the following Disadvantaged Business Enterprise ("DBE") participation goals:

(a) [__]% of Principal Project Company's costs for the Design Work;

(b) [__]% of Principal Project Company's costs for the Construction Work;

9.6.2 Achievement of the DBE participation goal for each type of Work identified in Sections 9.6.2(a) and (b) will be measured as a percentage of Principal Project Company's costs for each such type of Work, where the total amount paid to DBE firms for each such type of Work will be measured against Principal Project Company's costs for each such type of Work, without reduction for Deductions or other offsets.

9.6.3 Principal Project Company shall comply with the terms and conditions set forth in Exhibit [__] (DBE Compliance Manual) and in the approved DBE Utilization Plan.

9.6.4 If Principal Project Company fails to achieve any DBE participation goal, then Principal Project Company must demonstrate that it met all good faith efforts requirements for achieving the goal in accordance with 49 C.F.R. Appendix A to Part 26 - Guidance Concerning Good Faith Efforts and the DBE Compliance Manual. The efforts employed must at a minimum include those that one could reasonably expect a contractor to take if the contractor were actively and aggressively trying to obtain DBE participation sufficient to meet the DBE goals (See 49 C.F.R. Part 26, Appendix A).

9.6.5 To obtain an accurate record of Principal Project Company's performance towards meeting its DBE participation commitments and DBE goals, Principal Project Company shall utilize City's reporting system to report DBE and non-DBE payments and all other reporting activities throughout the performance of Work. Principal Project Company shall maintain an accurate listing of all DBE and non-DBE firms in City's reporting system. Principal Project Company shall ensure that all relevant Contractors, Suppliers and/or brokers (at all tiers) participate in trainings in the use and operation of City's reporting system and comply with the verification of payments and other related reporting requirements through the reporting system. City may require additional reports to ensure adequate reporting of DBE participation for the Project.

9.6.6 Principal Project Company shall complete all DBE and non-DBE reporting requirements on City's reporting system in accordance with the DBE Compliance Manual. If City provides a notice to Principal Project Company indicating that Principal Project Company has not achieved a DBE participation goal, Principal Project Company shall, within ten days of such notice, submit for City's consideration Principal Project Company's Good Faith Efforts documentation for the applicable time period.

9.6.7 Failure by Principal Project Company to carry out the DBE requirements set forth in this Section 9.6 (DBE Participation) is a material breach of this Agreement, which may result in:

(a) the termination of this Agreement;

(b) Noncompliance Points and Deductions as set forth in Exhibit 4 (Payment Mechanism); and/or

(c) other administrative remedies, including monetary liability, as set forth in Sections 801 and 802 of Exhibit [__] (DBE Compliance Manual) or in this Agreement.

9.6.8 Principal Project Company acknowledges the importance of Principal Project Company and Contractors timely tracking and entering DBE compliance data into City's reporting system. City's comments, approvals, acceptances, NTPs, payments, including the Milestone Payment, Availability Payments, periodic payments, progress payments, and other actions shall not waive or limit any remedies City has under the Contract Documents should City determine that Principal Project Company has failed to carry out the DBE requirements pursuant to this Section 9.6 (DBE Participation).

9.6.9 DBE Utilization Plan

9.6.9.1 Within [__] days after issuance of NTP 1, Principal Project Company shall submit to City for approval in its sole discretion, a DBE Utilization Plan that describes Principal Project Company's robust plan outreach, marketing, recruitment, and other good faith efforts for achieving the DBE participation goals set forth in this Section 9.6 (DBE Participation). The DBE Utilization Plan shall, at a minimum, include the following components:

(a) provisions for submission of DBE forms and affidavits through City's DBE reporting system;

(b) expanded descriptions of the types of proactive DBE and small business bid-specific marketing, recruitment, outreach and community engagement efforts that Principal Project Company will implement while preparing for and undertaking the D&C Work in order to include DBEs and on the Project, including:

(i) processes for timely communications and outreach methods that Principal Project Company will use;

(ii) processes to keep track of potential DBEs, small businesses and other Contractors on the Work;

(iii) proposed innovative methods for (A) involving new and emerging DBEs, and (B) identifying firms that might potentially be certified as DBEs, and for assisting them to become DBE-certified and involved in the Project; and

(iv) a discussion of how these efforts will flow through tiers of Subcontractors on the Project;

(c) description of efforts Principal Project Company has made and will make to recruit and utilize DBE firms such as graphic design and printing, marketing, outreach, training, employment services, catering companies, maintenance companies, janitorial services, security companies and other trades to help meet the DBE business goals;

(d) description of proposed DBE and small business capacity-building efforts to be implemented throughout the Work, including methods to assist DBEs with record-keeping and compliance, bonding, financing, access to supplies and other capabilities;

(e) description of the estimated DBE participation level for Design Work for each month of the Design Work and cumulatively, including a table or diagram of an estimated schedule that illustrates projected work sequencing of DBE utilization for the Design Work;

(f) description of the estimated DBE participation level for Construction Work for each month of the Construction Work and cumulatively, including a table or diagram of an estimated schedule that illustrates projected work sequencing of DBE utilization for the Construction Work;

(g) description of processes and procedures that Principal Project Company will use to monitor, track, document and report recruitment, progress and utilization of DBEs, and to maintain and adjust the DBE participation schedule to help ensure achievement of the DBE goals, including time intervals at which Principal Project Company will employ these processes and procedures;

(h) description of specific measures that Principal Project Company will undertake throughout the duration of the D&C Work to achieve and manage the DBE goals, including training workshops, technical and financial assistance, support services, mentor/protégé relationships, recruiting and encouraging potential DBEs to obtain certification, etc. Include a proposed schedule of events/activities;

(i) description of how Principal Project Company will manage DBEs on the Project, including processes for project management, technical performance reviews, feedback and dispute resolution to resolve issues that may arise;

(j) description of other procedures and processes for meeting DBE requirements, such as documenting and submitting affidavits for additional DBEs committed to the Project to meet or exceed the DBE goals, prompt pay requirements and substitution/replacement of DBEs; and

(k) description of any other innovative or additional good faith efforts activities already undertaken or ones Principal Project Company plans to undertake that are not listed above or listed in 49 C.F.R. Part 26.

9.6.10 Principal Project Company shall engage the DBE Contractors identified in the table set forth in Exhibit [__] (List of Approved DBE Subcontractors and Suppliers) as part of Principal

Project Company's efforts to meet Principal Project Company's DBE participation commitments and DBE goals during the Term, subject to the DBE Contractor substitution procedures set forth in Exhibit [__] (DBE Compliance Manual).

9.6.11 Not later than [150] days following NTP 1, in accordance with the requirements set forth in Exhibit [__] (DBE Compliance Manual), Principal Project Company shall provide to City for approval a list of all the DBE and small business firms that Principal Project Company proposes to engage to meet Principal Project Company's DBE participation commitments for the Construction Work.

9.6.12 Unless City's prior written consent is provided for termination or substitution of a DBE Contractor, Principal Project Company shall not be entitled to any payment for work or materials identified for a DBE Contractor unless it is performed or supplied by such DBE Contractor.

9.6.13 DBE Compliance Contractor

Principal Project Company shall retain or cause to be retained a Contractor to provide DBE liaison and compliance services that:

(a) is not corporately affiliated with Principal Project Company or a Key Contractor; and

(b) has primary responsibility on behalf of Principal Project Company to coordinate Principal Project Company's DBE compliance efforts and interface with City regarding DBE and SBE matters.

9.6.14 DBE Compliance Assessment

9.6.14.1 Annually until Substantial Completion, following the anniversary of the Effective Date each year, City will assess Principal Project Company's utilization during the preceding 12-month period of DBE firms in performance of Design Work and Construction Work. If after the end of any such 12-month period Principal Project Company is behind in meeting a DBE participation goal under Section 9.6.1(a) or (b), City may require Principal Project Company to update its plan and efforts to achieve the goal, at no additional cost to City.

9.7 Contracts with Affiliates

9.7.1 Affiliates may perform Work only if:

(a) Principal Project Company or a Contractor executes a written Contract with the Affiliate which:

(i) complies with all applicable provisions of the Contract Documents, including this Article 9 (Contracting and Labor Practices), is consistent with Good Industry Practice, and is in form and substance substantially similar to Contracts then being used by Principal Project Company or Affiliates for similar Work or services with unaffiliated contractors;

(ii) sets forth the scope of Work and all the pricing, terms respecting the scope of Work;

(iii) contains pricing, scheduling and other terms no less favorable to Principal Project Company than those that Principal Project Company could reasonably obtain in an arms'-length, competitive transaction with an unaffiliated Contractor. Principal Project Company shall bear the burden of proving that the same are no less favorable to Principal Project Company; and

(b) The Work to be performed by the Affiliate is not Work that any Contract Document, the Project Management Plan indicates is to be performed by an independent or unaffiliated party.

9.7.2 Before Principal Project Company or a Contractor enters into a written Contract (including supplements and amendments) with an Affiliate, Principal Project Company shall submit a true and complete copy of the proposed Contract to City for comment. City shall have 20 days after receipt to deliver its comments to Principal Project Company. If the Contract with the Affiliate is a Key Contract, it shall be subject to City's approval as provided in Section 9.3.1 (Key Contract Approvals, Amendments and Termination; Use of and Change in Key Contractors).

9.7.3 Principal Project Company shall make no payments to Affiliates for work or services in advance of provision of such work or services, except for reasonable mobilization payments or other payments consistent with arm's length, competitive transactions of similar scope. Advance payments in violation of this provision shall be excluded from the calculation of Termination Compensation.

9.8 Labor Standards

9.8.1 In performing the Work, Principal Project Company shall comply, and require all Contractors to comply, with all applicable federal and State labor, occupational safety and health Laws and orders, including payment of Prevailing Rate of Wages.

9.8.2 By the 15th day of each calendar month during the Term, Principal Project Company shall submit to City certified payroll records for all employees of Principal Project Company and Contractors at all tiers for the preceding calendar month.

9.8.3 In the event a prevailing wage law violation is discovered, City may withhold from payments owing (including the Milestone Payment and any Availability Payments) Principal Project Company's underpaid back wages plus penalties as required under Section 6.22(e)(8) (Non-Compliance with Wage Provisions – Penalties) of the San Francisco Administrative Code until the violation is resolved.

9.8.4 All individuals performing the Work shall be qualified, experienced, competent and skilled in the performance of the portion of the Work assigned and related obligations of Principal Project Company in accordance with the Contract Documents and any applicable minimum levels in the Technical Requirements.

9.8.5 If any individual employed by Principal Project Company or any Contractor lacks required qualifications, skill, competence, experience, licensing, certification, registration, permit, approval, bond or insurance or is not performing the Work in a proper, safe and skillful

manner, then Principal Project Company shall, or shall cause such Contractor to, remove such individual, and such individual shall not be re-employed on the Work.

9.8.6 If, after Notice and reasonable opportunity to cure, Principal Project Company fails to take action as required by Section 9.8.5, or if Principal Project Company fails to ensure that qualified, skilled, experienced, competent, licensed, certified, registered, permitted and approved personnel are furnished for the proper performance of the Work, then City may suspend the affected portion of the Work by delivering to Principal Project Company Notice of such suspension. Such suspension shall in no way relieve Principal Project Company of any obligation contained in the Contract Documents.

9.9 Local Hiring Requirements for Construction Work and Renewal Work

Principal Project Company shall comply with local hiring requirements for Construction Work and Renewal Work, as mandated by the San Francisco Local Hiring Policy for Construction set forth in Chapter 82 of the Administrative Code and related implementing regulations.

9.10 First Source Hiring Program

Principal Project Company shall comply with all applicable provisions of the First Source Hiring Program as set forth in Chapter 83 of the San Francisco Administrative Code, including all enforcement and penalty provisions.

9.11 SFMTA Employment Training Program

9.11.1 As part of the SFMTA Employment Training Program, Principal Project Company shall cause at least 4 professional services trainees to be hired during the period of the D&C Work for professional services performed for the Infrastructure Facility. If a person hired through the First Source Hiring Program also meets the trainee requirements described below, that person may be counted toward these trainee hiring requirements. Trainees may be obtained through the City's One Stop Employment Center, which works with various employment and job training agencies/organizations or other employment referral source.

9.11.2 Principal Project Company shall ensure that:

(a) Each trainee is hired by either the Principal Project Company or a Contractor providing professional services for the Infrastructure Facility.

(b) No trainee is counted towards meeting more than one contract requirement. For example, if City and Principal Project Company enter into this Agreement and another contract, any trainee hired for services under this Agreement would not count toward the trainee hiring requirement for the other contract.

(c) Each trainee meets enrollment qualifications established under the City's First Source Hiring Program as follows:

(i) "Qualified" with reference to an economically disadvantaged individual shall mean an individual who meets the minimum bona fide occupational qualifications provided by the prospective employer to the

San Francisco Workforce Development System in the job availability notices required by the First Source Hiring Program.

(ii) "Economically disadvantaged individual" shall mean an individual who is either (i) eligible for services under the Workforce Investment Act of 1988 (29 U.S.C. 2801 et seq.), as determined by the San Francisco Private Industry Council; or (ii) designated "economically disadvantaged" by the FS First Source Hiring Program HP administration, which means an individual who is at risk of relying upon, or returning to, public assistance.

(iii) "On-the-job training" means the hiring party hire the trainee on a full-time basis for at least 12 months or on a part-time basis for 24 months (using the full-time or part-time definition of the employer hiring that trainee), with prior approval offering him/her on-the-job training that allows the trainee to progress on a career path.

(d) Before a trainee is hired by a Contractor or by Principal Project Company, Principal Project Company submits for City's approval a description and summary of training proposed for that trainee, along with the rate of pay for the position.

(e) A trainee's commitment does not require that he/she is used only on this Project; the trainee may also be used on other Principal Project Company or Contractor projects that may be appropriate for the trainee's skill development.

Principal Project Company acknowledges its obligation to hire or cause to be hired trainees pursuant to the Trainee Plan and shall comply with the Trainee Plan during the Term.

9.12 Deductions and Noncompliance Points Relating to Local Hire and SFMTA Training Program Requirements Development

If Principal Project Company fails to meet certain requirements set forth in this Article 9 (Contracting and Labor Practices), City may, without limiting City's other rights and remedies under this Agreement, assess Deductions and Noncompliance Points as provided in Exhibit 4 (Payment Mechanism).

9.13 Ethical Standards

9.13.1 Principal Project Company or its representatives shall not make, nor cause to be made, any cash payments, commissions, employment, gifts, entertainment, free travel, loans, free work, substantially discounted work, or any other considerations to (a) City representatives, employees, or their relatives, or (b) representatives of subcontractors, or material suppliers or any other individuals, organizations, or businesses receiving funds in connection with this Project.

9.13.2 Principal Project Company employees (or their relatives), agents, or subcontractors shall not receive any cash payments, commissions, employment, gifts, entertainment, free travel, loans, free work, or substantially discounted work or any other considerations from any other contractors or from any City employee, agent, representative.

9.13.3 Principal Project Company agrees to provide Notice to a designated City representative within 48 hours of any instance where Principal Project Company becomes aware of a failure to comply with the provisions of this Section 9.13 (Ethical Standards).

ARTICLE 10. INSURANCE; PAYMENT AND PERFORMANCE SECURITY; INDEMNITY

10.1 Insurance

10.1.1 Insurance Policies and Coverage

Principal Project Company shall procure and maintain, or cause to be procured or maintained, the Insurance Policies identified in this Section 10.1 (Insurance) and in Exhibit 7 (Insurance Requirements) strictly in accordance with the minimum coverage requirements and terms of coverage as set forth in Exhibit 7 (Insurance Requirements) and in this Section 10.1 (Insurance). Principal Project Company shall timely pay, or cause to be paid, the premiums for all Insurance Policies and insurance coverages required by this Agreement. There shall be no recourse against City or any of the other City Additional Insureds for payment of premiums or other amounts with respect to the Insurance Policies, except to the extent (a) included within the Availability Payments or (b) an increase in premiums is a compensable Extra Work Cost as part of a Compensable Delay Event or Compensable Relief Event.

10.1.2 General Insurance Requirements

10.1.2.1 Insurers

All insurance required hereunder shall be procured from insurers that at the time coverage commences are authorized to do business in the State and have a rating of not less than A-:VIII according to A.M. Best's Financial Strength Rating and Financial Size Category, except as otherwise provided in Exhibit 7 (Insurance Requirements) or approved in writing by City in its reasonable discretion.

10.1.2.2 Deductibles; Self-Insured Retentions; Claims Exceeding Policy Limits

Except to the extent expressly provided otherwise in the Contract Documents, Principal Project Company shall be responsible for paying all insurance deductibles and self-insured retentions, and City shall have no liability for deductibles, self-insured retentions or claim amounts exceeding the required policy limits. If City is the sole cause of an insured Loss (including Losses caused by the SFMTA's operations) City shall pay the applicable insurance deductibles and self-insured retentions, notwithstanding any subrogation waivers. In the event that any required insurance coverage involves a self-insured retention: (a) the entity responsible for the self-insured retention shall have an authorized representative issue a letter to City, at the same time the Insurance Policy is to be procured, stating that it shall protect and defend City to the same extent as if an insurer provided coverage for City; and (b) Principal Project Company shall ensure that the relevant Insurance Policy expressly permits (but does not obligate) City, or a designee of City, to pay the self-insured retention to satisfy any policy condition requiring payment of the self-insured retention for coverage to apply. If the entity responsible for the self-insured retention does not pay the self-insured retention amount when due, then City may, but is not obligated to, pay the self-insured retention amount on behalf of such entity, and Principal Project Company shall indemnify City for such amount and any other Losses incurred by City in connection with the entity's failure to pay the self-insured retention amount when due.

10.1.2.3 Primary Coverage

Without any limitation, each policy shall provide that the coverage afforded under the policy is primary and noncontributory with respect to any other insurance available to all named and City Additional Insureds.

10.1.2.4 Verification of Coverage

(a) When Principal Project Company is required by the Contract Documents to initially obtain or cause to be obtained an Insurance Policy, Principal Project Company shall deliver to City a certificate of insurance before policy inception followed by a binder of insurance in a form reasonably acceptable to City no later than 30 days following policy inception. Principal Project Company shall make submit all certificates of insurance including relevant endorsements attached to the certificates of insurance prior to each policy effective date and binders of insurance as soon as they are issued by the insurers but not later than 30 days following policy inception. Each required binder must state the identity of all insurers, list all named and additional insureds, state the type of coverage and limits including any applicable sublimits, list all deductibles and self-insured retentions, provide the policy effective and expiration date, and list all applicable endorsements once available.

(b) In addition, as soon as they become available, Principal Project Company shall deliver to City (i) a true and complete copy of each such Insurance Policy or modification, or renewal or replacement Insurance Policy obtained by Principal Project Company or a Prime Contractor and all endorsements thereto and (ii) satisfactory evidence of payment of the premium therefor.

(c) If Principal Project Company has not provided City with the certificates of insurance, including applicable endorsements, prior to policy inception and evidence of premium payment within 30 days after each payment is due, City may, upon written Notice to Principal Project Company, in addition to any other available remedy, without obligation and without further inquiry as to whether such insurance is actually in force, elect to obtain such an Insurance Policy; and Principal Project Company shall reimburse City for any Recoverable Costs thereof upon demand. In addition, City shall have the right, without obligation or liability, to suspend all or any portion of Work, during any time that such proofs of coverage, in compliance with this Section 10.1 (Insurance), have not been provided.

10.1.2.5 Waivers of Subrogation

City and Principal Project Company waive all rights against each other, against each of their respective agents, employees and Project consultants, and against Contractors and their respective members, directors, officers, employees, subcontractors and agents for any claims to the extent covered and paid by insurance obtained pursuant to this Section 10.1 (Insurance), with the exception of professional liability insurance and except such rights as they may have to the proceeds of such insurance. Principal Project Company shall require all Contractors to provide similar waivers in writing, each in favor of all other parties specified above. Each policy

for which Principal Project Company or any Contractor is required to provide coverage for the City Additional Insureds shall include a waiver of any right of subrogation against the City Additional Insureds.

10.1.2.6 No Recourse

Except as may be inclusive within the MaxAP or as expressly provided otherwise in this Agreement, there shall be no recourse against City for payment of premiums or other amounts with respect to the insurance Principal Project Company is required to provide hereunder.

10.1.2.7 Support of Indemnifications

The insurance coverage Principal Project Company is required to provide hereunder shall support but is not intended to limit Principal Project Company's indemnification obligations under the Contract Documents.

10.1.2.8 Additional Terms and Conditions

(a) Each Insurance Policy shall state or be endorsed to state that coverage cannot be canceled except after 30 days' prior Notice (or ten days in the case of cancellation for non-payment of premium) has been given to City. No policy language or endorsement shall include any limitation of liability of the insurer for failure to provide such Notice.

(b) No Insurance Policy shall provide coverage on a "claims made" basis, with the exception of any professional liability Insurance Policies, unless specifically approved in writing by City.

10.1.2.9 Requirements Not Limiting

The Parties acknowledge and agree that:

(a) requirements for specific coverage features or limits contained in this Section 10.1 (Insurance) and in Exhibit 7 (Insurance Requirements) are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any Insurance Policy;

(b) specific reference to a given coverage feature is not intended to be all inclusive, or to the exclusion of other coverage, or a waiver of any type; and

(c) all insurance coverage and limits provided by Principal Project Company, or by third parties pursuant to obligations of Principal Project Company under this Agreement, and, in each case, available or applicable to this Agreement are intended to apply to the full extent of the Insurance Policies, and nothing contained in this Agreement limits, or shall be deemed to limit, the application of such insurance coverage.

Except as otherwise specifically set forth in the Contract Documents, Principal Project Company may meet its insurance obligations in any manner Principal Project Company deems reasonably

appropriate, so long as, in each case, and with respect to the coverages prescribed for each Insurance Policy, Principal Project Company meets all the requirements therefor.

10.1.2.10 Deemed Self-Insurance by Principal Project Company

If, in any instance, Principal Project Company (i) has not performed its obligations respecting insurance coverage set forth in this Agreement or (ii) is unable to enforce and collect any such insurance for failure (x) to assert claims in accordance with the terms of the Insurance Policies or (y) to prosecute claims diligently, then, for purposes of determining Principal Project Company's liability and the limits thereon or determining reductions in compensation due from City to Principal Project Company on account of available insurance, Principal Project Company shall be treated as if it has elected to self-insure up to the full amount of insurance coverage which would have been available had Principal Project Company performed such obligations and not committed such failure.

10.1.2.11 Umbrella and Excess Policies

Principal Project Company shall have the right to satisfy the requisite insurance coverage amounts for liability insurance through a combination of primary policies and umbrella or excess policies. Umbrella and excess policies shall comply with all insurance requirements for the applicable type of coverage ("follow form").

10.1.2.12 Inadequacy of Required Coverage

City makes no representation that the scope of coverage and limits of liability specified for any Insurance Policy to be carried pursuant to this Agreement or approved variances therefrom are adequate to protect Principal Project Company against its undertakings under this Agreement to City, or its liabilities to any third party. It is the responsibility of Principal Project Company and each Subcontractor to determine if any changes or additional coverages are required to adequately protect their interests. No such limits of liability or approved variances therefrom shall preclude City from taking any actions as are available to it under this Agreement, or otherwise under applicable Law.

10.1.2.13 No Relief from Liabilities and Obligations

Neither compliance nor failure to comply with the insurance provisions of this Agreement will relieve Principal Project Company or City of their respective liabilities and obligations under this Agreement.

10.1.2.14 Adjustments in Coverage Amounts

(a) At least once every two years during the Term (commencing initially on the Substantial Completion Date), City and Principal Project Company shall review and may, upon mutual agreement, adjust, as appropriate, the per occurrence and aggregate limits for the Insurance Policies that have stated dollar amounts set forth in Exhibit 7 (Insurance Requirements).

(b) In determining adjustments, Principal Project Company and City shall take into account (i) claims and loss experience for the Project, (ii) the physical condition of the Project, (iii) the Safety Compliance and Noncompliance Points

record for the Project, (iv) best practices in the insurance industry and (v) the terms of the Financing Documents.

(c) If a City Change to increase required limits of Insurance Policies results in a net increase in applicable insurance premiums, Principal Project Company shall be entitled to the actual amount of such net increase (without profit or mark-up), provided that to the extent such adjustments are made to reflect Principal Project Company's performance on the Project (including for reasons described in Section 10.1.2.14(b)(i), (ii), or (iii)), Principal Project Company shall not be entitled to any compensation.

10.1.3 Insurance Premium Benchmarking

During the IFM Period, City will allocate the risk or benefit of increases and decreases in insurance premiums through an insurance benchmarking process as set forth in this Section 10.1.3 (Insurance Premium Benchmarking). In no event shall City participate in any insurance premium risk associated with additional or extended coverages beyond those required under Exhibit 7 (Insurance Requirements), or changes in premiums that are not the result of market-wide factors. The benchmarking process will occur as follows:

(a) For the purposes of the benchmarking process, the "**Starting Insurance Benchmarking Premiums**" shall equal the following:

Coverage	**Agreement Reference**	**Amount**
Worker's Compensation and Employer's Liability	Exhibit 7, Section 2.1	*[$●]* ***[Note: To be included based on Implementation Phase Proposal]***
Commercial General Liability	Exhibit 7, Section 2.2	*[$●]* ***[Note: To be included based on Implementation Phase Proposal]***
Commercial Automobile Liability	Exhibit 7, Section 2.3	*[$●]* ***[Note: To be included based on Implementation Phase Proposal]***
Pollution Legal Liability	Exhibit 7, Section 2.4	*[$●]* ***[Note: To be included based on Implementation Phase Proposal]***
Property Insurance	Exhibit 7, Section 2.5	*[$●]* ***[Note: To be included based on Implementation Phase Proposal]***

(b) 60 days after the commencement date for the initial policies for the Required Minimum Insurance Policies and every two years thereafter during the IFM Period (each, a "**Benchmarking Date**"), Principal Project Company shall submit a report ("**Insurance Review Report**") to City that includes the following elements:

(i) Firm current quotes from three established and recognized insurance providers for the Required Minimum Insurance Policies; provided, however, that if three quotes are not available, Principal Project Company may, prior to the due date of Insurance Review Report, request a modification of this requirement, which shall be considered by City, in its good faith discretion. The quotes shall represent the current and fair market cost of providing the Required Minimum Insurance Policies.

(ii) With the exception of the first Benchmarking Date, copies of the premium invoices for the actual insurance policies obtained by Principal Project Company for the IFM Services for the prior two years ("**Actual Insurance Policies**").

(iii) With the exception of the first Benchmarking Date, a comprehensive written explanation of any effect that a PPC-Related Entity's loss experience has had on the premiums for the Required Minimum Insurance Policies and the Actual Insurance Policies. The explanation shall include: (A) an assessment by Principal Project Company's independent insurance broker addressing industry trends in premiums for the Required Minimum Insurance Policies and analysis (if applicable) of any Project-specific reasons for the increase in premiums; and (B) detailed analysis of any claims (paid or reserved) since the last report period, with claim date(s), description of incident(s), claims amount(s), and the level of deductibles provided.

(c) City may independently assess the accuracy of the information in the Insurance Review Report and retains the right to perform its own independent insurance review, which may include retaining advisors, obtaining independent quotes for the Required Minimum Insurance Policies or performing its own assessment as to the impact of claims history on renewal costs.

(d) The Starting Insurance Benchmarking Premiums shall be used in the benchmarking process for the remainder of the Term in accordance with the following procedures:

(i) 60 days after each Benchmarking Date, Principal Project Company shall provide the Insurance Review Report, with the information specified in Section 10.1.3(b). City shall determine the change in premium costs on a coverage-by-coverage basis for the Required Minimum Insurance Policies calculated based on the information obtained from the initial Insurance Review Report or, if City deems

appropriate in its reasonable discretion, from information obtained pursuant to Section 10.1.3(c).

(ii) City will use the Starting Insurance Benchmarking Premiums to measure changes in premium costs at each Benchmarking Date for each of the Required Minimum Insurance Policies. The Starting Insurance Benchmarking Premiums shall be adjusted based on the percentage change in CPI ("**Escalated Benchmark Insurance Premiums**") from the Effective Date. Broker's/agent's fees and/or commissions will not be considered as part of the benchmarking exercise described in this Section 10.1.3 (Insurance Premium Benchmarking), shall be identified and excluded from premiums, and are the exclusive responsibility of Principal Project Company.

(iii) The subsequent Insurance Review Reports shall be used to establish the renewal premiums for the Required Minimum Insurance Policies for purposes of the benchmarking process described in this Section 10.1.3 (Insurance Premium Benchmarking). In no event shall premium increases that are caused by Project-specific losses, changes in deductibles or matters within the control of Principal Project Company or any PPC-Related Entity be subject to the benchmarking exercise or risk sharing described in this Section 10.1.3 (Insurance Premium Benchmarking). Principal Project Company may voluntarily choose to procure an insurance package which exceeds the Required Minimum Insurance Policies (with, for example, higher deductibles or coverage amounts, less exclusions, etc.), in which case Principal Project Company and City recognize that: (A) the actual variations in Principal Project Company's insurance premiums may not necessarily reflect the variations in the minimum insurance requirements and (B) City will disregard the actual insurance package and will rely upon the analysis from the Insurance Review Report and its own independent analysis of the effect on the minimum insurance requirements. However, any insurance beyond the Required Minimum Insurance Policies shall not be subject to the insurance benchmarking process and the MaxAP adjustment described in Section 10.1.3(e).

(iv) If City elects to retain its own insurance advisor to analyze the extent of eligible premium increases, Principal Project Company shall cooperate in good faith with any reasonable requests for additional information from City's insurance advisor. No later than 30 days after Principal Project Company's submission of the Insurance Review Report, City shall make its determination of the eligible premium increases subject to the risk-allocation described in Section 10.1.3(e).

(e) As of a Benchmarking Date:

(i) if the aggregate annual insurance premiums for the Actual Insurance Policies, after adjustment for any changes in coverage and deductibles and as such premiums may be adjusted pursuant to

Section 10.1.3(d)(iii) (the "**Actual Insurance Premiums**") exceed 120% of the aggregate Escalated Benchmark Insurance Premiums, then City shall, within 30 days of the Benchmarking Date and on each 12 calendar month anniversary thereof until the next benchmarking period, make a lump sum payment to Principal Project Company in an amount equal to 85% of the Actual Insurance Premiums that are in excess of 120% of the aggregate Escalated Benchmark Insurance Premiums; and

(ii) if the Actual Insurance Premiums are less than 80% of the aggregate Escalated Benchmark Insurance Premiums, then City shall, during each 12 calendar month period commencing on the Benchmarking Date until the next benchmarking period, reduce the payments owed to Principal Project Company in an amount equal to 85% of the amount by which Actual Insurance Premiums are lower than 80% of the aggregate Escalated Benchmark Insurance Premiums.

(f) Any payments or reductions in payments to Principal Project Company pursuant to Section 10.1.3(e)(i) and (ii) shall be subject to a pro-rata adjustment for any period of less than 12 calendar months.

(g) Principal Project Company shall maintain copies of the Actual Insurance Policies and the Insurance Review Reports and make these documents available upon City's request for the Term plus 10 years.

10.1.4 Insurance Unavailability

10.1.4.1 If an Insurance Unavailability risk occurs, then:

(a) Principal Project Company shall notify City within 10 days of becoming aware that the risk has become an Insurance Unavailability; and

(b) City will meet with Principal Project Company within 10 days after receipt of Principal Project Company's Notice to discuss the risk, including whether the risk is in fact Insurance Unavailability.

10.1.4.2 If Principal Project Company demonstrates to City's reasonable satisfaction that it has used diligent efforts in the global insurance and reinsurance markets to procure the required Insurance Policy coverages for the Insurance Unavailability, and if, despite such diligent efforts and, through no fault of Principal Project Company or any other PPC-Related Entity, any Insurance Unavailability exists or occurs, the Parties shall meet further to discuss how the risk should be managed.

10.1.4.3 If the Parties cannot agree on how to manage the Insurance Unavailability, then City, in its sole discretion, shall elect one of the following, and City's election shall be final and not subject to **Error! Reference source not found.** (Contract Dispute Procedures):

(a) compensate Principal Project Company for the costs of any Claim or liability incurred in connection with the Insurance Unavailability, up to an amount equal to the Insurance Proceeds that would have been payable had the

relevant Insurance Policy continued to be available on the previous terms of that Insurance Policy and deduct from the Availability Payment or Milestone Payments owing to Principal Project Company 100% of the greater of (i) the amount of insurance premiums Principal Project Company would have been obligated to pay under this Agreement (up to the Commercially Reasonable Insurance Rates) and (ii) the premiums assumed in the Financial Model;

(b) if the Insurance Policies are available from insurers meeting the requirements in Section 10.1.2.1 (Insurers), but not at Commercially Reasonable Insurance Rates, provide Notice to Principal Project Company to obtain the Insurance Policy and that City will be responsible for 100% of the premiums that exceed the Commercially Reasonable Insurance Rates;

(c) provide Notice to Principal Project Company approving one or more variances from Exhibit 7 (Insurance Requirements) such that the risk ceases to be Insurance Unavailability, in which case City will be entitled to a reduction in the Availability Payments equal to 100% of the insurance premiums that Principal Project Company avoids as a result of the variance from Exhibit 7 (Insurance Requirements). In determining Principal Project Company's avoided insurance premiums, the Parties shall compare the actual premiums up to the greater of (i) the amount of insurance premiums Principal Project Company would have been obligated to pay for the relevant Insurance Policy had it been available under normal market conditions without variance from Exhibit 7 (Insurance Requirements) or (ii) the premiums for the relevant Insurance Policy assumed in the Financial Model; or

(d) terminate this Agreement by Notice to Principal Project Company, as further set out in Section 17.2.6 (Termination for Insurance Unavailability).

10.1.5 Review of Insurance Unavailability Risks

10.1.5.1 Whenever Principal Project Company has received information from its insurance adviser or other credible insurance industry source that Insurance Unavailability will likely exist during the next insurance renewal period, and annually during any period that Insurance Unavailability exists, Principal Project Company shall deliver Notice thereof to City and submit a report to City that includes the following elements:

(a) evidence of Principal Project Company's efforts to obtain from at least three insurers meeting the requirements in Section 10.1.2.1 (Insurers) the relevant Insurance Policy required to be maintained during the Term and an explanation of the reasons such efforts were unavailing;

(b) a comprehensive assessment by Principal Project Company's independent insurance broker identifying the Insurance Unavailability risk, the reasons for unobtainability of insurance, and trends in insurance market conditions respecting the Insurance Unavailability risk;

(c) a comprehensive written explanation and analysis of:

(i) any claims and loss experience (paid or reserved) with respect to any PPC-Related Entity or Affiliate, whether in connection with the Project or Work or in connection with any unrelated work or activity of a PPC-Related Entity or Affiliate, since the last review period, with claim date(s), description of incident(s), claims amount(s), and the level of deductibles or self-insured retentions provided; and

(ii) the effect thereof on obtainability or unobtainability of the relevant Insurance Policies and coverage.

10.1.5.2 City retains the right to independently assess the accuracy of the information on insurance markets, Insurance Unavailability and impacts of claims and loss experience, and retains the right to perform its own independent insurance review, which may include retaining advisors and seeking independent quotes for the Insurance Policies, all of which shall be undertaken and performed by City and any of its retained experts in good faith and a commercially reasonable manner.

10.1.5.3 If City's review conducted in accordance with Section 10.1.5.2 determines that the relevant Insurance Unavailability is insurable at Commercially Reasonable Insurance Rates, then Principal Project Company will promptly procure the insurance in connection with that risk in accordance with Exhibit 7 (Insurance Requirements).

10.1.5.4 Principal Project Company shall use commercially reasonable efforts to ensure that the process set forth in this Section 10.1.5 (Review of Insurance Unavailability Risks) concludes sufficiently in advance of expiration of such Insurance Policies to ensure continuation of insurance coverage under renewed or replacement Insurance Policies. City will cooperate with Principal Project Company in its discharge of this obligation.

10.1.5.5 Defense Costs

Unless otherwise agreed to in writing by City, defense costs shall not erode the limits of coverage of any of the Insurance Policies, except that defense costs may be included within the limits of coverage of professional liability, contractor's pollution liability and pollution legal liability policies.

10.1.5.6 Contesting Denial of Coverage

If any Insurer under an Insurance Policy described in Sections 10.1.1 (Insurance Policies and Coverage) and 10.1.3 (Insurance Premium Benchmarking) denies coverage with respect to any claims reported to such Insurer, Principal Project Company and City shall cooperate in good faith to establish whether and to what extent to contest, and how to fund the cost of contesting, the denial of coverage; provided that if the reported claim is a matter covered by an indemnity in favor of City or the denial is the result of Principal Project Company's failure to comply with an insurance requirement, then Principal Project Company shall bear all costs of contesting the denial of coverage.

10.1.6 Lender Insurance Requirements

If, under the terms of any Financing Agreement or Security Document, Principal Project Company is obligated to, and does, carry insurance coverage with higher limits, lower

deductibles or self-insured retentions, or broader coverage than required under this Agreement, Principal Project Company's provision of such insurance shall satisfy the applicable requirements of this Agreement provided such policy meets all the other applicable requirements of this Section 10.1 (Insurance) and Exhibit 7 (Insurance Requirements). If Principal Project Company carries insurance coverage in addition to that required under this Agreement, then, except for any directors and officers liability insurance carried by Principal Project Company, Principal Project Company shall include the City Additional Insureds as additional insureds thereunder and shall provide to City the proofs of coverage and certificates, binders and copies of the policy as described in Section 10.1.2.4 (Verification of Coverage). If, however, Principal Project Company demonstrates to City that inclusion of such City Additional Insureds as additional insureds will increase the premium, City shall elect either to pay the increase in premium or forego additional insured status.

10.1.7 Prosecution of Claims

10.1.7.1 Unless otherwise directed by City in writing with respect to City's insurance claims, Principal Project Company shall be responsible for reporting and processing all potential claims by City or Principal Project Company against the Insurance Policies required to be provided by Principal Project Company under the Contract Documents. City will make reasonable efforts to report to Principal Project Company incidents that City's Authorized Representative has Actual Knowledge of and that may give rise to an insurance claim against the Insurance Policies required to be provided by Principal Project Company under the Contract Documents. City will report such incidents to Principal Project Company within a reasonable period of time after City's Authorized Representative actually becomes aware of such incidents. Principal Project Company agrees to report timely to the insurer(s) under such policies any and all matters which may give rise to an insurance claim by Principal Project Company or City and to promptly and diligently pursue such insurance claims in accordance with the claims procedures specified in such policies, whether for defense or indemnity or both. Principal Project Company shall enforce all legal rights against the insurer under the applicable Insurance Policies and applicable Laws in order to collect thereon, including pursuing necessary litigation and enforcement of judgments, provided that Principal Project Company shall be deemed to have satisfied this obligation if a judgment is not collectible through the exercise of lawful and diligent means.

10.1.7.2 Principal Project Company shall immediately provide Notice to City, and thereafter keep City fully informed, of any incident, potential claim, claim or other matter of which Principal Project Company becomes aware that involves or could conceivably involve either City or City Additional Insureds as a defendant. City agrees to promptly provide Notice to Principal Project Company of City's incidents, potential claims, and matters which may give rise to a City insurance claim, to tender to the insurer City's defense of the claim (if applicable) under such Insurance Policies, and to cooperate with Principal Project Company as necessary for Principal Project Company to fulfill its duties hereunder.

10.1.7.3 If, in any instance, Principal Project Company (i) has not performed its obligations respecting insurance coverage set forth in this Agreement, or (ii) is unable to enforce and collect any such insurance for failure (x) to assert claims in accordance with the terms of the Insurance Policies or (y) to prosecute claims diligently, then for purposes of determining Principal Project Company's liability and the limits thereon or determining reductions in compensation due from City to Principal Project Company on account of available insurance, Principal Project Company

shall be treated as if it has elected to self-insure up to the full amount of insurance coverage which would have been available had Principal Project Company performed such obligations. Nothing in this Section 10.1.7 (Prosecution of Claims) or elsewhere in this Section 10.1 (Insurance) shall be construed to treat Principal Project Company as electing to self-insure where Principal Project Company is unable to collect due to the bankruptcy or insolvency of any insurer which at the time the Insurance Policy is written meets the rating qualifications set forth in this Section 10.1 (Insurance).

10.1.7.4 In the event that an Insurer providing any of the Insurance Policies required by this Agreement becomes the subject of bankruptcy proceedings, becomes insolvent, or is the subject of an order or directive limiting its business activities given by any Governmental Entity, including the State Department of Insurance, Principal Project Company shall exercise best efforts to promptly and at its own cost and expense secure alternative coverage in compliance with the insurance requirements contained in this Section 10.1 (Insurance) so as to avoid any lapse in insurance coverage.

10.1.7.5 If, in any instance, Principal Project Company has not promptly performed its obligation to report to applicable insurers and process any potential insurance claim tendered by City, then City may report the claim directly to the insurer and thereafter seek coverage under the relevant policy.

10.1.8 Application of Insurance Proceeds

All insurance proceeds received for physical property damage to the Project under any Insurance Policies required under Exhibit 7 (Insurance Requirements) shall be first applied to repair, reconstruct, rehabilitate, restore, renew, reinstate and replace each part or parts of the Project with respect to which such proceeds were received.

10.2 Performance Security

10.2.1 Equity Letter of Credit

Principal Project Company represents to City that if there is unfunded equity outstanding as of Financial Close, the Financing Documents will require each Equity Member to provide an Equity Letter of Credit to Principal Project Company or the Collateral Agent, the aggregate amount of which shall be at least equal to the unfunded equity outstanding as of Financial Close that is committed to the Project during the D&C Period.

10.2.2 D&C Performance Security

10.2.2.1 On or before the Financial Close Date, Principal Project Company shall deliver the D&C Performance Security to City. The D&C Performance Security shall be comprised of the following ("**D&C Performance Security**"):

(a) the D&C Performance Bond; and

(b) the D&C Payment Bond.

10.2.2.2 The D&C Performance Bond shall remain in full force and effect until:

(a) The Final Acceptance Date;

(b) There exists no PPC Default with respect to the D&C Work; and

(c) No event has occurred that, with the giving of Notice or passage of time, or both, would constitute a PPC Default with respect to the D&C Work.

10.2.2.3 The D&C Payment Bond shall remain in full force and effect until:

(a) Receipt of evidence satisfactory to City that all Persons eligible to file a Claim under applicable Law against the D&C Payment Bond have been fully paid;

(b) Receipt of unconditional releases of Claims and stop Notices from all Subcontractors who have filed preliminary Notices of Claims against the D&C Payment Bond; and

(c) Expiration of the statutory period for Contractors to file a Claim against the D&C Payment Bond, if no claims have been filed.

10.3 General Requirements for D&C Performance Security

10.3.1.1 Each D&C Performance Security shall be issued by an Eligible Surety or panel of Eligible Sureties.

10.3.1.2 The D&C Performance Security will be subject to the rights of Lenders under the Direct Agreement.

10.3.1.3 If the D&C Contract Amount is increased in connection with a Change Order, City may, in its sole discretion, require a corresponding and proportionate increase in the amount of each D&C Performance Security, or alternative security, as applicable.

10.3.1.4 Principal Project Company agrees that it may not seek an injunction to restrain City from calling upon any D&C Performance Security.

10.3.1.5 Unless otherwise specified in this Agreement, a draw on the D&C Performance Security or exercise of any rights under such D&C Performance Security will not be conditioned on prior resort to any other security of, or provided for the benefit of, Principal Project Company.

10.3.1.6 Principal Project Company will pay all Recoverable Costs imposed in connection with City's exercise of its remedies against any D&C Performance Security or replacements thereof.

10.3.1.7 Principal Project Company may:

(a) procure the D&C Performance Security, so that they are security, as applicable, for (i) Principal Project Company's performance obligations under the Contract Documents respecting the D&C Work and (ii) Principal Project Company's payment obligations to the designated Persons supplying labor or materials respecting the D&C Work; or

(b) subject to this Section 10.3 (General Requirements for D&C Performance Security), deliver D&C Performance Security from the Key Contractors for performance of any portion of the Work, so that each security is security for, as applicable, (i) performance of the Key Contractor's obligations under its Contract for D&C Work or (ii) payment to the designated Persons supplying labor or materials respecting the D&C Work.

10.3.1.8 If Principal Project Company makes the election under Section 10.3.1.7(b), then:

(a) the language of the bond forms in Exhibit 6B (Form of D&C Payment Bond), Exhibit 6C (Form of D&C Performance Bond), Exhibit 6D (Form of Multiple Obligee Rider for D&C Payment Bond) and Exhibit 6E (Form of Multiple Obligee Rider for D&C Performance Bond) shall be adjusted to reflect this election, but only as necessary to (i) identify the Key Contract for D&C Work as the bonded contract, and (ii) identify the Key Contractor as the principal; and

(b) if there are two or more parties providing the D&C Performance Security, then the aggregate sum of the D&C Performance Security shall equal the required bond amounts under this Agreement and the size of each bond shall be in proportion to the scope and cost of the Work to be provided under each bonded Key Contract. Subject to the terms of this Agreement, City may proceed against any or both of such bonds in the order that City, in its sole discretion, determines.

10.4 Letters of Credit

10.4.1 General Provisions

Wherever in the Contract Documents Principal Project Company has the option or obligation to deliver to City a letter of credit, in addition to any specific requirements relating to a particular letter of credit, the following provisions shall apply.

10.4.1.1 Except to the extent expressly provided otherwise in the Contract Documents, the letter of credit shall:

(a) be a direct pay, irrevocable standby letter of credit;

(b) be issued by a financial institution that is not an Affiliate, has a credit rating for long-term, unsecured debt of at least "A-" (or its equivalent) from one of the Rating Agencies, and has an office in Los Angeles, California, San Francisco, California, Chicago, Illinois, or New York, New York (or within reasonable proximity to these metropolitan areas) at which the letter of credit can be presented for payment. If the issuer's long-term, unsecured debt rating is downgraded such that the issuer no longer meets the ratings standard set forth above, Principal Project Company shall provide a replacement letter of credit issued by a financial institution meeting such standard within 30 days after the downgrade;

(c) be payable on demand, conditioned only on written presentment from a beneficiary thereof to the issuer of a sight draft drawn on the letter of credit and a certificate stating that the beneficiary has the right to draw under the letter of credit in the amount of the sight draft, up to the amount due to such beneficiary, without requirement to present the original letter of credit;

(d) be in place for the entire period of time for which the letter of credit is providing security;

(e) allow for multiple draws;

(f) name City as sole beneficiary; and

(g) be consistent with the requirements of this Section 10.4 (Letters of Credit).

10.4.1.2 Except to the extent expressly provided otherwise in the Contract Documents, if Principal Project Company has failed to pay or perform when due the duty, obligation or liability under the Contract Documents for which the letter of credit is held, City has the right, subject to any rights of Lenders under the Direct Agreement, to draw on the letter of credit as and when provided in Section 16.2.7 (Performance Bond). If City makes such a draw on the letter of credit, City shall use and apply the proceeds as provided in this Agreement for such letter of credit.

10.4.1.3 Except to the extent expressly provided otherwise in the Contract Documents and the Direct Agreement, City has the right to draw on the letter of credit, without prior Notice to Principal Project Company, if (a) Principal Project Company has failed to pay or perform when due the duty, obligation, or liability under this Agreement for which the letter of credit is held, (b) for any reason Principal Project Company fails to deliver to City a new or replacement letter of credit, on the same terms, at least 30 days before the expiry of the letter of credit, unless the applicable terms of the Contract Documents expressly provide that no further letter of credit is required with respect to such duty, obligation or liability, or (c) the financial institution issuing the letter of credit fails to meet the requirements in Section 10.4.1.1(b) and Principal Project Company fails to provide a substitute letter of credit issued by a qualified financial institution within 30 days after the downgrade. If City makes such a draw on the letter of credit, City shall be entitled to draw on the full face amount of the letter of credit and shall retain such amount as cash security to secure the obligations under the letter of credit, without payment of interest to Principal Project Company.

10.4.1.4 Except to the extent expressly provided otherwise in the Contract Documents and the Direct Agreement, a draw on letters of credit shall not be conditioned on prior resort to Principal Project Company or any other security of Principal Project Company. For all draws conditioned on prior Notice from City to Principal Project Company, no such Notice shall be required if it would preclude draw before the expiration date of the letter of credit. City will use and apply draws on letters of credit (or cash security held from draws on letters of credit) toward satisfying the relevant obligation of Principal Project Company (or, if applicable, any other Person for which the letter of credit is performance security). Subject to City's rights under Sections 10.4.1.2 and 10.4.1.3, if City receives proceeds of a draw in excess of the relevant obligation, City will promptly refund the excess to Principal Project Company (or such other Person) after all relevant obligations are satisfied in full.

10.4.1.5 Except to the extent expressly provided otherwise in the Contract Documents, Principal Project Company's sole remedy in connection with the improper presentment or payment of sight drafts drawn under letters of credit shall be to obtain from City a refund of the proceeds which are misapplied, reimbursement of the reasonable costs Principal Project Company incurs as a result of such misapplication; provided that at the time of such refund Principal Project Company increases the amount of the letter of credit to the amount (if any) then required under applicable provisions of this Agreement. Principal Project Company acknowledges that the presentment of sight drafts drawn upon a letter of credit could not under any circumstances cause Principal Project Company injury that could not be remedied by an award of money damages, and that the recovery of money damages would be an adequate remedy. Accordingly, Principal Project Company covenants (a) not to request or instruct the issuer of any letter of credit to refrain from paying any sight draft drawn under the letter of credit and (b) not to commence or pursue any legal proceeding seeking, and Principal Project Company irrevocably waives and relinquishes any right, to enjoin, restrain, prevent, stop or delay any draw on any letter of credit.

10.4.1.6 Principal Project Company shall obtain and furnish all letters of credit and replacements thereof at its sole cost and expense, and shall pay all charges imposed in connection with City's presentment of sight drafts and drawing against letters of credit or replacements thereof.

10.4.1.7 If City makes a permitted assignment of its rights and interests under this Agreement, then Principal Project Company shall cooperate so that concurrently with the effectiveness of such assignment, either replacement letters of credit for, or appropriate amendments to, the outstanding letters of credit shall be delivered to the assignee naming the assignee as beneficiary, at no cost to Principal Project Company.

10.4.1.8 City acknowledges that if the letter of credit is performance security for a Person other than Principal Project Company (e.g., a Key Contractor), City's draw may only be based on the underlying obligations of such Person.

10.5 Guarantees

10.5.1 If Principal Project Company, any Key Contractor, any Affiliate or any Lender receives from any Person a guaranty of payment or performance of any obligation(s) of a Key Contractor, then either Principal Project Company shall cause such Person to expressly include City as a guaranteed party under such guaranty, with the same protections and rights of Notice, enforcement and collection as are available to any other guaranteed party, and deliver to City a duplicate original of such guaranty, which guaranty shall provide that the rights and protections of City shall not be reduced, waived, released or adversely affected by the acts or omissions of any other guaranteed party, other than through the rendering of payment and performance to another guaranteed party; and upon receipt of written Notice from City of the occurrence of the circumstances described in Section 10.5.2, such other documents reasonably satisfactory to City permitting City, subject to the rights of the Collateral Agent under any Direct Agreement, to become the transferee beneficiary under such guaranty and to enforce it, including enforcing the guaranty in favor of City or the Project, or both, which transfer documents shall include a certified copy of the guaranty and an executed transfer and assignment of the beneficiary rights from Principal Project Company or Collateral Agent, as applicable, to City; and the guaranty

shall expressly authorize such transfer without condition and permit draw without presentation of the original guaranty.

10.5.2 City's rights as a transfer beneficiary are exercisable if, subject to Section 10.5.3 and the Direct Agreement, City determines that (a) a Key Contractor has breached or failed to perform any obligations under its Contract and any Notice thereof required under such Contract has been provided and the applicable cure period has expired without full and complete cure, (b) such breach has caused a PPC Default and the applicable cure period has expired without full and complete cure and (c) Principal Project Company or the Collateral Agent has failed to call upon or otherwise enforce such guaranty for the purpose of causing the performance of such obligations by or on behalf of the Contractor within 10 days after City delivers Notice of such breach or expected breach to Principal Project Company and the Collateral Agent and the Cure Period (as defined in the Direct Agreement) has expired.

10.5.3 So long as Principal Project Company or a Lender is diligently pursuing remedies under a guaranty, City agrees to forbear from (a) exercising remedies under any such guaranty that names City as a direct beneficiary, and (b) exercising its right to become a beneficiary under Section 10.5.1; provided, however, that if the PPC Default giving rise to exercise remedies under any such guaranty remains uncured at the end of the applicable cure period in Section 16.1.2 (Default Notice and Cure Periods), City's obligation to forbear from exercising remedies as a guaranteed party shall cease. The foregoing shall not obviate any agreement by City to forbear from exercising its rights and remedies contained in a Direct Agreement.

10.6 Indemnities

10.6.1 General Indemnity

10.6.1.1 Subject to Section 10.6.3 (Limitations on Indemnification Obligations), Principal Project Company shall defend, indemnify, protect and hold harmless the Indemnitees from and against any and all claims, causes of action, suits, investigations, legal or administrative proceedings, demands and Losses arising out of or in connection with:

(a) any alleged or actual PPC Fault, if asserted or incurred by or awarded to any Third Party or any PPC-Related Entity;

(b) Losses to the Infrastructure Facility, and any interference, disruption, or delay to the Project, caused by or related to the work of any JDA-Related Entity; provided, however, that the indemnity set forth in this clause (b) shall not apply to the D&C Work performed by the D&C Contractor to the extent that the City commences construction of a Joint Development Alternative prior to the earlier of (i) Substantial Completion; or (ii) the Substantial Completion Deadline, unless, in either case, the prime contractor undertaking such construction is the D&C Contractor or an affiliate thereof (in which case, the indemnity shall apply);

(c) damage to public or private property owned by Third Parties (or any PPC-Related Entity), and for injuries to any person or entity, arising out of performance of the Project or Work by any PPC-Related Entity;

(d) any alleged intellectual property infringement or other allegedly improper appropriation or use of intellectual property by any PPC-Related Entity in performance of the Project or the Work, or in connection with the Infrastructure Facility;

(e) any and all claims by any governmental or taxing authority claiming taxes based on gross receipts, purchases or sales, or the use of any property or income of any PPC-Related Entity with respect to any payment for the Project or Work made to or earned by any PPC-Related Entity;

(f) the failure or alleged failure by any PPC-Related Entity to pay sums due for the Work or services of Contractors, laborers, or suppliers;

(g) any actual or threatened PPC Release;

(h) the claim or assertion by any Other Contractor or a Utility that any PPC-Related Entity (i) failed to cooperate reasonably with such party, so as to cause interference, disruption, delay or loss; or (ii) interfered with or hindered the progress or completion of work being performed by such Other Contractor or Utility, so as to cause interference, disruption, delay or loss, to the extent such claim arises out of any PPC Fault;

(i) any PPC-Related Entity's breach of or failure to perform an obligation that City owes to a Third Party, including any Governmental Entity and any Utility, under applicable Law or under any agreement between City and a Third Party, where City has delegated performance of the obligation to Principal Project Company under this Agreement or the acts or omissions of any PPC-Related Entity which render City unable to perform or abide by an obligation that City owes to a Third Party, including any Governmental Entity and any Utility, under any agreement between City and a Third Party, where, in each case, the agreement was expressly disclosed or known to Principal Project Company;

(j) inverse condemnation, trespass, nuisance or similar taking of or harm to real property by reason of (i) the failure of any PPC-Related Entity to comply with Good Industry Practice, requirements of this Agreement, the Project Management Plan or Regulatory Approvals respecting control and mitigation of construction activities and construction impacts, (ii) the intentional misconduct or negligence of any PPC-Related Entity in connection with the performance of the Project or the Work, or (iii) the actual physical entry onto or encroachment upon another's property by any PPC-Related Entity in connection with the performance of the Project or the Work;

(k) errors or other Defects in the supply, construction (including installation), operation or maintenance of the Project (except, subject to Section 6.11.1, with respect to operation and maintenance, of the SFMTA O&M Facilities after Substantial Completion or of Utility Adjustments included in the Project or the Work;

(l) Design Work that fails, in whole or in part, to meet the requirements of this Contract; and

(m) Any Principal Project Company failure to implement environmental mitigation measures to control environmental impacts, as required by the Governmental Approvals, the CEQA MMRP and the NEPA document.

10.6.1.2 Principal Project Company's responsibilities pursuant to this Section 10.6.1 (General Indemnity) include both the obligation to (a) defend the Indemnitees from and against any and all claims, causes of action, suits, investigations, legal or administrative proceedings, demands and Losses, and (b) indemnify the Indemnitees when liability is sustained pursuant to the Contract Dispute Procedures or through judicial proceedings or is mutually agreed upon by the Parties.

10.6.1.3 Principal Project Company's indemnification shall include reasonable fees of attorneys, consultants, and experts and related costs and City's costs of investigating any claims against City. In addition to Principal Project Company's obligation to indemnify City, Principal Project Company specifically acknowledges and agrees that it has an immediate and independent obligation to defend City from any claim which actually or potentially falls within this indemnification provision, even if the allegations are or may be groundless, false or fraudulent, which obligation arises at the time such claim is tendered to Principal Project Company by City and continues at all times thereafter.

10.6.1.4 Principal Project Company's responsibilities pursuant to this Section 10.6.1 (General Indemnity) are in addition to any right that City may have under the terms of this Agreement to assess Noncompliance Points and/or Deductions with respect to the same event or circumstance giving rise to a Third Party claim, cause of action, suit, legal or administrative proceeding.

10.6.1.5 Principal Project Company's defense, indemnity, and hold harmless obligations shall extend to City's consultants (e.g., design professionals and construction managers) providing services covering any portion of the Project under a separate written agreement with City and designated in the Contract Documents as persons or entities to be listed on Principal Project Company's insurance policies as "Additional Insureds." Principal Project Company's defense, indemnity, and hold harmless obligations shall not extend to the liability of a City consultant (including architects and engineers) designated as an Indemnitee or its agents, employees, or subconsultants arising out of, connected with or resulting from such Indemnitee's own active negligence, willful misconduct, bad faith, fraud, errors or omissions or from such Indemnitee's preparation or approval of maps, plans, opinions, reports, surveys, change orders, designs or specifications, or such Indemnitee's issuance of or failure to issue directions or instructions provided that such issuance or failure to issue is the primary cause of the damage or injury.

10.6.2 Design Defects

10.6.2.1 Principal Project Company agrees that, because the Reference Documents are subject to review and modification by Principal Project Company, (a) it is appropriate for Principal Project Company to assume liability for errors, omissions, inconsistencies and other Defects in the completed Project even though they may be related to errors, omissions, inconsistencies and other Defects in the Reference Documents, and (b) such documents shall

not be deemed "design furnished" by City or any of the other Indemnitees, as the term "design furnished" is used in Civil Code section 2782. Principal Project Company hereby waives the benefit (if any) of Civil Code section 2782 and agrees that this Section 10.6.2 (Design Defects) constitutes an agreement governed by Civil Code section 2782.5.

10.6.2.2 Subject to Section 10.6.3 (Limitations on Indemnification Obligations), Principal Project Company shall indemnify, defend and hold harmless the Indemnitees from and against any and all claims and Losses arising out of, relating to or resulting from errors, omissions, inconsistencies or other defects in the Design Documents, regardless of whether such errors, omissions, inconsistencies or other defects were also included in the Reference Documents.

10.6.3 Limitations on Indemnification Obligations

10.6.3.1 Subject to Section 23.8 (Limitation on Third Party Beneficiaries) and the releases and disclaimers herein, including all the provisions set forth in Section 5.1.3 (Limitations on Principal Project Company's Right to Rely), Principal Project Company's indemnity obligations shall not extend to any claims, suits, actions or Losses to the extent directly caused by:

(a) the active negligence, gross negligence, reckless or willful misconduct, bad faith or fraud of an Indemnitee;

(b) a City-Caused Delay Event or a City-Caused Relief Event; or

(c) City's breach of any of its obligations under the Contract Documents.

10.6.3.2 With respect to Work performed by a design professional as defined in California Civil Code section 2782.8, such indemnities shall apply only to the extent permitted by section 2782.8 as of the Effective Date.

10.6.3.3 Claims by Employees

In claims by an employee of a PPC-Related Entity, the indemnification obligation under this Section 10.6 (Indemnities) shall not be limited by any limitation on the amount or type of damages, compensation or benefits payable by or for a PPC-Related Entity under workmen's compensation, disability benefit or other employee benefits laws; provided that this provision shall not be construed as a waiver in favor of any employee by Principal Project Company or any Contractor of any limitation of liability afforded by such laws.

10.6.3.4 Indemnity as Alternative Cause of Action

The requirement to provide an indemnity as specified in this Section 10.6 (Indemnities) is not intended to provide City with an alternative cause of action against Principal Project Company for damages for breach of contract incurred directly by Indemnitees in connection with the event giving rise to the indemnification obligation.

10.6.4 Principal Project Company's Defense

In Principal Project Company's defense of Indemnitees under this Section 10.6 (Indemnities), negotiation, compromise, and settlement of any action, City shall, without prejudice to the rights of any Indemnitees to be indemnified by Principal Project Company, retain reasonable

discretion in and control of the litigation, negotiation, compromise, settlement, and appeals therefrom.

10.7 Indemnities by Contractors

Principal Project Company shall ensure that each Contract includes indemnity provisions appropriate to the scope of the Work to be performed by the Contractor, naming the Indemnitees as indemnitees.

10.8 Notice of Claims by Third Parties

10.8.1 If the City receives Notice of a claim, cause of action, suit, legal or administrative proceeding covered by the indemnities in Section 10.6 (Indemnities), or otherwise has Actual Knowledge of such a claim, cause of action, suit, legal or administrative proceeding that it believes is within the scope of the indemnities under Section 10.6 (Indemnities), as soon as practicable after receipt of the claim, cause of action, suit, legal or administrative proceeding, City shall:

(a) inform Principal Project Company in writing of the claim, cause of action, suit, legal or administrative proceeding, and

(b) send to Principal Project Company a copy of all relevant written materials City has received asserting such claim, cause of action suit, legal or administrative proceeding.

10.8.2 As soon as is practicable after Principal Project Company receives Notice of a claim, cause of action, suit, legal or administrative proceeding covered by the indemnities in Section 10.6 (Indemnities), Principal Project Company shall promptly provide Notice to City in writing and, unless subject to evidentiary privilege, promptly furnish to City copies of all factual reports and factual portions of any other reports given to Principal Project Company's insurance carrier or carriers.

10.9 SFMTA O&M Facilities Warranty Bond

10.9.1 Upon achieving Final Acceptance, Principal Project Company shall provide a warranty bond to City in an amount equal to 20% of the value of the SFMTA O&M Facilities in the form attached hereto as Exhibit 6F (Form of SFMTA O&M Facilities Warranty Bond), with such nonmaterial modifications, if any, as City may approve in its sole discretion (the "**SFMTA O&M Facilities Warranty Bond**").

10.9.2 The SFMTA O&M Facilities Warranty Bond shall guarantee performance of Work on the SFMTA O&M Facilities required to be performed during the period following Final Acceptance, including warranty Work, which shall also constitute a payment bond guaranteeing payment to Persons performing such Work.

10.9.3 City will release the SFMTA O&M Facilities Warranty Bond upon the expiration of the warranty period set forth in Section 6.11.1.1; provided, however, that all of the following conditions have been met: (a) Principal Project Company is not in default under the Contract Documents and no event has occurred which, with the passage of time or the giving of Notice, would constitute a default under the Contract Documents, (b) receipt by City of (i) evidence

satisfactory to City that all Persons eligible to file a Third Party claim against the SFMTA O&M Facilities Warranty Bond have been fully paid and (ii) unconditional releases of liens and Notices from all Contractors who filed preliminary notices of a Third Party claim against the SFMTA O&M Facilities Warranty Bond, using applicable California statutory forms, (c) the statutory period for Subcontractors to file a Third Party claim against the SFMTA O&M Facilities Warranty Bond has expired and no Third Party claims have been filed, and (d) Principal Project Company assigns to City any Contractor and Supplier warranties that may still be in effect as of the effective date of the expiration of the warranty period set forth in Section 6.11.1.1.

ARTICLE 11. PAYMENTS TO PRINCIPAL PROJECT COMPANY

11.1 Milestone Payment

11.1.1 Subject to any limitations and exceptions expressly provided in this Agreement, City will pay the Milestone Payment to Principal Project Company upon achievement of Substantial Completion, calculated and otherwise in accordance with the process in Exhibit 4A (Milestone Payment Mechanism).

11.2 Availability Payments

11.2.1 Commencing from the Substantial Completion Date and subject to any limitations and exceptions expressly provided in this Agreement, City will make Availability Payments to Principal Project Company as provided in this Section 11.2 (Availability Payments) and Exhibit 4B (Availability Payment Mechanism). Principal Project Company is not entitled to earn any Availability Payments before the Substantial Completion Date.

11.2.2 City will make Availability Payments to Principal Project Company through Quarterly Availability Payments calculated and otherwise in accordance with Exhibit 4B (Availability Payment Mechanism).

11.2.3 Principal Project Company acknowledges and agrees that any Availability Payment or portion thereof not received by Principal Project Company as a result of a delay in achieving Substantial Completion for which Principal Project Company is not entitled to compensation under this Agreement represents the liquidated amount of delay damages suffered by City due to such delay.

11.3 Pass-Through Costs

11.3.1 City shall reimburse PPC for Pass-Through Costs during the IFM Period as set out in this Section 11.3.

11.3.2 PPC shall deliver to the City Authorized Representative copies of each invoice, which must be in a format reasonably approved by City, and receipt of payment of Pass-Through Costs issued to PPC.

11.3.3 PPC's invoices for Pass-Through Costs may not include any mark-up, profit or overhead on costs paid or payable by PPC to Contractors or utility owners. Such mark-up, profit and overhead together with PPC's reasonable expenses for general administration, insurance premiums, overhead and other business expenses that relate to the provision of services rendered by PPC in connection with Pass-Through Costs shall not be considered as Pass-Through Costs and are to be compensated as part of the Availability Payment.

11.4 Invoice, Other Amounts and Payments

11.4.1 Prior to issuing any invoice required by this Agreement, Principal Project Company must submit to City a form invoice to be approved by City, and any invoice issued in accordance with this Agreement must be substantially in the form agreed by the City.

11.4.2 Principal Project Company shall submit an invoice (i) for the Availability Payment with the Quarterly Report delivered to City in accordance with the IFM Specifications no later than the 10th day of the month immediately following the relevant Contract Quarter; (ii) for any other proposed payment adjustments in accordance with this Agreement, including Milestone Payments Compensable Delay Events, Compensable Relief Events or Termination Compensation (collectively, "**Other Amounts**") no later than the 10th day of the month immediately following the applicable event triggering such invoice, unless a different time period is set out in the Agreement for such event. All invoices shall include any supporting mathematical corrections or reconciliations to enhance the accuracy of payments due to Principal Project Company under this Agreement, to the satisfaction of City.

11.4.3 City shall review each properly submitted invoice within 7 days of receipt. If City, in its sole discretion, determines that the invoice is improper, the invoice will be returned to Developer not later than 7 days after receipt, along with a document setting forth the reasons why the invoice is not proper.

11.4.4 Unless otherwise specified in this Agreement, City will pay PPC any amount owing under this Agreement within 45 days after receipt of a properly submitted invoice for such payment.

11.5 Disputed Amounts

11.5.1 City may dispute, in good faith, any amount specified in an invoice submitted under Section 11.4 (Invoice, Other Amounts and Payments), or any other invoice submitted by Principal Project Company under this Agreement. City shall pay all undisputed amounts for which payment is requested and that are not subject to withholding in accordance with Section 11.4 (Invoice, Other Amounts and Payments).

11.5.2 Principal Project Company and City shall use reasonable efforts to resolve any invoice dispute within 30 days after the dispute arises.

11.6 Withholding from Payments

11.6.1 City may deduct from any payment owing to Principal Project Company under this Agreement or make a demand of Principal Project Company for:

(a) any amount due and payable by Principal Project Company to City (whether in connection with this Agreement or any other Contract Document);

(b) any sums expended by City in performing any of Principal Project Company's obligations under this Agreement which Principal Project Company has failed to perform; and

(c) amounts in respect of any other Claim or Losses by City against Principal Project Company in connection with the Work, the IFM Services or the Project.

11.6.2 The failure by City to deduct any of the sums under this Section 11.6 (Withholding from Payments) from a payment must not constitute a waiver of City's right to such sums.

11.7 Interest on Late Payments and Overpayments

11.7.1 If Principal Project Company fails to pay any undisputed amount due and owing from Principal Project Company to the City under this Agreement, Principal Project Company shall pay to City interest on such amount at the Late Payment Rate commencing 90 days after the due date thereof until the date of payment.

11.7.2 If any properly submitted invoice is disputed and an amount is determined to be due under the Contract Dispute Procedures, payment of the disputed amount shall be made within 30 Business Days following resolution of the dispute, together with interest at the Late Payment Rate on the amount owing from the date that the payment was originally due (based on the agreement of the parties or the decision of the dispute resolver) until the date of payment.

11.7.3 If as a result of any inaccuracy in an invoice any overpayment is made by City to Principal Project Company then, in addition to the adjustments provided in Section 11.2 (Availability Payments), City shall be entitled to deduct or receive as a payment from Principal Project Company interest on such amount at the Late Payment Rate, starting on the date of City's payment of the invoice to the date the overpayment is deducted or paid. City's right to deduct or receive payment of interest is without prejudice to any other rights City may have under this Agreement.

11.8 Taxes

Except as provided in Section 2.4.2 (Possessory Interest Tax), Principal Project Company shall pay all applicable Taxes on or before the due date (or delinquency date if applicable). Principal Project Company is solely responsible for and has no right to make any Claim due to its misinterpretation of laws respecting Taxes or incorrect assumptions regarding applicability of Taxes. In the event that an exemption from applicable sales or use taxes becomes available for the Project, City shall have no obligation to reimburse Principal Project Company for any such taxes, and City shall be entitled to an upfront payment from Principal Project Company or a reduction in payments made by City, as agreed upon by the Parties, equal to the amount actually saved following the date such exemption becomes available.

11.9 Payment Not Evidence of Approval

No payment by City is or must be construed as:

(a) evidence of the value of Work or that Work has been satisfactorily carried out in accordance with this Agreement;

(b) an admission of liability by City;

(c) approval by City of Principal Project Company's performance or compliance with this Agreement;

(d) acknowledgement that City has inspected or accepted the Work; or

(e) waiver of any Claim or right that City may then or thereafter have, including among others, warranty and indemnity rights.

11.10 Other Adjustments; Full Compensation

Principal Project Company acknowledges and agrees:

(a) the Milestone Payment and Availability Payments calculated in accordance with this Article 11 (Payments to Principal Project Company) and Exhibit 4 (Payment Mechanism) are subject to adjustment to reflect previous over-payments and/or under-payments, any interest payable in respect of any amounts owed, and any other amount due and payable from Principal Project Company to City or from City to Principal Project Company under this Agreement, including credits, deductions or offsets for failure to meet Performance Requirements or pursuant to the Noncompliance and Deduction regime; and

(b) that the payments provided for in this Article 11 (Payments to Principal Project Company) constitute full compensation for performance of all the Work, subject only to Principal Project Company's rights under Articles 12 (City Change Process; Unilateral Change Orders; Deviations), 13 (General Provisions Applying to Delay Events and Relief Events), 14 (Compensation and Other Relief for Delay Events and Relief Events) and 17 (Termination).

11.11 Appropriation; Certification of Funds

11.11.1 All payments due from City to Principal Project Company under this Agreement, including any Termination Compensation, shall be paid solely from monies made available to City from an appropriation of funds for the purpose of making all such payments coming due in such fiscal year. SFMTA, or the San Francisco Board of Supervisors, as applicable, shall have the absolute and unconditional right, to be exercised in their discretion, for any reason, not to appropriate such funds.

11.11.2 This Agreement is subject to the fiscal provisions of the City's Charter and the budget decisions of its Mayor and Board of Supervisors, each acting in its sole discretion. No funds will be available hereunder until prior written authorization certified by the City's Controller. The City's Controller cannot authorize payments unless funds have been certified as available in the budget or in a supplemental appropriation. City shall use commercially reasonable efforts to obtain the certification from the City's Controller if the funds have been appropriated for such purpose. Without prejudice to Principal Project Company's rights and remedies as set forth in this Agreement for unexcused and undisputed non-payment by City of any payment due Principal Project Company when due, City's obligations hereunder shall never exceed the amount certified by the City's Controller for the purpose and period stated in such certification. City, its employees and officers are not authorized to offer or promise any additional funding without City's Controller certification of such additional funding. Without such lawful approval and certification, City shall not be required to provide such additional funding.

11.11.3 City shall:

(a) make a timely submission for the fiscal year in which Substantial Completion of the Infrastructure Facility will occur of a budget proposal to the SFMTA

Board of Directors requesting a budget that includes the Milestone Payment and initial Availability Payment;

(b) for each fiscal year beyond the fiscal year in which the initial Availability Payment is made, make a timely submission of a budget proposal to the SFMTA Board of Directors requesting a budget for each and every Availability Payment, including any subsequent change to the Maximum Availability Payment; and

(c) request an appropriation of funds for the purpose of paying any Termination Payment payable by City or any other amount due from City under this Agreement other than the Availability Payments.

11.11.4 City shall respond promptly in writing to any reasonable written request submitted by Principal Project Company for information regarding the status of any request City is obligated to make under Section 11.11.3.

11.11.5 If City fails to appropriate money to make a Termination Payment, there shall be no contractual obligation of the City to make such payment that may be enforced; such contractual payment obligation shall arise only if and when any such amounts have been appropriated by City.

11.11.6 City shall provide written Notice to Principal Project Company no later than ten Business Days following the enactment of any City budget with respect to a particular Fiscal Year that does not make an appropriation of funds for the purpose of paying the scheduled Availability Payments or Milestone Payment due for such Fiscal Year. City shall consult with Principal Project Company to discuss the situation and the possible solutions, it being understood that such discussions shall be without prejudice to Principal Project Company's right to termination for unexcused and undisputed non-payment by City of any payment due Principal Project Company when due, as set forth in Section 17.4.1 (Termination for City Default).

11.11.7 The obligation of City to make any payments under this Agreement does not constitute a debt of the City under applicable Law and does not constitute a liability of or a lien or charge upon the funds or property of the City beyond the fiscal year for which there has been an appropriation of funds to make such payments. The obligation of City to make payments hereunder does not constitute an obligation of City for which City is obligated to levy or pledge any form of taxation or for which City has levied or pledged any form of taxation.

11.12 Allowances

[NOTE TO PNC: ALLOWANCE AMOUNTS UNDER DEVELOPMENT; CITY-FURNISHED IT/COMMS ALLOWANCE MAY BE JUST DISBURSED AND HELD FOR CITY IT/COMMS]

11.12.1 Allowances, Generally

(a) Each of the Allowances is available to pay for certain portions of the D&C Work, with payments from the Allowance to be made on the basis identified with respect to each such Allowance under this Section 11.12 (Allowances).

(b) Principal Project Company shall be entitled to use Office/Admin and Training Spaces FF&E Allowance as set forth in this Section 11.12 (Allowances).

(c) City shall be entitled to be reimbursed from the City-Furnished IT/Comms Allowance for amounts incurred with respect to procurement, purchase and installation of the IT/Comms Equipment. To the extent that City directs Principal Project Company to procure, purchase or install any City-Furnished IT/Comms FF&E, the provisions in Section 11.11.1(b), (e) and (g) shall apply to the City-Furnished IT/Comms FF&E Allowance.

(d) The initial amount of each Allowance is identified in Section 11.12 (Allowances). Principal Project Company acknowledges and agrees that the Milestone Payment and the Availability Payment include the Allowances and represent full compensation to Principal Project Company on account of the Allowances.

(e) Principal Project Company shall keep detailed records of the quantities, units, or other agreed metrics with respect to the Office/Admin and Training Spaces FF&E Allowance and shall submit to City supporting documentation of such quantities with its invoices, and such other information as City may require, in its sole discretion.

(f) Notwithstanding that the Allowances have been developed for specific elements of the D&C Work, City, in its sole discretion, may elect to use some or all of any Allowance as a source of payment for D&C Work for which Principal Project Company may be entitled under another Allowance or in connection with a Compensable Delay Event.

(g) No Change Order is required for invoicing amounts remaining (with respect to relevant portions of the D&C Work) within any Allowance. Principal Project Company shall promptly provide Notice to City if it becomes apparent that the amount with respect to Office/Admin and Training Spaces FF&E Allowance will be exceeded, in which event the Parties shall negotiate a Change Order increasing the Office/Admin and Training Spaces FF&E Allowance and/or modifying the scope of the D&C Work to avoid the need to increase the Office/Admin and Training Spaces FF&E Allowance; provided, however, that in lieu of modification to the Office/Admin and Training Spaces FF&E Allowance amount and/or scope of D&C Work, City may, in its sole discretion, issue a Change Order, and such D&C Work otherwise eligible for invoicing against the Office/Admin and Training Spaces FF&E Allowance will not be invoiced against the Office/Admin and Training Spaces FF&E Allowance , but, instead, be invoiced under such Change Order, and such Change Order shall be on the same unit and other pricing terms as if the D&C Work were invoiced against the Office/Admin and Training Spaces FF&E Allowance.

(h) If the amount with respect to Office/Admin and Training Spaces FF&E Allowance will be exceeded, City will bear the cost of such items.

(i) As part of Final Acceptance, all remaining amounts of any Allowance shall be refunded and paid to City.

11.12.2 Office/Admin and Training Spaces FF&E Allowance

Principal Project Company shall be eligible to invoice against the Office/Admin and Training Spaces FF&E Allowance to address City-approved Office/Admin and Training Spaces FF&E, as set forth herein.

(a) The Office/Admin and Training Spaces FF&E Allowance shall be in an initial amount of $6,220,000.

(b) The Office/Admin and Training Spaces FF&E Allowance shall be used for Office/Admin and Training Spaces FF&E.

(c) For all Office/Admin and Training Spaces FF&E, Principal Project Company shall obtain at least three arms-length competitive price quotes (or, if Principal Project Company believes it is impractical to obtain such number of competitive price quotes, Principal Project Company may submit a request for waiver or modification of the competitive price quote requirement to City, which shall consider such request in its good faith discretion).

(d) Invoicing for completed Office/Admin and Training Spaces FF&E Work shall be included in the monthly invoice described in Section 11.3 (Invoice, Other Amounts and Payments).

(e) This Section 11.11.2 (Office/Admin and Training Spaces FF&E Allowance) shall not apply to, and the Office/Admin and Training Spaces FF&E Allowance shall not be useable for, repair and replacement of Office/Admin and Training Spaces FF&E that is damaged, defective or missing prior to Substantial Completion.

11.12.3 City-Furnished IT/Comms Allowance

City shall be eligible to (i) invoice against the City-Furnished IT/Comms Allowance for City-Furnished IT/Comms FF&E; or (ii) direct Principal Project Company to procure and install such FF&E in which case Principal Project Company shall be eligible to invoice against the Office/Admin and Training Spaces FF&E Allowance to address City-approved Office/Admin and Training Spaces FF&E, each as set forth herein.

(a) The City-Furnished IT/Comms Allowance shall be in an initial amount of $2,850,000.

(b) The City-Furnished IT/Comms Allowance is to be used for City-Furnished IT/Comms FF&E.

(c) City shall provide Principal-Project-Company a monthly invoice for the procurement, purchase and installation of City-Furnished IT/Comms FF&E.

(d) Invoicing for completed City-Furnished IT/Comms FF&E Work shall be included in the monthly invoice described in Section 11.3 (Invoice, Other Amounts and Payments).

11.12.4 Partnering Allowance

Principal Project Company shall be eligible to invoice against the Partnering Allowance for Partnering, as set forth herein.

(a) The Partnering Allowance shall be in an initial amount of $200,000.

(b) The Partnering Allowance is to be used for Partnering costs and expenses.

(c) City shall provide Principal Project Company a monthly invoice for Partnering.

(d) Invoicing for completed Partnering shall be included in the monthly invoice described in Section 11.3 (Invoice, Other Amounts and Payments).

ARTICLE 12. CITY CHANGE PROCESS; UNILATERAL CHANGE ORDERS; DEVIATIONS

12.1 General

Exhibit 9 (Change Procedures) sets out the process with respect to (a) Change Orders issued by City following a Proposed Change Order request by City; (b) Unilateral Change Orders unilaterally issued by City; and (c) Change Orders issued by City following a PPC Change Request.

12.2 City Changes

12.2.1 Subject to Section 12.2.2 and in accordance with the procedure set forth in Exhibit 9 (Change Procedures), City may at any time make changes to the Work, including additions or reductions in the scope of the D&C Work or IFM Services, or changes to the requirements applicable to the Work, as it may direct in its sole discretion (each, a "**City Change**").

12.2.2 Principal Project Company shall not be required to implement any City Change to the extent the City Change would:

(a) result in a breach of Law, a breach of Good Industry Practice or a breach of any conditions of a Regulatory Approval or revocation of any Regulatory Approval;

(b) require a new Regulatory Approval which would not be reasonably obtainable;

(c) render any Insurance Policy void or voidable;

(d) materially and adversely affect the health and safety of any person; or

(e) materially and adversely affect the nature of the Project as a whole, such that the City Change would constitute a cardinal change under California law.

Principal Project Company acknowledges that a City Change relating to a Joint Development Alternative would not fall under clause (e).

ARTICLE 13. GENERAL PROVISIONS APPLYING TO DELAY EVENTS AND RELIEF EVENTS

13.1 Interface with Other Portions of the Facility

13.1.1 Principal Project Company acknowledges and agrees that if any PPC-Related Entity, any JDA-Related-Entity, or any entity that is not a PPC-Related Entity or a JDA-Related-Entity but that executes an interface agreement substantially in the form of Exhibit 8 (Form of Interface Agreement), is involved in any aspect of the development, design, construction, operations or maintenance of a Joint Development Alternative, then:

(a) any interference or delay in the performance of the D&C Work or the IFM Services or damage affecting the Infrastructure Facility, in each case, caused in whole or in part by or in any way related to a Joint Development Alternative, shall be entirely Principal Project Company's responsibility and liability;

(b) Principal Project Company shall not make any Claim for, and shall not receive or be entitled to, any additional compensation, time extensions, or relief from its obligations under this Agreement for any delay, additional costs, or failure to perform due to Losses, interference, delay, or damage caused in whole or in part by or in any way related to a Joint Development Alternative;

(c) City shall have no liability or responsibility to Principal Project Company for any Losses, interference, delay, or damage incurred or suffered by Principal Project Company or any PPC-Related Entity with respect to the Infrastructure Facility, including the D&C Work and IFM Services, that is caused, in whole or in part, by a JDA-Related Entity or in any way related to or arising out of a Joint Development Alternative; and

(d) City shall continue to enforce all of City's rights and remedies under this Agreement in circumstances where Principal Project Company cannot perform its obligations hereunder due to any Losses, interference, delay, or damage caused in whole or in part by or in any way related to a Joint Development Alternative or a JDA Related-Entity, including City's rights to assess and collect Deductions, declare a PPC Default, declare a Persistent PPC Default and terminate this Agreement.

13.1.2 With respect to the D&C Work performed by the D&C Contractor, the provisions of Section 13.1.1 shall not apply to the extent that the City commences construction of a Joint Development Alternative prior to the earlier of (i) Substantial Completion; or (ii) the Substantial Completion Deadline, unless, in either case, the prime contractor undertaking such construction is the D&C Contractor or an affiliate thereof (in which case, the provisions of Section 13.1.1 shall apply;

13.2 Delay Event and Relief Event Process

13.2.1 If a Delay Event or Relief Event occurs, subject to the limitations and exclusions provided in this Agreement, Principal Project Company may seek additional compensation, time

extension, and/or other relief, if applicable, in accordance with the entitlements specified in Article 14 (Compensation and Other Relief for Delay Events and Relief Events).

13.2.2 The agreement of the Parties as to the specific compensation, time extension, or other relief to be given Principal Project Company on account of a Delay Event or Relief Event, as applicable, shall be evidenced by a written amendment or change order to this Agreement.

13.2.3 Either Party may initiate the Contract Dispute Procedures if:

(a) the Parties are unable to agree as to the specific compensation, time extension, or other relief to be given Principal Project Company on account of an alleged Delay Event or Relief Event; or

(b) City rejects the Delay Event or Relief Event claim, as applicable.

13.3 Mitigation

13.3.1 If a Delay Event, Relief Event or any other event occurs as a result of which Principal Project Company considers that it is entitled to claim an extension of time, compensation or relief from performance of its obligations under this Agreement (together "**Relevant Events**"), then Principal Project Company shall, and shall require all PPC-Related Entities to, use and continue to use commercially reasonable efforts to:

(a) Eliminate or mitigate the liability, Losses, schedule impact and other consequences of such event upon the performance of its obligations under this Agreement, including by re-sequencing, rescheduling, reallocating or redeploying Principal Project Company forces to other work, as appropriate;

(b) Continue to perform and remain liable and responsible for its obligations under this Agreement notwithstanding the Relevant Event; and

(c) Resume performance of its obligations under this Agreement affected by the Relevant Event as soon as practicable and in no event later than promptly after the cessation of the Relevant Event.

13.3.2 To the extent that Principal Project Company does not comply with its obligations under this Section 13.3 (Mitigation), then Principal Project Company's entitlement to claim an extension of time, compensation or relief from performance of its obligations under this Agreement with respect to the Relevant Event will be reduced to the extent of such failure.

13.4 Deductions for Relevant Events

The compensation payable to Principal Project Company with respect to any Relevant Event will be reduced by:

(a) any amount which a PPC-Related Entity recovers under any Insurance Policy, or would have recovered if it had complied with the requirements of this Agreement in respect of any Insurance Policy in respect of the Relevant Event, which amount, for greater certainty, will not include any excess or

deductibles or any amount over the maximum amount insured under any such Insurance Policy; and

(b) the amount of any Extra Work Costs, other direct costs and margins calculated in accordance with Exhibit 13 (Costs Schedule) avoided or otherwise reduced as a result of the Relevant Event.

13.5 Acts of a PPC-Related Entity

Principal Project Company's entitlement to claim an extension of time, compensation or relief from performance of its obligations under this Agreement with respect to any Relevant Event will be reduced to the extent the Relevant Event arises out of, relates to or was caused or contributed to by the acts or omissions of any PPC-Related Entity or any PPC Fault.

13.6 Notification; Delay in Notification

13.6.1 Principal Project Company shall provide Notice regarding Relevant Events:

(a) as provided in Section 14.1.1 (Claim for Delay Event) with respect to Delay Events;

(b) as provided in Section 14.2.2 (Claim for a Relief Event) with respect to Relief Events; and

13.6.2 as provided in accordance with this Agreement with respect to all other Relevant Events.

13.7 Multiple and Overlapping Claims

Principal Project Company may make multiple but not duplicative Claims with respect to a Relevant Event.

13.8 Burden of Proof and Mitigation

Principal Project Company bears the burden of proof in establishing (a) the occurrence of a Relevant Event and (b) the entitlement to, and amount of, relief for such Relevant Event, including demonstrating that Principal Project Company complied with its mitigation obligations under Section 13.3 (Mitigation).

13.9 Sole Entitlement

Principal Project Company acknowledges and agrees that:

(a) Subject to the express terms of this Agreement, the Milestone Payment and Availability Payments constitute full compensation for performance of all of the Work; and

(b) Principal Project Company's sole right to claim an extension of time, compensation or relief from performance of its obligations under this Agreement or otherwise make any Claim for any liability in connection with a

Delay Event or Relief Event is as set out in Article 13 (General Provisions Applying to Delay Events and Relief Events) and Article 14 (Compensation and Other Relief for Delay Events and Relief Events).

13.10 Compensation

City will pay the compensation due to Principal Project Company under Article 13 (General Provisions Applying to Delay Events and Relief Events) and Article 14 (Compensation and Other Relief for Delay Events and Relief Events) in accordance with Exhibit 13 (Costs Schedule).

13.11 Waiver

As a condition precedent to City's obligation to pay any compensation, grant an extension of time or provide any other relief to fully resolve or address a Delay Event or a Relief Event, Principal Project Company shall execute a full, unconditional, irrevocable waiver and release, in favor of and in a form reasonably acceptable to City, of any other Claims, Losses or rights to relief arising out of such Delay Event or a Relief Event, as applicable, that is not the subject of a Contract Dispute.

ARTICLE 14. COMPENSATION AND OTHER RELIEF FOR DELAY EVENTS AND RELIEF EVENTS

14.1 Relief During the D&C Period

This Section 14.1 (Relief During the D&C Period) sets out Principal Project Company's entitlement to an extension of time, Extra Work Costs, Financing Delay Costs and Delay Costs (as applicable) as a result of Delay Events. Principal Project Company's entitlement to relief and compensation under this Section 14.1 (Relief During the D&C Period) is subject to the limitations on compensation in Article 13 (General Provisions Applying to Delay Events and Relief Events), Exhibit 13 (Costs Schedule), and this Agreement.

14.1.1 Claim for Delay Event

14.1.1.1 Principal Project Company shall provide Notice to City's Authorized Representative within 30 days of obtaining Actual Knowledge of the occurrence of Delay Event (or, if earlier, on such date that Principal Project Company should have discovered such Relief Event if Principal Project Company was in full compliance with the terms of the Contract Documents). Failure to do so shall result in a waiver of and forfeiture of any relief, compensation or time extension related to the event or occurrence.

14.1.1.2 Principal Project Company shall, within 10 Business Days after such initial Notice, provide further details to City's Authorized Representative, which shall, to the extent Principal Project Company has obtained Actual Knowledge, include:

(a) A summary of the provisions of this Agreement that entitle Principal Project Company to relief. If Principal Project Company seeks relief for City's alleged breach of this Agreement, then Principal Project Company shall identify the provisions of this Agreement which allegedly have been breached and the actions or failures to act constituting such breach;

(b) Details of the Delay Event, the circumstances from which the Delay Event arises including its nature, the date of its occurrence, its duration (to the extent that the Delay Event and the effects thereof have ceased or estimated duration to the extent that the Delay Event and the effects thereof have not ceased), the portions of the Infrastructure Facility affected;

(c) Details of the contemporary records which Principal Project Company shall maintain to substantiate its claim for extra time and the substance of any oral communications, if any, relating to the Delay Event and the name of the person or persons making such material oral communications;

(d) Analysis of consequences (whether direct or indirect, financial or non-financial) the Delay Event may have upon achieving the Substantial Completion Date or the Final Acceptance Date, as applicable, including a TIA indicating all activities represented or affected by the change, with activity numbers, durations, predecessor and successor activities, resources and cost, and with a narrative report, in form satisfactory to City, which compares the proposed new schedule to the Project Schedule, as appropriate. Principal

Project Company shall reschedule activities not otherwise affected by the event, in order to take advantage of additional Float available as the result of the time extension. Any such rescheduling shall be reflected in the Project Schedule;

(e) Where the Delay Event is also a Compensable Delay Event, an itemized estimate of all amounts claimed under Section 14.1.1 (Claim for Delay Event). Extra Work Costs and Delay Costs (as applicable) and Financing Delay Costs shall be broken down in accordance with Exhibit 13 (Costs Schedule);

(f) Where the Delay Event is also an Unavoidable Delay Event, an itemized estimate of any Financing Delay Costs claimed under Sections 14.1.6 or 14.1.7 (Additional Limits Relating to Force Majeure Events or Unavoidable Delay Events During D&C Period) broken down in accordance with Exhibit 13 (Costs Schedule);

(g) The type and amount of insurance that may be applicable and amounts that have been or are anticipated to be collected under such insurance; and

(h) Details of any measures that Principal Project Company has taken to date and proposes to adopt to mitigate the consequences of such Delay Event in accordance with Section 13.3 (Mitigation).

14.1.1.3 Within 7 days of Principal Project Company receiving, or becoming aware of, any supplemental information which may further substantiate or support Principal Project Company's Claim, Principal Project Company shall submit further particulars based on such information to City's Authorized Representative.

14.1.1.4 City's Authorized Representative shall, after receipt of details under Section 14.1.1.2, or of further particulars under Section 14.1.1.3, be entitled by Notice to Principal Project Company to require that Principal Project Company provide such further supporting particulars as City's Authorized Representative may reasonably consider necessary. Principal Project Company shall provide City's Authorized Representative full access and facilities for investigating and assessing the validity of Principal Project Company's Claim, including, on-site inspection.

14.1.1.5 Principal Project Company shall provide City with monthly updates, together with further details and supporting documentation, as it receives or develops additional information pertaining to the Delay Event and the matters described in Section 14.1.1.2 Without limiting the foregoing, Principal Project Company shall notify City as soon as the Delay Event has ceased and when performance of its affected obligations can be resumed.

14.1.2 Extension of Deadlines for Delay Events

14.1.2.1 Except as provided in Section **Error! Reference source not found.**, upon the occurrence of a Delay Event, Principal Project Company shall be entitled to an extension of the Contract Deadlines equal to the delay to the Critical Path directly caused by the Delay Event.

14.1.2.2 City's Authorized Representative shall determine revised Contract Deadlines arising out of a Delay Event, as soon as reasonably practicable and in any event within 30 days of the later of:

(a) The date of receipt by City's Authorized Representative of Principal Project Company's Notice given in accordance with Section 14.1.1.1 and the date of receipt of any further particulars (if such are required under Section 14.1.1.2 or Section 14.1.1.3), whichever is later; and

(b) The date of receipt by City's Authorized Representative of any supplemental information supplied by Principal Project Company in accordance with Section 14.1.1.3 (if such are required under Section 14.1.1.4), whichever is later.

14.1.3 Concurrent Delays

If Principal Project Company has made a Claim for an extension of time in accordance with Section 14.1.2 (Extension of Deadlines for General Delay Events) which is caused by City Fault and there is another unrelated delay to a Critical Path for which a PPC-Related Entity is responsible under this Agreement, Principal Project Company shall remain entitled to an extension of time to the Substantial Completion Deadline or Final Acceptance Deadline, as applicable, in accordance with, and subject to, Section 14.1.2 (Extension of Deadlines for General Delay Events), but shall not be entitled to any compensation or monetary relief associated with such extension of time or Claim. If Principal Project Company has made a Claim for an extension of time in accordance with Section 14.1.2 (Extension of Deadlines for General Delay Events) which is not caused by City Fault and there is another unrelated delay to a Critical Path for which a PPC-Related Entity is responsible under this Agreement, Principal Project Company shall not be entitled to an extension of time to the Substantial Completion Deadline or Final Acceptance Deadline, as applicable, to the extent and for so long as the Delay Event is concurrent with any other unrelated delay to a Critical Path for which any PPC-Related Entity is responsible under this Agreement.

14.1.4 Costs Payable for Compensable Delay Events

Subject to the limitations on compensation in Article 13 (General Provisions Applying to Delay Events and Relief Events), this Section 14.1 (Relief During the D&C Period) and Exhibit 4 (Payment Mechanism), if a Compensable Delay Event occurs, City shall reimburse Principal Project Company for:

(a) Extra Work Costs calculated in accordance with Exhibit 13 (Costs Schedule) directly attributable to the Compensable Delay Event;

(b) Delay Costs calculated in accordance with Exhibit 13 (Costs Schedule) attributable to the Compensable Delay Event, but only where an extension of time is granted under Section 14.1.2 (Extension of Deadlines for General Delay Events) for a City-Caused Delay Event; and

(c) Financing Delay Costs calculated in accordance with Exhibit 13 (Costs Schedule) but only where an extension of time is granted under Section 14.1.2 (Extension of Deadlines for General Delay Events) for the Compensable

Delay Event and Principal Project Company is unable to achieve Substantial Completion by the original Substantial Completion Deadline.

14.1.5 Additional Limits Relating to Hazardous Materials Event During D&C Period

If a Delay Event is a Hazardous Materials Event, no compensation or time relief shall be provided for ((i) once Principal Project Company obtains Actual Knowledge of the Hazardous Materials (or should have discovered such Hazardous Materials if Principal Project Company was in full compliance with the terms of the Contract Documents), any Hazardous Materials that could have been reasonably avoided by use of available construction techniques or incorporation of anticipated or minor design changes which are consistent with Good Industry Practice; (ii) once Principal Project Company obtains Actual Knowledge of the Hazardous Materials (or should have discovered such Hazardous Materials if Principal Project Company was in full compliance with the terms of the Contract Documents, including by performing a Reasonable Investigation), any Hazardous Materials encountered, to the extent Principal Project Company is required and failed to manage or mitigate against the risk of such Hazardous Materials in accordance with this Agreement; and (iii) once Principal Project Company obtains Actual Knowledge of the Hazardous Materials (or should have discovered such Hazardous Materials if Principal Project Company was in full compliance with the terms of the Contract Documents, including by performing a Reasonable Investigation), any Hazardous Materials encountered, to the extent a contractor, acting in accordance with Good Industry Practice, would have taken preventative measures to prevent or minimize such Hazards Materials, and Principal Project Company has failed to take such preventative measures. With respect to Extra Work Costs, Principal Project Company's entitlement to compensation for a Hazardous Materials Event shall be limited to Extra Work performed under the City-approved plans required to be provided under Section 01 35 44 of Division 10 of the Technical Requirements, and as otherwise limited in accordance with Section 7.7 (Hazardous Materials Management; Risk Allocation).

14.1.6 Costs Payable for Force Majeure Events During the D&C Term

14.1.6.1 If a Delay Event for which an extension of time was granted under Section 14.1.2 (Extension of Deadlines for General Delay Events) is:

(a) a Force Majeure Event; and

(b) the Force Majeure Event is not insured against and is not required to be insured against in accordance with this Agreement,

City will reimburse Principal Project Company for Financing Delay Costs (if any) and any Extra Work Costs, if any, authorized pursuant to a Change Order under Section 14.6 (Loss or Damage Due to Force Majeure Termination Event).

14.1.6.2 In addition, if (i) Principal Project Company is unable to perform all or substantially all of its obligations under the Contract Documents for a period of 180 consecutive days or more; and (ii) such inability to perform its obligations is not attributable to a concurrent non-Force Majeure Termination Event, City will reimburse Principal Project Company for Delay Costs incurred after such 180 day period until 255 days after the occurrence of such Force Majeure

Termination Event, after which Section 17.2 (Termination for Force Majeure Termination Events or Insurance Unavailability) applies.

14.1.7 Costs Payable for Unavoidable Delay Events During the D&C Term

If a Delay Event for which an extension of time was granted under Section 14.1.2 (Extension of Deadlines for General Delay Events) is an Unavoidable Delay Event, City will reimburse Principal Project Company for Financing Delay Costs (if any), such reimbursement to be Principal Project Company's sole entitlement to compensation for such Unavoidable Delay Event.

14.1.8 Impact of Delay Event on Performance of D&C Work

14.1.8.1 Any failure by Principal Project Company to perform the D&C Work during the D&C Term, to the extent directly arising out of any Delay Event, will:

(a) not constitute a breach of this Agreement by Principal Project Company;

(b) not result in accrual of Noncompliance Points or Deductions with respect to any Delay Event ;

(c) relieve Principal Project Company of its obligations to perform such directly affected D&C Work for the duration and to the extent directly prevented by such Delay Event as described in Section 13 of Exhibit 4 (Payment Mechanism); and

(d) not result in a Principal Project Company Default or right of termination or other claim by City, other than either Party's right to terminate this Agreement under Section 17.2 (Termination for Force Majeure Events or Insurance Unavailability).

14.1.8.2 Notwithstanding Section 14.1.7 (Impact of Delay Event on Performance of D&C Work), Principal Project Company shall remain fully responsible for performance of all elements of the D&C Work not directly impacted or affected by any Delay Event.

14.1.9 Relief for Adverse Weather Event

14.1.9.1 The occurrence of Adverse Weather alone shall not be a prima facie reason for an Adverse Weather Event, and Principal Project Company shall make every effort to continue to work under prevailing conditions. Such efforts by Principal Project Company shall include: providing temporary gravel roads; installing a rain dewatering system; protecting interior and exterior areas exposed to rain, wind, and extreme temperatures; and providing temporary heat where required for Work to proceed without delay.

14.1.9.2 Principal Project Company shall plan the D&C Work to allow for 17 days of Adverse Weather per year during normal working hours. The Project Schedule shall incorporate 17 days per year for the anticipated number of days of Adverse Weather. As used in this Section 14.1.8.2, "year" shall mean the period measured between May 1-April 30 of each calendar year

during the D&C Period. If the D&C Period commences or ends during a partial year, the foregoing 17-day period shall be prorated and rounded up to the nearest day.

14.1.9.3 Principal Project Company shall not be entitled to a time extension or relief from its obligations under this Agreement for Adverse Weather until the 18th day of occurrence of Adverse Weather in a year, or such lesser applicable amount for any prorated year, as determined pursuant to Section 14.1.8.2.

14.1.9.4 If there are years with less days of Adverse Weather than 17 days, or such lesser applicable amount for any prorated year, as determined pursuant to Section 14.1.8.2, the unused days shall be rolled into Float.

14.2 Relief During the IFM Period

14.2.1 Overview

This Section 14.1.7 (Relief During the IFM Period) sets out Principal Project Company's entitlement to Extra Work Costs and relief from performance as a result of Relief Events occurring during the IFM Period. Principal Project Company's right to relief and compensation under this Section 14.1.7 (Relief During the IFM Period) is subject to the limitations on compensation in Article 13 (General Provisions Applying to Delay Events and Relief Events), Exhibit 13 (Costs Schedule), and this Agreement.

14.2.2 Claim for a Relief Event

14.2.2.1 Principal Project Company shall provide Notice to City's Authorized Representative within 30 days of obtaining Actual Knowledge of the occurrence of Relief Event (or, if earlier, on such date that Principal Project Company should have discovered such Relief Event if Principal Project Company was in full compliance with the terms of the Contract Documents). Failure to do so shall result in a waiver and forfeiture of any relief, compensation or time extension related to the event or occurrence.

14.2.2.2 Principal Project Company shall, within 10 Business Days after its Notice under Section 14.2.2.1, provide a further Notice to City's Authorized Representative, which shall, to the extent Principal Project Company has obtained Actual Knowledge, include:

(a) A summary of the provisions of this Agreement that entitle Principal Project Company to relief. If Principal Project Company seeks relief for City's alleged breach of this Agreement, then Principal Project Company shall identify the provisions of this Agreement which allegedly have been breached and the actions constituting such breach;

(b) Details of the Relief Event, circumstances from which the Relief Event arises including its nature, the date of its occurrence, its duration (to the extent that the Relief Event and the effects thereof have ceased or estimated duration to the extent that the Relief Event and the effects thereof have not ceased) and any portions of the Infrastructure Facility affected. Impacts to the IFM Services, if any, shall be stated by Term year;

(c) Details of the contemporary records which Principal Project Company shall maintain to substantiate its claim for relief or compensation and the substance of any oral communications, if any, relating to the Relief Event and the name of the person or persons making such material oral communications;

(d) Where the Relief Event is also a Compensable Relief Event, an itemized estimate of all amounts claimed under Section 14.2.3 (Costs Payable for Compensable Relief Events) broken down into Extra Work Costs identified in Exhibit 13 (Costs Schedule). The estimate shall include, to the extent applicable, Extra Work Costs for additional work for future IFM Services, and a proposal for how to reasonably net present value such amount to current dollars should the City wish to pay such amount in a lump sum payment;

(e) The type and amount of insurance that may be applicable and amounts that have been or are anticipated to be collected under such insurance; and

(f) Details of any measures that Principal Project Company has taken to date and proposes to adopt to mitigate the consequences of such Relief Event in accordance with Section 13.3 (Mitigation).

14.2.2.3 As soon as possible but in any event within 7 days of Principal Project Company receiving, or becoming aware of, any supplemental information which may further substantiate or support Principal Project Company's Claim, Principal Project Company shall submit further particulars based on such information to City's Authorized Representative.

14.2.2.4 City's Authorized Representative shall, after receipt of details under Section 14.2.2.2, or of further particulars under Section 14.2.2.3, be entitled by Notice to require Principal Project Company to provide such further supporting particulars as City's Authorized Representative may reasonably consider necessary. Principal Project Company shall afford City's Authorized Representative full access and facilities for investigating and assessing the validity of Principal Project Company's Claim, including, on-site inspection.

14.2.2.5 Principal Project Company shall provide City with monthly updates, together with further details and supporting documentation, as it receives or develops additional information pertaining to the Relief Event and the matters described in Section 14.2.2.2 Without limiting the foregoing, Principal Project Company shall notify City as soon as the Relief Event has ceased and when performance of its affected obligations can be resumed.

14.2.3 Costs Payable for Compensable Relief Events

Subject to the limitations on compensation in Article 13 (General Provisions Applying to Delay Events and Relief Events), this Section 14.1.7 (Relief During the IFM Period) and Exhibit 4 (Payment Mechanism), upon the occurrence of a Compensable Relief Event, City will reimburse Principal Project Company for all Extra Work Costs incurred by Principal Project Company as a direct result of the Compensable Relief Event calculated in accordance with Exhibit 13 (Costs Schedule). City will not be entitled to make Deductions/assess Noncompliance Points for non-performance that is caused directly as a result of a Compensable Relief Event; provided; however, that the Availability Payment shall be reduced for any avoided costs resulting from the Compensable Relief Event.

14.2.4 Costs Payable for Force Majeure During IFM Period

14.2.4.1 If a Force Majeure Event:

(a) is not insured and is not required to be insured in accordance with this Agreement; and

(b) directly and adversely impacts the IFM Services after Substantial Completion,

then,

(c) City will reimburse Principal Project Company for Extra Work Costs, if any, authorized pursuant to a Change Order under Section 14.6 (Loss or Damage Due to Force Majeure Termination Event); and

(d) City is entitled to deduct from the Availability Payments the amount of avoided and/or reduced costs which are not in fact incurred by Principal Project Company during the period where IFM Services is not required to be performed by Principal Project Company pursuant to the Contract Documents. The deduction shall be in the amount of any costs (including applicable Extra Work Costs, Delay Costs, Financing Delay Costs, profit, overhead and margins calculated in accordance with Exhibit 13 (Costs Schedule) that are avoided or otherwise reduced. .

14.2.5 Additional Limits Relating to Hazardous Materials Event During IFM Period

If a Relief Event is a Hazardous Materials Event, no compensation, performance or time relief shall be provided for (i) once Principal Project Company obtains Actual Knowledge of the Hazardous Materials (or should have discovered such Hazardous Materials if Principal Project Company was in full compliance with the terms of the Contract Documents), any Hazardous Materials that could have been reasonably avoided by use of available construction techniques or incorporation of anticipated or minor design changes which are consistent with Good Industry Practice; (ii) once Principal Project Company obtains Actual Knowledge of the Hazardous Materials (or should have discovered such Hazardous Materials if Principal Project Company was in full compliance with the terms of the Contract Documents), any Hazardous Materials encountered, to the extent Principal Project Company is required and failed to manage or mitigate against the risk of such Hazardous Materials in accordance with this Agreement; and (iii) once Principal Project Company obtains Actual Knowledge of the Hazardous Materials (or should have discovered such Hazardous Materials if Principal Project Company was in full compliance with the terms of the Contract Documents), any Hazardous Materials encountered, to the extent a contractor, acting in accordance with Good Industry Practice, would have taken preventative measures to prevent or minimize such Hazards Materials, and Principal Project Company has failed to take such preventative measures. Principal Project Company's entitlement to compensation for a Compensable Relief Event that is a Hazardous Materials Event shall be limited to the Extra Work Costs associated with the Hazardous Materials Event for Extra Work performed under the approved plans required to be provided under Section 01 35 44 of Division 10 of the Technical Requirements, and as otherwise limited in accordance with Section 7.7 (Hazardous Materials Management; Risk Allocation).

14.2.6 Impact of Relief Event on Performance of IFM Services

14.2.6.1 Any failure by Principal Project Company to perform the IFM Services from the Substantial Completion Date until the expiration of the IFM Period, to the extent directly arising out of any Relief Event, will:

(a) not constitute a breach of this Agreement by Principal Project Company;

(b) not result in accrual of Noncompliance Points or Deductions with respect to any Relief Event;

(c) relieve Principal Project Company of its obligations to perform such directly affected IFM Services for the duration and to the extent directly prevented by such Relief Event as described in Section 13 of Exhibit 4 (Payment Mechanism); and

(d) not result in a Principal Project Company Default or right of termination or other claim by City, other than either Party's right to terminate this Agreement under Section 17.2 (Termination for Force Majeure Termination Events or Insurance Unavailability).

14.2.6.2 Notwithstanding Section 14.2.6.1, Principal Project Company shall remain fully responsible for performance of all elements of the IFM Services not directly impacted or affected by any Relief Event.

14.3 Method of Payment of Compensation for Compensable Delay Events and Compensable Relief Events

14.3.1 Additional compensation due for a Compensable Delay Event or a Compensable Relief Event shall be paid in accordance with Section 7.0 (Form and Timing of Compensation) of Exhibit 13 (Costs Schedule).

14.3.2 City shall provide Principal Project Company with prompt written Notice of the method chosen for paying Principal Project Company for the amounts owed under this Article 14 (Compensation and Other Relief for Delay Events and Relief Events).

14.3.3 If City elects to pay for such amounts by periodic payments, progress payments, milestone payments or a lump sum payment, Principal Project Company shall submit an invoice, in a format acceptable to City, for the amount of each such payment, and City will make payment of all undisputed amounts to Principal Project Company within 30 Business Days of receipt of a complete and proper invoice.

14.4 Open Book Basis

Principal Project Company shall share with City all data, documents and information, and shall conduct all discussions and negotiations, pertaining to any claimed Delay Event or Relief Event, as applicable, on an Open Book Basis.

14.5 Excavations; Public Contract Code 7104

Information regarding site conditions included in the Technical Requirements and Reference Documents (including any information, reports, or studies about site conditions, geotechnical conditions, Utilities or structure and bridge design, and any interpretations, extrapolations, analyses and recommendations contained therein) shall not be considered “indicated” therein as such term is used in Public Contract Code section 7104. Principal Project Company is responsible for investigating and satisfying itself as to the site conditions affecting the Project Site and the Work. To the maximum extent permitted by Law, Principal Project Company knowingly, unconditionally, irrevocably and specifically waives each and every right and benefit of Public Contract Code section 7104 to the extent that it may be inconsistent with any provision of the Contract Documents. Principal Project Company acknowledges and agrees that this waiver and the risk allocations set forth in the Contract Documents are a material consideration for City to award and enter into this Agreement with Principal Project Company.

14.6 Loss or Damage Due to Force Majeure Event

14.6.1 If the D&C Work or the Infrastructure Facility are wholly or substantially destroyed or damaged by:

(a) a Force Majeure Event which is not insured against and is not required to be insured against in accordance with this Agreement or Insurance Unavailability; and

(b) City requires Principal Project Company to repair, replace or rebuild the D&C Work or the Infrastructure Facility,

the Parties will use reasonable efforts to negotiate and agree on how the D&C Work or the Infrastructure Facility will be repaired, replaced or rebuilt in accordance with Exhibit 9 (Change Procedure) and the Extra Work Costs of doing so in accordance with Exhibit 13 (Costs Schedule).

14.6.2 The Parties’ attempts to negotiate must not limit City’s right to issue a Change Order or Unilateral Change Order in accordance with this Agreement or the Parties’ right to terminate under Section 17.2 (Termination for Force Majeure Termination of Insurance Unavailability).

ARTICLE 15. DEDUCTIONS AND NONCOMPLIANCE POINTS

15.1 Failure Events

15.1.1 Appendix A of Exhibit 4 (Payment Mechanism) identifies certain D&C Failure Events applicable from the Effective Date until the Final Acceptance Date.

15.1.2 The Performance Measurements Table identifies certain IFM Failure Events which may become an Availability Failure or Service Failure during the IFM Period as described in Exhibit 4 (Payment Mechanism).

15.1.3 Each Noncompliance Event will result in either or both:

(a) the assessment of Noncompliance Points;

(b) the assessment of Deductions,

in each case in accordance with Exhibit 4 (Payment Mechanism).

15.2 Deductions

15.2.1 In accordance with Exhibit 4 (Payment Mechanism) and Section 15.4, City may:

(a) assess D&C Period Deductions (i) immediately for any D&C Failure Event for which no Rectification Time is specified in the Performance Measurements Table; (ii) at the end of each Rectification Time or any additional Rectification Time for any D&C Failure Event if Principal Project Company has not Rectified the Noncompliance Event; and

(b) assess IFM Period Deductions (i) immediately for any IFM Failure Event or D&C Failure Event for which no Rectification Time is specified in the Performance Measurements Table; (ii) at the end of the Response Time (if any) if Principal Project Company has not Responded to the Noncompliance Event; and (iii) the end of each Rectification Time if Principal Project Company has not Rectified the Noncompliance Event.

15.2.2 Principal Project Company acknowledges that any Deductions, are reasonable liquidated damages under the circumstances existing at the Effective Date, to compensate City for:

(a) City's increased costs of administering the Contract Documents, including any obligations to pay or reimburse Governmental Entities over the Project for their increased costs of monitoring and enforcing Principal Project Company's compliance with applicable Regulatory Approvals;

(b) City's potential loss of revenues due to a reduction in its operations at the Infrastructure Facility;

(c) potential harm to the public; and

(d) potential harm to the credibility and reputation of City with stakeholders, policy makers and with the general public.

15.2.3 Principal Project Company further acknowledges that such increased costs and loss of revenue, credibility and reputation, would be difficult and impracticable to measure and prove, because, among other things, the costs of administering the Contract Documents prior to increases in the level thereof will be variable and extremely difficult to quantify and the variety of factors that influence use of and demand for the Infrastructure Facility and associated SFMTA services generally make it difficult to sort out causation and quantify the precise revenue loss attributable to the matters that will trigger these liquidated damages.

15.2.4 Except for other remedies expressly provided in this Agreement, including City's right to assess Noncompliance Points and to be indemnified for Third Party claims, any Deduction assessed in accordance with this Agreement shall constitute City's sole remedy in respect of City's damages arising from the Noncompliance Event, for which such Deduction is assessed.

15.3 Noncompliance and Failure Reporting, Notification and Cure Process

15.3.1 Noncompliance Database

15.3.1.1 Principal Project Company shall establish and maintain an electronic database for recording and tracking Failure Events and Noncompliance Events (the "**Noncompliance Database**"). The format and design of the database shall be subject to City's approval, in its reasonable discretion. At a minimum, the database shall:

(a) include a description of each Failure Event in reasonable detail;

(b) provide for automatic notification to City of the entry of a Failure Event in the Noncompliance Database;

(c) identify the location of the Failure Event (if applicable);

(d) identify the date and time of each Failure Event;

(e) identify the applicable Response Time and Rectification Time of the IFM Failure Event, if any, stated in the Performance Measurements Table;

(f) indicate date and time of Response and Rectification for any Failure Event;

(g) indicate when a Noncompliance Event has developed; and

(h) record the number of assessed Noncompliance Points, the date of each assessment, and the date when each Noncompliance Event is cured.

15.3.1.2 Principal Project Company shall provide City with full access to the Noncompliance Database at all times, including the ability to enter Failure Events into the Noncompliance Database as provided in Section 15.3.2 (Notification Initiated by City).

15.3.1.3 Notification Initiated by Principal Project Company

As an integral part of Principal Project Company's self-monitoring obligations, Principal Project Company shall record in the Noncompliance Database, in real time and upon discovery, the occurrence of any Failure Event specified in the Performance Measurements Table.

15.3.2 Notification Initiated by City

If City believes a Failure Event has occurred that Principal Project Company has not recorded in the Noncompliance Database, City may enter the Failure Event into the Noncompliance Database or deliver to Principal Project Company a Notice of Determination as provided in Section 15.3.3.2 via the Noncompliance Database, and delivery shall be deemed given upon proper entry of the information into the Noncompliance Database.

15.3.3 Performance Reports

15.3.3.1 Principal Project Company shall include in each Monthly Report and in each Monthly Progress Status Report required under Section 1.2.4.1 of Division 1 and Section B.11 of the IFM Specifications, a report of all Failure Events and Noncompliance Events that occurred during the preceding calendar month, which reports shall include the same detailed information required to be recorded in the Noncompliance Database. Principal Project Company shall correct any inaccuracies in reporting of Failure Events, Noncompliance Events and Noncompliance Points, within 10 Business Days of City's notification to Principal Project Company of such inaccuracies.

15.3.3.2 Within a reasonable time after receiving the Monthly Report, City will deliver to Principal Project Company a Notice setting forth for each Failure Event City's determination whether the Failure Event was Responded to or Rectified (as applicable) during the applicable Rectification Time, City's determination whether a Noncompliance Event occurred, and the Noncompliance Points and Deductions to be assessed with respect to such Noncompliance Event (a "**Notice of Determination**").

15.3.4 Response and Rectification Times

15.3.4.1 Principal Project Company shall Respond to each IFM Failure Event by the end of the Response Time (if any) for each such Failure Event.

15.3.4.2 Principal Project Company shall Rectify each IFM Failure Event by the end of the Rectification Time (if any) for each such Failure Event.

15.3.4.3 For each IFM Failure Event identified, Principal Project Company's applicable Response Time and Rectification Time with respect to the IFM Failure Event shall be deemed to start on the date and time Principal Project Company first obtained Actual Knowledge or should have first reasonably known of (if Principal Project Company was in full compliance with the terms of the Contract Documents) the IFM Failure Event. For this purpose, if the Notice of the IFM Failure Event is initiated by City, Principal Project Company shall be deemed to first obtain Actual Knowledge of the IFM Failure Event not later than the date of delivery of the Notice to Principal Project Company.

15.3.4.4 Following the occurrence of an Availability Deduction or Service Failure Deduction, Principal Project Company shall be allowed an additional Rectification Time as set out in

Section 6.3 of Exhibit 4 (Payment Mechanism). If, before the expiry of this additional period, Principal Project Company Rectifies the Availability Failure or Service Failure, no further Availability Deduction or Service Failure Deduction shall be made. Otherwise, a further Deduction shall be made of the applicable amount and a further Rectification Time of equal duration shall apply. This process and application shall continue until Principal Project Company Rectifies the Availability Failure or Service Failure, subject to any other rights and remedies of City in connection with such Availability Failure or Service Failure.

15.3.5 Notification of Response and Rectification

15.3.5.1 When Principal Project Company determines that its Response or Rectification (as applicable) of an IFM Failure Event has been completed, Principal Project Company shall make an entry in the Noncompliance Database that:

(a) identifies the IFM Failure Event;

(b) states that Principal Project Company has completed Response or Rectification; and

(c) briefly describes the applicable Response or Rectification, including any modifications to the Project Management Plan to prevent future similar IFM Failure Events.

15.3.5.2 Principal Project Company shall include the same information in the next Monthly Report.

15.3.5.3 City may, via written Notice of rejection, reject any Principal Project Company Notice of completed Response or Rectification if it determines that Principal Project Company has not rectified the Failure Event and shall, upon making this determination, deliver a written Notice of rejection to Principal Project Company.

15.4 Assessment of Noncompliance Points

15.4.1 City may assess Noncompliance Points in accordance with this Section 15.4 (Assessment of Noncompliance Points), Section 6 of Exhibit 4 (Payment Mechanism) and the Performance Measurements Table upon the occurrence of Noncompliance Events.

15.4.2 If, at any time, the Noncompliance Database or a Monthly Report indicates, or City is notified or otherwise obtains Actual Knowledge of, a Failure Event or Noncompliance Event, or City provides Principal Project Company with a Notice of Determination, then, without prejudice to any other right or remedy available to City, City may assess Noncompliance Points, subject to the following terms and conditions:

(a) except as provided in Section 15.4.2(b), City may assess Noncompliance Points at each of the following times: (i) immediately for any IFM Failure Event or D&C Failure Event for which no Rectification Time is specified in the Performance Measurements Table; (ii) the end of the Response Time (if any) if Principal Project Company has not Responded to the Noncompliance Event; and (iii) the end of each Rectification Time if Principal Project Company has not Rectified the Noncompliance Event;

(b) if City initiated Notice of a Failure Event that becomes a Noncompliance Event entitling City to assess Noncompliance Points, and to the extent City has determined to assess Noncompliance Points, City may allocate the applicable Noncompliance Points at the commencement of the applicable Response Time or Rectification Time. If City and Principal Project Company deliver concurrent written Notices of the same Failure Event, or concurrently seek to enter the details of the Failure Event into the Noncompliance Database, Principal Project Company's Notice shall prevail, if complete and compliant;

(c) the number of points listed in Appendix A and Appendix D to Exhibit 4 (Payment Mechanism) or the Performance Measurements Table (as applicable) for any particular Noncompliance Event is the maximum number of Noncompliance Points that may be assessed for each event or circumstance that is a Noncompliance Event. City may, in its sole discretion, assess less than the maximum;

(d) if a Noncompliance Event continues beyond its relevant Response Time or Rectification Time (as applicable), if any, each subsequent Response Time or Rectification Time (as applicable), shall be treated as a new and separate Noncompliance Event, without necessity for further Notice and Noncompliance Points will continue to accrue for every additional Response Time or Rectification Time (as applicable), shall be treated as a new and separate Noncompliance Event; and

(e) 100% of the Noncompliance Points assessed during the D&C Period may be carried forward and used by City to calculate, after the Substantial Completion Date, accumulated Noncompliance Points for determining the occurrence of a Persistent PPC Default and for the purposes specified in Sections **Error! Reference source not found.** (Persistent PPC Default and Increased Oversight), 15.8 (Cure Plan for Persistent PPC Default), and 16.1.1(r).

15.4.3 Regardless of the continuing assessment of Noncompliance Points under this Section 15.4 (Assessment of Noncompliance Points), City may exercise its step-in rights under Section 16.2.5 (City Step-in Rights) and, if applicable, its Work suspension rights under Section 16.2.8 (Suspension of Work), after expiration of the applicable Rectification Time.

15.5 Performance Notice

15.5.1 In addition to other remedies available under this Agreement, City may provide Principal Project Company, a Notice, indicating unsatisfactory performance and establishing the matters that give rise to such Notice, if the Performance Notice Threshold is reached ("Performance Notice").

15.5.2 If a Performance Notice is given by the City, then:

(a) Principal Project Company shall, within 20 days of receiving the Performance Notice, submit to the City a cure plan for review and approval in accordance with Exhibit 11 (Submittals Review Process) ("Performance Cure Plan"). The Performance Cure Plan will include reasons for the unsatisfactory

performance and specific actions (including timeframes) to be taken by Principal Project Company to improve its performance.

(b) The Parties shall consult to develop and agree the Performance Cure Plan within 10 days of Principal Project Company's submittal of such plan; and

(c) Following agreement or determination of the Performance Cure Plan, Principal Project Company shall implement and comply with the Performance Cure Plan and any failure to do so shall result in a second Performance Notice.

15.6 Increased Oversight

15.6.1 In addition to other remedies available under this Agreement, City may provide Principal Project Company, a Notice for increased Oversight, if the Increased Oversight Threshold is reached.

15.6.2 In addition to other remedies available under this Agreement, City may, by Notice to Principal Project Company direct Principal Project Company to increase its own oversight or change the type and/or increase the level of City's Oversight of the Project, in such manner and to such level considered fit, if the Increased Oversight Threshold is reached.

15.6.3 If City changes the type or increases the level of its Oversight due to Principal Project Company reaching the Increased Oversight Threshold, then Principal Project Company shall pay and reimburse City, within 30 days after receipt of written demand and reasonable supporting documentation, all reasonable increased costs and fees City incurs in connection with such action, including City's Recoverable Costs.

15.6.4 If City directs Principal Project Company to increase its own oversight or changes the type or increases the level of its Oversight, then:

(a) Principal Project Company shall, within 30 days of Notice submit to the City a cure plan for review and approval in accordance with Exhibit 11 (Submittals Review Process) ("Increased Oversight Cure Plan"). The Increased Oversight Cure Plan shall include specific actions (including timeframes) to be taken by Principal Project Company to improve its performance; and

(b) the Parties shall consult to develop and agree to the Increased Oversight Cure Plan within 20 days of Principal Project Company's submittal of the Increased Oversight Cure Plan.

15.6.5 Principal Project Company's obligation to pay and reimburse City for increased Oversight costs shall apply to all changes in the type or increases in the level of City's Oversight occurring until Principal Project Company has:

(a) implemented and complied with the Increased Oversight Cure Plan;

(b) fully and completely cured the breaches and failures that gave rise to the Increased Oversight;

(c) diligently pursued cure of all other Failure Events; and

(d) during the D&C Period, has accumulated less than 40 Noncompliance Points in the subsequent 90 days following notice of Increased Oversight; or

(e) during the IFM Period, has accumulated less than 375 Noncompliance Points in the subsequent 90 days following notice of Increased Oversight

15.7 Persistent PPC Default

15.7.1 In addition to other remedies available under this Agreement including Section 15.6**,** City may provide PPC with a Notice of Persistent PPC Default ("Persistent PPC Default Notice").

15.8 Cure Plan for Persistent PPC Default

15.8.1 Upon the occurrence of a Persistent PPC Default:

(a) Principal Project Company shall, within 30 days of the Persistent PPC Default, submit to City a cure plan for review and approval in accordance with Exhibit 11 (Submittals Review Process) ("Persistent PPC Default Cure Plan"). The Persistent PPC Default Cure Plan shall include specific actions (including timeframes) to be taken by Principal Project Company to improve performance

(b) City may require, in its good faith discretion, that Principal Project Company's actions under this Section 15.8.1 include improving Principal Project Company's quality management practices, plans and procedures, revising and restating the Project Management Plan, changing organizational and management structure, increasing monitoring and inspections, changing Key Personnel and other important personnel, replacement of IFM Provider, replacement of Subcontractors;

(c) The Parties shall consult to develop and agree to the Persistent PPC Default Cure Plan within 20 days of Principal Project Company's submittal of the plan; and

(d) Following agreement or determination of the Persistent PPC Default Cure Plan, Principal Project Company shall implement and comply with the cure plan and any failure to do so shall result in an additional PPC Default which shall not be subject to any additional Notice or cure period.

15.8.2 If:

(a) Principal Project Company complies in all material respects with the approved Persistent PPC Default Cure Plan

As of the date it achieves such requirements, there exist no other uncured PPC Defaults for which a Default Notice was given; and

(b) During the D&C Period, Principal Project Company has accumulated less than 100 points in the subsequent 90 days, following notice of Persistent PPC Default; or

(c) During the IFM period, Principal Project Company has accumulated less than 750 Noncompliance points in the subsequent 6-month period, following notice of Persistent PPC Default

Upon successfully curing the Persistent PPC Default, during the IFM Period only, City will reduce the number of cumulative Noncompliance Points that would otherwise then be counted toward Persistent PPC Default by 50%. Such reduction will be taken from the earliest assessed Noncompliance Points that would otherwise then be counted toward Persistent PPC Default.

15.9 Amendment of IFM Period Performance Measurements Table

15.9.1 The Performance Measurements Table contains a representational, but not exhaustive, list of IFM Failure Events possible during the IFM Period under the Contract Documents. Subject to Sections 15.9.2 and 15.9.3, City may:

(a) replace IFM Failure Events in the Performance Measurements Table by removing an IFM Failure Event and adding in its place an alternate IFM Failure Event identified in accordance with Section 15.9.2(a); and

(b) establish the category applicable to, and set a reasonable "Performance Measurement," "Response Time" and "Rectification Time", each alternate Failure Event.

15.9.2 City's right to revise the Performance Measurements Table is subject to the following restrictions:

(a) any existing contractual obligation of Principal Project Company may become an alternate IFM Failure Event if:

(i) Principal Project Company has failed to comply with that contractual obligation at least twice;

(ii) City provided Notice to Principal Project Company within 15 days of Principal Project Company's second failure to comply and such Notice identifies the contractual obligation and the instances of Principal Project Company's failure to comply, and indicates that City will add that contractual obligation to the Performance Measurements Table if Principal Project Company at any time again fails to comply with the specified contractual obligation; and

(iii) Principal Project Company fails a third time to comply with the contractual obligation specified in the Notice;

(b) the total number of Noncompliance Points in the Performance Measurements Table as existing on the Financial Close Date shall not increase by more than

10% for the Term. City may elect to remove contractual obligations and reduce Noncompliance Points allocated to listed contractual obligations in order to comply with the 10% growth limit; and

(c) the number of Noncompliance Points associated with any alternate IFM Failure Event added to the Performance Measurements Table shall not exceed 20 Noncompliance Points.

15.9.3 Changes to the Performance Measurements Table made in accordance with this Section 15.9 (Amendment of IFM Period Performance Measurements Table) will be applied prospectively, starting three days after delivery to Principal Project Company of the revised table or such later date stated in the Notice delivering any revised table.

ARTICLE 16. DEFAULT; REMEDIES

16.1 Default by Principal Project Company; Cure Periods

16.1.1 PPC Default

Principal Project Company shall be in breach under this Agreement upon the occurrence of any one or more of the following events or conditions (each a "**PPC Default**"):

(a) Principal Project Company fails to satisfy the conditions set forth in Section 7.4.3 (Commencement of Non-Construction Work) within 30 days after City's issuance of NTP 1, to begin the D&C Work within 10 days following City's issuance of NTP 2, or to diligently prosecute the Work to completion in accordance with the Contract Documents;

(b) Principal Project Company abandons all or a material part of the Project, which abandonment is deemed to occur if (i) Principal Project Company demonstrates through statements, acts or omissions an intent not to continue, for any reason other than a Delay Event or Relief Event that materially impairs Principal Project Company's ability to continue, to design, construct, operate or maintain all or a material part of the Project, or (ii) no significant Work (taking into account the Project Schedule, if applicable, and any Delay Event or Relief Event) on the Project is performed for a continuous period of more than 30 days unless due to Principal Project Company's compliance with a City suspension order issued under this Agreement;

(c) Principal Project Company fails to achieve Substantial Completion by the Long Stop Date;

(d) Principal Project Company (i) fails to make any payment owing to City under the Contract Documents when due, or (ii) fails to deposit other funds into any custodial account, trust account or other reserve or account (including the Handback Requirements Reserve Account) in the amount and within the time period required by the Contract Documents;

(e) Principal Project Company fails to begin the IFM Services within 30 days following the Substantial Completion Date;

(f) (i) any representation or warranty in the Contract Documents made by Principal Project Company is false in any material respect, materially misleading or inaccurate in any material respect when made or omits material information when made, or (ii) any certificate, schedule, report, instrument or other document delivered by or on behalf of Principal Project Company, any Equity Member, Controlling Affiliate of Principal Project Company, Prime Contractor or Supplier to City as part of the Implementation Proposal or under the Contract Documents is false in any material respect, materially misleading or inaccurate in any material respect when made or omits material information when made;

(g) Principal Project Company fails to obtain, provide and maintain any insurance, bonds, guarantees, letters of credit or other payment or performance security as required under the Contract Documents for the benefit of relevant parties, or Principal Project Company fails to comply with any requirement of the Contract Documents pertaining to the amount, terms or coverage of the insurance or security or fails to pay the associated premiums, deductibles, retain self-insured retentions, co-insurance or any other such amounts as and when due;

(h) Principal Project Company ceases performing a substantial portion of its business, or a substantial portion of such business is suspended or is not being performed, whether voluntarily or involuntarily, that has or will have a material adverse effect on Principal Project Company's ability to perform its obligations under this Agreement;

(i) (i) Principal Project Company makes, attempts to make or suffers a voluntary or involuntary assignment or transfer of all or any portion of the Contract Documents, the Project or PPC's Interest in violation of the limitations on assignment or transfer under this Agreement, (ii) there occurs an Equity Transfer or a Change of Control not permitted under this Agreement, or (iii) any other violation of the limitations on assignment or transfer under this Agreement occurs;

(j) Principal Project Company fails to timely observe or perform, or cause to be observed or performed any material covenant, agreement, obligation, term or condition required to be observed or performed by Principal Project Company under the Contract Documents, including failure to pay for or perform the Design Work, Construction Work, IFM Services or any portion thereof (except to the extent payment is subject to a good faith payment dispute with a subcontractor) in accordance with the Contract Documents in any material respect, provided that any failure that constitutes a Noncompliance Event or Failure Event is not considered a default under this clause (j) although such failure may become a PPC Default in accordance with clause (r) or (s) below;

(k) Principal Project Company, any Equity Member, any Controlling Affiliate of Principal Project Company, any Prime Contractor, any Supplier, or any of their respective partners, members, officers, directors, responsible managing officers, or responsible managing employees, has been convicted in a court of competent jurisdiction of any charge of fraud, bribery, collusion, conspiracy, or any other act in violation of any state or federal antitrust law in connection with the bidding upon, award of, or performance of, any public works contract, as defined in California Public Contract Code section 1101, with any public entity, as defined in California Public Contract Code section 1100, provided that, if the conviction relates to an Equity Member, a Controlling Affiliate of Principal Project Company, a Prime Contractor, a Supplier, or any of their or Principal Project Company's respective partners, members, officers, directors, responsible managing officers, or responsible managing employees, (i) such Person is involved in the Project at the time of such conviction and (ii) Principal Project Company fails to remove such Person from the Project;

(l) Principal Project Company fails to comply with City's order to suspend Work issued in accordance with Sections 9.8.6, 10.1.2.4(c), 16.2.4.5(b) or 16.2.8 (Suspension of Work) within the time reasonably allowed in such order;

(m) A Bankruptcy Event arises with respect to:

(i) Principal Project Company except to the extent such Bankruptcy Event is caused by a failure by City to pay Principal Project Company as required under this Agreement, and/or

(ii) Any D&C Contractor or IFM Provider, unless Principal Project Company:

(A) enters into a replacement D&C Contract, guarantee or IFM Contract (as relevant) with a reputable counterparty acceptable to City, in its good faith discretion, within 60 days of the relevant Bankruptcy Event; provided, however, that, if Principal Project Company has commenced and is diligently pursuing meaningful steps to secure a replacement D&C Contract, guarantee or IFM Contract (as relevant) immediately after the Bankruptcy Event, Principal Project Company shall have such additional period of time, up to a maximum period of 120 days after the Bankruptcy Event;

(B) in the absence of entering into a replacement D&C Contract, Principal Project Company otherwise demonstrates to the satisfaction of City, in its good faith discretion, that Principal Project Company possesses the technical and financial capacity to perform all remaining D&C Work in accordance with this Agreement; or

(C) in the absence of entering into a replacement IFM Contract, Principal Project Company otherwise demonstrates to the satisfaction of City, in its good faith discretion, that Principal Project Company possesses the technical and financial capacity to perform all remaining IFM Services in accordance with this Agreement;

(n) Principal Project Company draws against any custodial account, trust account, allowance or other reserve or account in violation of the Contract Documents or makes a false or materially misleading representation in connection with a draw against any such account, allowance or reserve;

(o) Principal Project Company fails to comply with applicable Regulatory Approvals or Laws, including the Laws described in Exhibit 16 (Federal, State and City Requirements) in any material respect;

(p) any use of the Project by any PPC-Related Entity that violates requirements of applicable Regulatory Approvals or Laws or otherwise is not permitted under the Contract Documents;

(q) any D&C Contract or IFM Contract is terminated (other than non-default termination on its scheduled termination date) and Principal Project Company has not either:

(i) entered into a replacement D&C Contract or IFM Contract (as relevant) with a reputable counterparty acceptable to City, in its good faith discretion, within 60 days of the termination of the relevant D&C Contract or IFM Contract (as relevant); provided, however, that, if Principal Project Company has commenced and is diligently pursuing meaningful steps to secure a replacement D&C Contract or IFM Contract (as relevant) immediately after the termination, Principal Project Company shall have such additional period of time, up to a maximum period of 120 days after the termination; or

(ii) in the absence of entering into a replacement IFM Contract, Principal Project Company otherwise demonstrates to the satisfaction of City, in its good faith discretion, that Principal Project Company possesses the technical and financial capacity to perform all remaining IFM Services in accordance with this Agreement;

(r) a Persistent PPC Default occurs, City delivers to Principal Project Company a Default Notice, and either (i) Principal Project Company fails to deliver to City, within 30 days after such Notice is delivered, a cure plan meeting the requirements for approval in Section 15.8 (Cure Plan for Persistent PPC Default) or (ii) Principal Project Company fails to fully comply with the schedule or specific elements of, or actions required under, the approved cure plan;

(s) after any rights of appeal have been exhausted, Principal Project Company, any PPC-Related Entity or any Subcontractor (i) is determined to be disqualified, suspended or debarred, or otherwise excluded from bidding, proposing or contracting with a federal, State, or City department or agency, or (ii) has not dismissed any Subcontractor whose work is not substantially complete and who is determined to be disqualified, suspended or debarred, or otherwise excluded from bidding, or proposing or contracting with a federal, State, or City department or agency; or

(t) In the event that LEED BD+C Gold Rating, including the mandatory 12x EAc2 Optimize Energy Performance credits, is not obtained within 24 months after the Final Acceptance Date, other than as a sole and direct result of any affirmative act or omission of City or unless unreasonably withheld by USGBC or an equivalent body.

16.1.2 Default Notice and Cure Periods

16.1.2.1 Principal Project Company shall promptly:

(a) provide Notice to City upon the occurrence of a PPC Default; and

(b) take steps to commence the cure of and mitigate the effects of any PPC Default.

16.1.2.2 If Principal Project Company notifies City of a PPC Default in accordance with Section 16.1.2.1 or City considers a PPC Default has occurred, City may give PPC a Notice ("**Default Notice**") which contains:

(a) details of the PPC Default;

(b) the cure period (if any) by which Principal Project Company shall cure the PPC Default in accordance with Section 16.1.2.3; and

(c) if the PPC Default is not capable of being cured or no cure period is applicable, a date by which Principal Project Company shall comply with any requirements of City in connection with that PPC Default.

16.1.2.3 The following list identifies Principal Project Company's rights to receive Notice and opportunity to cure before City may exercise its right to terminate this Agreement or enforce its Performance Bond in accordance with Section 16.2.7 (Performance Bond), and identifies other PPC Defaults that are not subject to cure:

(a) respecting any PPC Default under Sections 16.1.1(h) or 16.1.1(m), a period of 15 days after delivery by City to Principal Project Company of a Default Notice;

(b) respecting a PPC Default under Sections 16.1.1(a), 16.1.1(b), 16.1.1(d), 16.1.1(i), 16.1.1(n), 16.1.1(o), or 16.1.1(p), a cure period of 30 days after City delivers to Principal Project Company a Default Notice; provided that City may effect cure, at Principal Project Company's expense, if a PPC Default under Section 16.1.1(g) continues beyond five days after such Notice is delivered;

(c) respecting a PPC Default under Sections 16.1.1(f), 16.1.1(j) or 16.1.1(k), a cure period of 30 days after City delivers to Principal Project Company a Default Notice; provided that:

(i) if the nature of such PPC Default is such that the cure cannot with diligence be completed within such time period and Principal Project Company has commenced and is diligently pursuing meaningful steps to cure immediately after receiving the Default Notice, Principal Project Company shall have such additional period of time, up to a maximum cure period of 60 days after City delivers the Default Notice, as is reasonably necessary to diligently effect cure; and

(ii) as to Section 16.1.1(f), cure will be regarded as complete when the adverse effects of the breach are cured;

(d) respecting a PPC Default under Sections 16.1.1(c), 16.1.1(e), 16.1.1(l), 16.1.1(q), 16.1.1(r), or 16.1.1(s), no cure period is allowed; and

(e) respecting a PPC Default under Section 16.1.1(t), a cure period of 30 days after City delivers to Principal Project Company a Default Notice, provided that if the nature of such PPC Default is such that the cure cannot with diligence be completed within such time period and Principal Project Company has commenced and is diligently pursuing meaningful steps to cure immediately after receiving the Default Notice, Principal Project Company shall have such additional period of time, up to a maximum cure period of 365 days after City delivers the Default Notice, as is reasonably necessary to diligently effect cure.

16.1.3 Warning Notices

16.1.3.1 Without prejudice to any other right or remedy available to City, City may deliver a Notice (a "**Warning Notice**") to Principal Project Company, with a copy to the Collateral Agent, stating explicitly that it is a "Warning Notice" of a material PPC Default and stating in reasonable detail the matter or matters giving rise to the Warning Notice and, if applicable, amounts due from Principal Project Company, whenever there occurs a PPC Default.

16.1.3.2 If City issues a Warning Notice for any PPC Default after it issues a Default Notice, then the remaining cure period available to Principal Project Company, if any, for such PPC Default before City may terminate this Agreement on account of such PPC Default will be extended by the time period between the date the Default Notice was issued and the date the Warning Notice is issued. However, this shall not affect the time when City may exercise any remedy other than termination respecting such PPC Default.

16.1.4 Principal Project Company to Comply with Default Notice and Provide Cure Plan

16.1.4.1 If City gives a Default Notice to Principal Project Company, then:

(a) Principal Project Company shall comply with the Default Notice;

(b) Except for a PPC Default under Sections 16.1.1(b), 16.1.1(e), 16.1.1(i), 16.1.1(m), 16.1.1(q), and 16.1.1(r), and PPC Defaults for which no cure period is applicable, Principal Project Company shall, as soon as possible, give City a plan for review and approval in accordance with Exhibit 11 (Submittal Review Process) to cure the PPC Default and comply with any requirements of City in accordance with the terms of City's Default Notice (which plan shall also specify steps to address the underlying cause of the PPC Default and to avoid similar PPC Defaults occurring in the future);

(c) The Parties shall consult to develop and agree to the cure plan; and

(d) Following agreement or determination of the cure plan, Principal Project Company shall implement and comply with the cure plan. Any failure to implement the cure plan or comply with the agreed cure plan will result in a PPC Default which is not subject to any cure period.

16.1.4.2 In the case of a Persistent PPC Default, Principal Project Company shall comply with Section 15.8 (Cure Plan for Persistent PPC Default).

16.2 City Remedies for PPC Default

16.2.1 Subject to the rights of Lenders under any Direct Agreement, upon occurrence of a PPC Default that has not been cured within the applicable cure period, if any, City may:

(a) Terminate this Agreement as provided in Section 17.3 (Termination for PPC Default);

(b) Exercise its step-in rights in Section 16.2.5 (City Step-In Rights);

(c) Recover any Losses on account of the occurrence of a PPC Default, regardless of when the Default Notice is given, whether the Losses accrue after the occurrence of the PPC Default or whether the PPC Default is subsequently cured;

(d) Where such PPC Default is not cured within the applicable cure period, if any, specified in Section 16.1.2.3 make demand upon and enforce any performance security, and make demand upon, draw on and enforce and collect any letter of credit, guaranty or other payment or performance security (including the Handback Requirements Reserve Account and City's rights to withhold payment) available to City under this Agreement with respect to the PPC Default in any order, in City's sole discretion, without Notice to Principal Project Company. City will apply the proceeds of any such action to the satisfaction of Principal Project Company's obligations under this Agreement, including payment of amounts due City;

(e) Suspend the Work in whole or part in accordance with Section 16.2.8 (Suspension of Work); or

(f) Exercise any other remedies available under this Agreement or at law or in equity.

16.2.2 Each right and remedy of City upon the occurrence of a PPC Default is cumulative as set out in Section 16.2.10 (Cumulative, Non-Exclusive Remedies).

16.2.3 Immediate City Entry and Cure of Wrongful Use

Without Notice and without awaiting lapse of the period to cure, in the event of any PPC Default under Section 16.1.1(p), City may enter and take control of the relevant portion of the Project to restore the permitted uses and reopen and continue operations for the benefit of the public, until such breach is cured or City terminates this Agreement; provided, however, that the foregoing shall be subject to the rights of Lenders under any Direct Agreement except in the event of an Emergency, an imminent safety risk, an unauthorized use of the Project by Principal Project Company or a PPC Default that materially precludes the use of the Project by City in the manner contemplated under this Agreement. Principal Project Company shall pay to City on demand City's Recoverable Costs in connection with such action, which payment will be reimbursed by City if a determination is ultimately made that no PPC Default occurred, promptly following such a determination. So long as City undertakes such action in good faith, even if under a mistaken belief in the occurrence of such a PPC Default, such action shall not be deemed unlawful or a breach of this Agreement, shall not expose City to any liability to Principal

Project Company, other than the reimbursement obligation described above, and shall not entitle Principal Project Company to any other remedy except if City's action constitutes gross negligence, recklessness or willful misconduct. Principal Project Company acknowledges that City has a high priority, paramount public interest in maintaining the authorized uses of the Project and continuous access to the Project. City's good faith determination that such action is needed shall be deemed conclusive in the absence of clear and convincing evidence to the contrary. City will promptly relinquish control and possession of the relevant portion of the Project to Principal Project Company once City determines that such PPC Default has been cured.

16.2.4 Remedies for Failure to Meet Safety Standards or Perform Safety Compliance

16.2.4.1 If at any time Principal Project Company or its Surety fails to meet any Safety Standard or timely perform Safety Compliance or if City and Principal Project Company cannot reach an agreement regarding the interpretation or application of a Safety Standard or the valid issuance of a Safety Compliance Order within a period of time acceptable to City, City may undertake or direct Principal Project Company to undertake any work required to ensure implementation of and compliance with Safety Standards as interpreted or applied by City or with the Safety Compliance Order. If at any time a condition or deficiency of the Project violates any Law respecting health, safety or right of use and access, including the Americans with Disabilities Act of 1990, 42 U.S.C. Sections 12101 et seq., and regulations of the United States Occupational Safety and Health Administration (OSHA), City may take any immediate corrective actions required.

16.2.4.2 Subject to Section 16.2.4.3, to the extent that any work done under Section 16.2.4.1 is undertaken by City and is reasonably necessary to comply with Safety Standards, perform valid previously issued Safety Compliance Orders or correct a violation of Law or a Regulatory Approval respecting health, safety or right of use and access, Principal Project Company shall pay to City on demand the costs of such work including City's Recoverable Costs in connection with such work. In such event, City (whether it undertakes the work or has directed Principal Project Company to undertake the work) shall have no obligation or liability to compensate Principal Project Company for any Losses Principal Project Company suffers or incurs arising from, resulting to or resulting from such work.

16.2.4.3 To the extent that City requires Principal Project Company to perform Work under Section 16.2.4.1 that is not reasonably necessary to comply with Safety Standards, perform valid previously issued Safety Compliance Orders or correct a violation of Law or Regulatory Approval respecting health, safety or right of use and access, such requirement shall be considered a City Change, and Principal Project Company's obligation to pay City's Recoverable Costs shall not include City's costs relating to the City Change.

16.2.4.4 Notwithstanding anything to the contrary contained in this Agreement and without limiting City's other rights and remedies under this Agreement, City shall have the rights and remedies specified in Section 16.2.4.5 if, in the good faith judgment of City:

(a) Principal Project Company has failed to meet any Safety Standards or perform Safety Compliance and the failure results in an Emergency or danger to persons or property; or

(b) Principal Project Company is not then diligently taking all necessary steps to rectify or deal with such Emergency or danger.

16.2.4.5 Upon the occurrence of any event described in Section 16.2.4.4, City may without Notice and without awaiting lapse of the period to cure any breach:

(a) immediately take such action as may be reasonably necessary to rectify the Emergency or danger, in which event Principal Project Company shall pay to City on demand the cost of such action, including City's Recoverable Costs, which payment will be reimbursed by City if a determination is ultimately made that Principal Project Company did not fail to meet applicable Safety Standards or to perform Safety Compliance; or

(b) suspend Work and/or close or cause to be closed any and all portions of Project affected by the Emergency or danger.

16.2.4.6 So long as City undertakes any action under Section 16.2.4.5 in good faith, even if under a mistaken belief in the occurrence of such failure or existence of an Emergency or danger, such action shall not be deemed unlawful or a breach of this Agreement, shall not expose City to any liability to Principal Project Company, other than the reimbursement obligation described in Section 16.2.4.5, and shall not entitle Principal Project Company to any other remedy, except if City's action was undertaken in bad faith or constitutes gross negligence, recklessness or willful misconduct.

16.2.4.7 Principal Project Company acknowledges that City has a high priority, paramount public interest in protecting public and worker safety at the Project and adjacent areas. City's good faith determination of the existence of such a failure, Emergency or danger shall be deemed conclusive in the absence of clear and convincing evidence to the contrary. Immediately following rectification of such Emergency or danger, as determined by City, City will allow the Work to continue or such portions of the Project to reopen, as applicable.

16.2.5 City Step-in Rights

16.2.5.1 If Principal Project Company has not fully and completely cured a PPC Default by the expiration of the applicable cure period, if any, City may, subject to the terms of any Direct Agreement and in accordance with the terms and conditions of this Section 16.2.5 (City Step-in Rights), pay and perform all or any portion of Principal Project Company's obligations under the Contract Documents that are the subject of such PPC Default.

16.2.5.2 Upon exercising its rights pursuant to Section 16.2.5.1, City may, to the extent necessary to cure a PPC Default:

(a) perform or attempt to perform, or cause to be performed, such Work;

(b) employ security guards and other safeguards to protect the Project;

(c) spend such sums as City deems reasonably necessary to employ and pay such architects, engineers, consultants and contractors and obtain materials and equipment as may be required to perform such Work, without obligation or liability to Principal Project Company or any Contractors for loss of

opportunity to perform the same Work or supply the same materials and equipment;

(d) in accordance with Section 16.2.7 (Performance Bond), draw on and use proceeds from the Performance Bond and any other available security or source of funds available to Principal Project Company for the purposes set forth in this Section 16.2.5.2 including amounts held in an operating account, to the extent such instruments provide recourse to pay such sums, provided City's right to access amounts held in an operating account shall not include a security interest in such funds nor shall the exercise of such right by City interfere with the right of the Lenders, if any, under the Security Documents and the Direct Agreement to access such funds;

(e) execute all applications, certificates and other documents as may be required;

(f) make decisions respecting, assume control over and continue Work as may be reasonably required;

(g) modify or terminate any contractual arrangements in Principal Project Company's Contracts in City's sole discretion, without liability for termination fees, costs or other charges in accordance with the terms of those Contracts, including the requirements for each Contract listed in Section 9.3.2 (Key Contract Provisions);

(h) meet with, coordinate with, direct and instruct Contractors and Suppliers, process invoices and applications for payment from Contractors and Suppliers, pay Contractors and Suppliers, and resolve claims of Contractors and Suppliers;

(i) take any and all other actions it may consider necessary to effect cure and perform the Work; and

(j) prosecute and defend any action or proceeding incident to the Work.

16.2.5.3 Principal Project Company shall reimburse City on demand for its Recoverable Costs incurred in connection with the performance of any act or work authorized by this Section 16.2.5 (City Step-in Rights).

16.2.5.4 In addition to its continuing ownership of the Project Site and rights to have access to the Project Site throughout the Term, including the rights described in Section 6.7 (Coordination, Cooperation and Access), City and its Authorized Representatives, contractors, subcontractors, vendors and employees shall have the right to enter onto all Temporary Areas, exercisable at any time or times without Notice, for the purpose of carrying out City's step-in rights under Section 16.2.3 (Immediate City Entry and Cure of Wrongful Use) and this Section 16.2.5 (City Step-in Rights). Principal Project Company grants City a perpetual, non-rescindable right of entry onto the Temporary Areas for such purpose.

16.2.5.5 If City exercises any right to pay or perform under this Section 16.2.5 (City Step-in Rights), it nevertheless shall have no liability to Principal Project Company for the sufficiency, adequacy or quality of any such payment or performance, or for any effect of such payment or

performance on the Work or the Project, unless caused by the gross negligence, recklessness or willful misconduct of City. City and its Authorized Representatives, contractors, subcontractors, vendors and employees shall have no liability to Principal Project Company for any inconvenience or disturbance arising out of any entry onto the Project Site or Temporary Areas as contemplated by Section 16.2.3 (Immediate City Entry and Cure of Wrongful Use) or this Section 16.2.5 (City Step-in Rights), provided that the foregoing shall not absolve any Person of liability as a matter of law for its gross negligence, recklessness or willful misconduct.

16.2.5.6 City's rights under this Section 16.2.5 (City Step-in Rights) (but not City's rights under Section 16.2.3 (Immediate City Entry and Cure of Wrongful Use) regarding City's immediate right of entry and right to cure wrongful use of the Project) are subject to the right of any Surety to assume performance and completion of all bonded work under a Performance Bond.

16.2.5.7 If City takes action described in this Section 16.2.5 (City Step-in Rights) and it is later finally determined that City lacked the right to do so because there did not occur a PPC Default or because Principal Project Company had previously fully cured the default in accordance with this Agreement, then City's action shall be treated as a City Change.

16.2.6 Damages; Offset

16.2.6.1 Except as limited by City's agreement to liquidate certain damages as specified in this Agreement, and subject to the limitations in Section 16.6 (Limitation on Consequential Damages), City shall be entitled to recover any and all damages available at law on account of the occurrence of a PPC Default. Principal Project Company shall owe any such damages that accrue after the occurrence of PPC Default regardless of when Default Notice is given or whether PPC Default is subsequently cured.

16.2.6.2 In the case of a termination for PPC Default, City may deduct and offset any damages owing to it under the Contract Documents from and against any amounts City may owe to Principal Project Company. If the amount of damages owing to City is not liquidated or known with certainty at the time a payment is due from City to Principal Project Company with respect to such termination for a PPC Default, City may deduct and offset the amount it reasonably estimates will be due, subject to City's obligation to adjust such deduction or offset when the amount of damages owing to City is liquidated or becomes known with certainty.

16.2.6.3 Damages owed to City under this Section 16.2.6 (Damages; Offset) shall bear interest at the Late Payment Rate from and after the date any amount becomes due to City until the date paid.

16.2.6.4 Without limiting Section 16.2.6.2:

(a) the amount of any damages attributable to Principal Project Company may be deducted or offset from periodic payments owing by City under Section 11.1 (Milestone Payment) (including damages attributable to any PPC Default that concerns the D&C Work and is the subject of a Notice delivered to Principal Project Company before the date such payments are owing), subject to Section 2.4 of Exhibit 4A (Milestone Payment Mechanism); and

(b) the amount of any damages attributable to Principal Project Company may be deducted or offset from the Availability Payments (including damages

attributable to any PPC Default), provided that in certain cases damages are liquidated by the Deductions under Exhibit 4B (Availability Payment Mechanism).

16.2.6.5 If the amount of damages owing to City from Principal Project Company is not liquidated or known with certainty at the time the payment is due, City may deduct and offset up to 105% of the amount it reasonably estimates will be due, in which case, the Parties shall adjust such deduction or offset when the amount of damages owing to City becomes known with certainty, with interest at the Late Payment Rate payable by City on excess amounts withheld and interest at the same rate payable by Principal Project Company on any shortfall.

16.2.6.6 City's right of offset includes all amounts paid by City to satisfy, discharge and defend against any claim of lien, stop Notice, equitable lien or any other demand for payment or security made or filed with City, City's property or the Project by any Person claiming that any PPC-Related Entity has failed to perform its contractual obligations or to make payment for any obligation incurred for or in connection with the Work, provided that no such offset shall be made if Principal Project Company has filed surety bonds fully releasing City and City's property from such claim or lien under applicable Law.

16.2.7 Performance Bond

16.2.7.1 Subject to Sections 10.5.2 and 16.2.6.2, upon the occurrence of a PPC Default and expiration, without full and complete cure, of the applicable cure period, if any, under Section 16.1.2 (Default Notice and Cure Periods), without waiving or releasing Principal Project Company from any obligations or limiting other remedies that may be available to City, City may make demand upon and enforce any Performance Bond, and make demand upon, draw on and enforce and collect any letter of credit, guaranty or other payment or performance security available to City under this Agreement with respect to such PPC Default in any order. City will apply the proceeds of any such action to the satisfaction of Principal Project Company's obligations under this Agreement, including payment of amounts due to City.

16.2.7.2 If City is an additional obligee under a Performance Bond, or is a transferee beneficiary under any letter of credit or guaranty, then City will forbear from exercising remedies as additional obligee or transferee beneficiary so long as Principal Project Company or the Collateral Agent commences the good faith, diligent exercise of remedies within 10 days after City delivers Notice to Principal Project Company and the Collateral Agent of City's intent to make a claim under such security, letter of credit or guaranty and subsequently continues such good faith, diligent exercise of remedies until the default is cured.

16.2.7.3 Section 16.2.7.2 shall not apply where access to a bond, letter of credit, guaranty or other payment or performance security is for the purpose of satisfying damages owing to City, in which case City shall be entitled to make demand, draw, enforce and collect regardless of whether PPC Default is subsequently cured.

16.2.7.4 City will provide Notice to Principal Project Company at the same time or promptly after City takes any action to make demand upon, draw on, enforce or collect any Performance Bond.

16.2.8 Suspension of Work

16.2.8.1 Subject to the rights of the Lenders as provided in the Direct Agreement, in addition to any other right to suspend the Work under the Contract Documents, City may suspend all or part of the Work by Notice to Principal Project Company if Principal Project Company fails to cure and correct, within the applicable cure period available to Principal Project Company (if any), the following:

(a) failure to perform the Work in compliance with the Contract Documents, where such failure is not substantially cured within 15 days after City delivers Notice thereof to Principal Project Company;

(b) failure to comply with any Law or Regulatory Approval (including failure to implement protective measures for Threatened or Endangered Species, failure to handle, preserve and protect paleontological and cultural (including archaeological and historic) resources, or failure to handle Hazardous Materials, in accordance with applicable Laws and Regulatory Approvals);

(c) performance of Design Work before achieving all conditions in Section 7.4.3 (Commencement of Non-Construction Work), or performance of Construction Work before all conditions precedent to commencement of Construction Work have been met;

(d) discovery of Nonconforming Work not corrected within 15 days after City delivers Notice of such Nonconforming Work to Principal Project Company or, if correction will require more than 15 days, failure of Principal Project Company to deliver to City, within 15 days of said Notice, a plan acceptable to City for correction of the Nonconforming Work or to diligently execute and complete such plan;

(e) failure to pay in full when due sums owing to any Contractor or Supplier for services, materials or equipment, except only for retainage provided in the relevant Contract and amounts in dispute, which amounts in dispute may include amounts withheld on account of damage caused by such Contractor or Supplier or arising out of such Contractor or Supplier's failure to comply with the relevant Contract;

(f) failure to provide proof of required insurance coverage under Section 10.1.2.4 (Verification of Coverage);

(g) failure to deliver or maintain Payment Bonds or Performance Bonds;

(h) the existence of conditions unsafe for workers, other Project personnel or the general public, including failures to comply with Safety Standards or perform Safety Compliance in accordance with Section 16.2.4 (Remedies for Failure to Meet Safety Standards or Perform Safety Compliance) (and in any such case the order of suspension may be issued without awaiting any cure period);

(i) failure to carry out and comply with Unilateral Change Orders, where such failure is not substantially cured within 15 days after City delivers Notice thereof to Principal Project Company; and

(j) for the reasons specified in Sections 9.8.6, 10.1.2.4(c) and 16.2.4.4.

16.2.8.2 In addition to the protections from liability under Section 16.2.4.6, City shall have no liability to Principal Project Company, and Principal Project Company shall have no right to make any Claim against City, due to any suspension under Section 16.2.8.1

16.2.8.3 City shall have the right and authority to order suspension of Work, in whole or in part, for reasons other than those in Section 16.2.8.1 If City purports to order suspension of Work under Section 16.2.8.1 but it is finally determined under the Contract Dispute Procedures that no grounds under Section 16.2.8.1 exist for such suspension, then it shall be deemed a suspension under this Section 16.2.8.3

16.2.8.4 Principal Project Company shall promptly comply with any such suspension order, even if Principal Project Company disputes the grounds for suspension. Principal Project Company shall promptly recommence the Work upon receipt of Notice from City directing Principal Project Company to resume work. City will lift the suspension order promptly after Principal Project Company fully cures and corrects the applicable breach or failure to perform or any other reason for the suspension order ceases to apply.

16.2.8.5 Without limiting Principal Project Company's rights with respect to a Compensable Delay Event under clause (q) of the definition thereof or a Compensable Relief Event under clause (p) of the definition thereof, in case of suspension of work for any cause, Principal Project Company shall be responsible for the Project and shall take such precautions as may be necessary to prevent loss or damage to the materials, equipment and Work, provide for normal drainage and shall erect any necessary temporary structures, signs, or other facilities at Principal Project Company's expense.

16.2.9 Other Rights and Remedies

City shall also be entitled to exercise any other rights and remedies available under this Agreement, or available at law.

16.2.10 Cumulative, Non-Exclusive Remedies

Subject to the exception specified in Section 16.1.1(j) regarding failures that constitute a Noncompliance Event or Failure Event not being considered defaults under Section 16.1.1(j), each right of City under this Agreement shall be cumulative and shall be in addition to every other right provided under this Agreement or at law, and the exercise or beginning of the exercise by City of any one or more of any of such rights or remedies shall not preclude the simultaneous or later exercise by City of any or all other such rights or remedies.

16.3 Default by City; Cure Periods

16.3.1 City Default

City shall be in breach under this Agreement upon the occurrence of any one or more of the following events or circumstances (each a "**City Default**"):

(a) City fails to make any payment due to Principal Project Company under this Agreement when due, provided that such payment is not subject to a Contract Dispute;

(b) City ceases to be legally authorized to make any undisputed payment to the Principal Project Company under this Agreement; provided, however, that a failure to appropriate or an injunction or other legal or administrative constraint on making such payment shall not be considered a City Default; or

(c) any representation or warranty made by City to Principal Project Company in the Agreement is false in any material respect, materially misleading or inaccurate in any material respect when made or omits material information when made.

16.3.2 Cure Periods

City shall have the following cure periods to cure City Defaults:

16.3.2.1 Respecting a City Default under Section 16.3.1(a), a period of 45 days after Principal Project Company delivers to City Notice of such City Default; and

16.3.2.2 Respecting a City Default under Section 16.3.1(c), a period of 90 days after Principal Project Company delivers to City Notice of such City Default; provided that:

(a) if the City Default is of such a nature that the cure cannot with diligence be completed within such time period and City has commenced meaningful steps to cure promptly after receiving the default Notice, City shall have such additional period of time, up to a maximum cure period of 180 days, as is reasonably necessary to diligently effect cure; and

(b) cure will be regarded as complete when the adverse effects of the breach are cured.

16.4 Principal Project Company Remedies for City Breach

16.4.1 Termination

Refer to Section 17.4 (Principal Project Company Rights to Terminate) for provisions regarding Principal Project Company's right to terminate for City Default.

16.4.2 Interest on Late Payment

If City fails to make payments of undisputed Availability Payments or the Milestone Payment that are due and owing to Principal Project Company under this Agreement, then Principal Project Company shall be entitled to interest at the Late Payment Rate commencing 90 days after the due date thereof in accordance with Section 11.7 (Interest on Late Payments and Overpayments).

16.4.3 Limitations on Remedies

16.4.3.1 Principal Project Company shall have no right to seek, and irrevocably waives and relinquishes any right to, non-monetary relief against City, except for (a) any sustainable action for relief available in mandamus, (b) any sustainable action to stop, restrain or enjoin use, reproduction, duplication, modification, adaptation or disclosure of PPC Intellectual Property in violation of the licenses granted, or to specifically enforce City's duty of confidentiality, under Section 21.4 (Intellectual Property), (c) declaratory relief under the Contract Dispute Procedures declaring the rights and obligations of the Parties under the Contract Documents, or (d) declaratory relief under the Contract Dispute Procedures declaring specific terms that shall bind the Parties.

16.4.3.2 If City wrongfully withholds an approval or consent required under this Agreement, or wrongfully issues an objection to or disapproval of a Submittal or other matter under this Agreement, Principal Project Company's sole remedies against City shall be compensation and extensions of time, each to the extent provided in Articles 13 (General Provisions Applying to Delay Events and Relief Events) and 14 (Compensation and Other Relief for Delay Events and Relief Events). Principal Project Company shall have no right to suspend Work.

16.4.4 Remedies at Law and in Equity

Subject to Section 16.4.3 (Limitations on Remedies) and except as specifically provided otherwise in this Agreement, upon breach of this Agreement by City, Principal Project Company may exercise any remedies available at law or in equity.

16.4.5 Principal Project Company Right to Suspend

Principal Project Company may suspend Work based on City's failure, after required Notice and the expiration of the applicable cure period, to pay undisputed amounts owing to Principal Project Company with a cumulative value of $1,000,000 or more, subject to the following:

(a) Principal Project Company shall provide City with Notice regarding its intent to suspend at least 30 days before implementing the suspension, and may implement the suspension only if the breach remains uncured as of the suspension date; and

(b) a suspension by Principal Project Company under this Section 16.4.5 (Principal Project Company Right to Suspend) shall be deemed to be a suspension of Work order issued by City for its convenience under Section 16.2.8.2, and the suspension order shall be deemed lifted upon Principal Project Company's receipt of payment in full of all undisputed amounts owing.

16.5 No Duplicative Payment

Notwithstanding any other provisions of this Agreement to the contrary, neither Party shall be entitled to recover compensation or make a claim under this Agreement with respect to any loss that it has incurred to the extent that it has already been compensated with respect to that loss under this Agreement or otherwise.

16.6 Limitation on Consequential Damages

16.6.1 Except as stated here, Principal Project Company shall have no liability to City for any type of special, consequential, or incidental damages arising out of or connected with Principal Project Company's performance of the Work. This limit of liability applies under all circumstances including the breach, completion, termination, suspension or cancellation of the services under this Agreement, and negligence or strict liability of Principal Project Company. This limit of liability, however, shall not apply to, limit or preclude:

(a) Principal Project Company's obligation to pay liquidated damages as set forth in the Contract Documents, including any credits, deductions or offsets for failure to meet performance requirements or pursuant to the noncompliance/deduction regime;

(b) damages caused by a PPC Fault (other a PPC Fault that is a breach by a PPC-Related Entity of any obligations under the Contract Documents);

(c) Principal Project Company's obligations to indemnify, defend and hold City and other Indemnities harmless for Third Party Claims as set forth in the Contract Documents;

(d) Principal Project Company's liability damages that fall within the insurance coverages required under this Agreement;

(e) Principal Project Company's liability for statutory damages imposed by City as a Governmental Entity under applicable Law;

(f) statutory fines, penalties, and statutory damages, including punitive damages, treble damages, and statutory attorney fees and costs, including those due as a result of violations of environmental regulations and laws;

(g) amounts that Principal Project Company is obligated to reimburse City under the express provisions of this Agreement, including any Recoverable Costs and any express interest thereon;

(h) damages and other liability arising under claims by Third Parties for loss or damage to property or personal injuries, including wrongful death; or

(i) damages and other liability for infringement of any Intellectual Property right.

ARTICLE 17. TERMINATION

17.1 Termination for Convenience; Condemnation

17.1.1 City may terminate this Agreement in whole, but not in part, if City determines in its sole discretion that termination is in City's best interest (a "**Termination for Convenience**").

17.1.2 City may exercise a Termination for Convenience by delivering to Principal Project Company a Notice of Termination for Convenience specifying the election to terminate and its effective date, which shall not be earlier than 30 days after the date of delivery of such Notice.

17.1.3 In the event of a Termination for Convenience, City shall pay compensation to Principal Project Company (or to the Collateral Agent as provided in the Direct Agreement) in an amount (without double counting) equal to:

(a) (i) all amounts shown in the Financial Model as payable by Principal Project Company to Equity Members from the Early Termination Date, either as Distributions on Committed Investments or as payments of interest or repayments of principal made by Principal Project Company in respect of Equity Members Funding Agreements, each amount discounted back at the Equity IRR from the date on which it is shown to be payable in the Financial Model to the date on which the Termination Compensation is paid, minus (ii) Deferred Equity Amounts, discounted back at the Equity IRR from the date on which it is shown to be payable in the Financial Model to the date on which the Termination Compensation is paid; plus

(b) Lenders' Liabilities; plus

(c) PPC Employee and Contractor Breakage Costs; minus

(d) Account Balances; minus

(e) Insurance Proceeds; minus

(f) any Deductions to the extent not deducted in full from the Milestone Payment or Quarterly Availability Payments.

17.1.4 If:

(a) City confiscates, sequesters, condemns or appropriates the PPC's Interest or any material part thereof; or

(b) as a direct result of a City ordinance Principal Project Company is unable to perform all or substantially all of its obligations under the Contract Documents for a period of 180 consecutive days or more,

then this Agreement shall be deemed terminated for convenience and City shall pay compensation to Principal Project Company in the amount described in Section 17.1.3.

17.2 Termination for Force Majeure Termination Events or Insurance Unavailability

17.2.1 Notice of Conditional Election to Terminate – Force Majeure Termination Events

Subject to Section 17.2.2, either Party may deliver to the other Party Notice of its conditional election to terminate this Agreement ("**Notice of Conditional Termination**") if a Force Majeure Event (excluding a Force Majeure Event under clauses (i) or (j) of the definition of Force Majeure Event) ("**Force Majeure Termination Event**") has occurred and:

(a) (i) the Notice of Conditional Termination is delivered before the Substantial Completion Date; (ii) as a direct result of the Force Majeure Termination Event, Principal Project Company is unable to perform all or substantially all of its obligations under the Contract Documents for a period of 255 consecutive days or more; and (iii) such inability to perform its obligations is not attributable to a concurrent non-Force Majeure Termination Event; or

(b) (i) the Notice of Conditional Termination is delivered on or after the Substantial Completion Date; (ii) as a direct result of the Force Majeure Termination Event, all or substantially all of the Project has become and remains inoperable for a period of 255 consecutive days or more; and (iii) such suspension of operations is not attributable to another concurrent non-Force Majeure Termination Event; and

(c) Principal Project Company could not have mitigated or cured such result through the exercise of diligent efforts; and

(d) such result is continuing at the time of delivery of the written Notice; and

(e) the written Notice sets forth in reasonable detail a description of the Force Majeure Termination Event, a description of the direct result and its duration, and a statement that the notifying Party's intends to terminate this Agreement.

17.2.2 No Right to Termination Election

Notwithstanding the foregoing, if, following the occurrence of any Force Majeure Termination Event that results in damage or partial destruction of the Project:

(a) the conditions listed in Section 17.2.1 (Notice of Conditional Election to Terminate – Force Majeure Termination Events) are satisfied;

(b) insurance proceeds are available to fund work required to remedy the effects of the Force Majeure Termination Event; and

(c) the Parties agree to a restoration plan in respect of such work required to remedy the effect of the Force Majeure Termination Event,

then neither Party shall have the right to elect to terminate this Agreement pursuant to Section 17.2.1 (Notice of Conditional Election to Terminate – Force Majeure Termination Events).

17.2.3 Principal Project Company Options Upon City Notice

17.2.3.1 If City delivers a Notice of Conditional Termination, Principal Project Company shall have the option either to accept such Notice or to continue this Agreement in effect by delivering to City Notice of Principal Project Company's choice not later than 30 days after City delivers its Notice. If Principal Project Company does not deliver such Notice within such 30 day period, then Principal Project Company shall be deemed to have accepted City's election to terminate this Agreement.

17.2.3.2 If Principal Project Company delivers timely Notice under Section 17.2.3.1 choosing to continue this Agreement in effect, then:

(a) City shall have no obligation to compensate Principal Project Company for any Extra Work Costs, Financing Delay Costs, Delay Costs, costs of restoration, repair or replacement arising out of the Force Majeure Termination Event and incurred after the date on which City gives written Notice of conditional election to terminate under this Section 17.2 (Termination for Force Majeure Events or Insurance Unavailability), except as provided in Section 17.2.3.2(b);

(b) if the Force Majeure Termination Event occurred before the Substantial Completion Date and resulted in a Relief Event Delay, Principal Project Company shall be entitled to an extension of the applicable deadlines in accordance with Section 14.1.2 (Extension of Deadlines for General Delay Events); and

(c) this Agreement shall continue in full force and effect and City's election to terminate shall not take effect.

17.2.4 City Options Upon Principal Project Company Notice

17.2.4.1 If Principal Project Company delivers a Notice of Conditional Termination, including an estimate (with supporting documentation) of the compensation that would be paid or reimbursed to Principal Project Company under Section 17.2.4.2, City shall have the option either: (a) to accept such Notice; or (b) to continue this Agreement in effect if City in its reasonable discretion determines that the Project can be completed or re-opened, as applicable, on a commercially reasonable basis. City shall exercise such option by delivering to Principal Project Company written Notice of City's choice not later than 30 days after Principal Project Company delivers its Notice of Conditional Termination. If City does not deliver such written Notice within such 30-day period, then it shall be conclusively deemed to have accepted Principal Project Company's election to terminate this Agreement.

17.2.4.2 If City delivers timely written Notice under Section 17.2.4.1 choosing to continue this Agreement in effect, then:

(a) subject to Section 13.8 (Burden of Proof and Mitigation), City shall be obligated to pay or reimburse Principal Project Company an amount equal to (without double-counting):

(i) where the Force Majeure Termination Event occurs prior to Substantial Completion, Financing Delay Costs and the Extra Work Costs directly

caused by the Force Majeure Termination Event which are incurred after the date Principal Project Company delivers its written Notice of conditional election to terminate; plus

(ii) where the Force Majeure Termination Event occurs prior to Substantial Completion, Delay Costs which are incurred after the date Principal Project Company delivers its written Notice of conditional election to terminate; plus

(iii) such other amounts so as to result in Principal Project Company achieving the same Equity IRR (with reference to the Base Case Equity IRR) from and after the date Principal Project Company delivers its written Notice of conditional election to terminate as if such Force Majeure Termination Event had not occurred; and

(b) From and after the date which is 255 days after the occurrence of the Force Majeure Termination Event, Principal Project Company shall not be subject to Deductions or Noncompliance Points with respect to such Force Majeure Termination Event; and

(c) this Agreement shall continue in full force and effect and Principal Project Company's election to terminate shall not take effect for the period specified in City's written Notice under this Section 17.2.4 (City Options Upon Principal Project Company Notice) or such longer period as may be mutually agreed to in writing by the Parties.

17.2.5 No Waiver

No election by Principal Project Company under Section 17.2.3 (Principal Project Company Options Upon City Notice) or by City under Section 17.2.4 (City Options Upon Principal Project Company Notice) to continue this Agreement in effect shall prejudice or waive such Party's right to thereafter, at any time, give a Notice of conditional election to terminate with respect to the same or any other Force Majeure Termination Event.

17.2.6 Termination for Insurance Unavailability

If it becomes apparent that insurance required under the Contract Documents is not available as a result of Insurance Unavailability, City may deliver to Principal Project Company Notice of its election to terminate this Agreement for Insurance Unavailability and the effective date of the termination, which shall not be earlier than 30 days after the date of delivery of such Notice. Such Notice shall include reasonable details regarding the affected coverages and associated risks, as well as the estimated cost of premiums if Commercially Reasonable Insurance Rates are not available. In the event of a termination for Insurance Unavailability, City shall pay compensation to Principal Project Company (or to the Collateral Agent as provided in the Direct Agreement) calculated in accordance with Section 17.2.8 (Termination Compensation for Force Majeure Termination Events and Insurance Unavailability).

17.2.7 Concurrent Notices

If City and Principal Project Company deliver concurrent Notices of Conditional Termination under this Section 17.2 (Termination for Force Majeure Termination Events or Insurance Unavailability), Principal Project Company's Notice shall prevail. Notices shall be deemed to be concurrent if each Party sends its Notice before actually receiving the Notice from the other Party. Knowledge of the other Party's Notice obtained before actual receipt of the Notice shall have no effect on determining whether concurrent Notice has occurred.

17.2.8 Termination Compensation for Force Majeure Termination Events and Insurance Unavailability

If either Party accepts, or is deemed to accept, the other Party's conditional election to terminate under Section 17.2.3 (Principal Project Company Options Upon City Notice) or Section 17.2.4 (City Options Upon Principal Project Company Notice), as applicable, then this Agreement shall be deemed terminated on an Early Termination Date that is 30 days after the date of acceptance or deemed acceptance of the conditional election to terminate; and Principal Project Company will be entitled to compensation calculated as follows (calculated at the Early Termination Date and without double-counting):

(a) an amount equal to its Equity Investments less Distributions paid to the Equity Members, which shall never be a negative number; plus

(b) Lenders' Liabilities; plus

(c) PPC Employee and Contractor Breakage Costs; minus

(d) Account Balances; minus

(e) Insurance Proceeds; minus

(f) any Deductions to the extent not deducted in full from Milestone Payments or Quarterly Availability Payments.

17.3 Termination for PPC Default

17.3.1 PPC Defaults Triggering City Termination Rights

17.3.1.1 Subject to the rights of the Lenders pursuant to any Direct Agreement, in the event that:

(a) any PPC Default occurs and has not been cured within the applicable cure period, if any, set out in Section 16.1.2 (Default Notice and Cure Periods) or (if relevant) in accordance with any cure plan accepted by City under Section 15.8 (Cure Plan for Persistent PPC Default); or

(b) any PPC Default occurs for which there is no cure period under Section 16.1.2 (Default Notice and Cure Periods);

(each a "**Default Termination Event**")

City may terminate this Agreement with immediate effect upon written Notice to Principal Project Company.

17.3.1.2 Termination of this Agreement for a Default Termination Event in accordance with this Section 17.3 (Termination for PPC Default) will take effect on the date stated in the Notice given by City to Principal Project Company under Section 17.3.1.1.

17.3.2 Compensation to Principal Project Company

17.3.2.1 Subject to Section 17.3.2.2, if City issues a Notice of termination of this Agreement due to a PPC Default:

(a) if termination occurs before the Substantial Completion Date, Principal Project Company will be entitled to compensation in an amount equal to the lesser of:

(i) the D&C Work Value; and

(ii) the amount equal to:

(A) Lenders' Liabilities; minus

(B) Account Balances; minus

(C) Insurance Proceeds (excluding proceeds of personal injury, property damage or other Third Party liability insurance payable to or for the account of a Third Party); minus

(D) any D&C Period Deductions to the extent not deducted in full from Milestone Payments;

(b) if termination occurs on or after the Substantial Completion Date, Principal Project Company will be entitled to compensation equal to the amount calculated at the Early Termination Date (without double-counting) as follows:

(i) eighty percent (80%) of Lenders' Liabilities; minus

(ii) Maintenance Rectification Costs; minus

(iii) Account Balances; minus

(iv) Deferred Equity Amounts; minus

(v) Insurance Proceeds; minus;

(vi) any Deductions to the extent not deducted in full from the Milestone Payment or Quarterly Availability Payments; plus

(vii) the balance standing to the credit of the Handback Requirements Reserve Account on the Early Termination Date.

17.3.2.2 If the calculation described in Section 17.3.2.1 results in a negative number, the negative value shall represent damages recoverable by City in accordance with Section 16.2.6.2.

17.3.3 Finality

If City issues Notice of termination of this Agreement due to a PPC Default, termination shall be effective and final regardless of whether City is correct in determining that it has the right to terminate for PPC Default. If it is determined that City lacked such right, then such termination shall be treated as a Termination for Convenience as provided in Section 17.1 (Termination for Convenience; Condemnation) for the purpose of determining the Termination Compensation due.

17.4 Principal Project Company Rights to Terminate

17.4.1 Termination for City Default

17.4.1.1 If a City Default under Section 16.3.1 (City Default) remains uncured following (a) Notice and expiration of the applicable cure period under Section 16.3.2 (Cure Periods), and (b) Principal Project Company's compliance with the warning requirements set forth in Section 17.4.1.2, Principal Project Company shall have the right to terminate this Agreement, effective immediately upon delivery of written Notice of termination to City. In the event of such termination, City shall pay compensation to Principal Project Company equal to the amount described in Section 17.1.3.

17.4.1.2 Principal Project Company shall provide a warning Notice to City at least 15 Business Days before terminating, which Notice may not be delivered until 30 Business Days after delivery of the Notice under Section 16.3.2.1 Principal Project Company shall provide a second warning Notice to City at least five Business Days before terminating, which Notice may not be delivered until 10 Business Days after delivery of the first warning Notice. If City fails to effect cure within five Business Days after the date of delivery of the second warning Notice, Principal Project Company shall have the right to terminate this Agreement in accordance with Section 17.4.1.1

17.4.2 Termination for Suspension of Work

17.4.2.1 If City issues a suspension order under Section 16.2.8.3 that suspends the Work for a period of 270 days or more, and provided that (a) such suspension is not the result of any PPC Fault; and (b) Principal Project Company has delivered a warning Notice to City at least 15 days before terminating, Principal Project Company shall have the right to terminate this Agreement, effective immediately upon delivery of written Notice of termination to City. In the event of such termination, Principal Project Company will be entitled to compensation equal to the amount described in Section 17.1.3.

17.4.2.2 Principal Project Company may not terminate under this Section 17.4.2 (Termination for Suspension of Work) if, at the time Principal Project Company's right to terminate would arise, circumstances exist entitling either Party to terminate under Sections 17.2 (Termination for Force Majeure Termination Events or Insurance Unavailability), 17.3 (Termination for PPC Default), 17.4.3 (Termination Due to Court Ruling) or 17.5 (Termination if Financial Close Fails to Occur).

17.4.3 Termination Due to Court Ruling

Termination Due to Court Ruling means, and becomes effective upon: (a) issuance of a final order by a court of competent jurisdiction after exhaustion of all appeals to the effect that this Agreement is void, voidable, and/or unenforceable or impossible to perform in its entirety for reasons beyond the reasonable control of Principal Project Company; or (b) issuance of a final order by a court of competent jurisdiction after exhaustion of all appeals upholding the binding effect on Principal Project Company and/or City of a Change in Law that causes impossibility of performance of a fundamental obligation by Principal Project Company or City under the Contract Documents or impossibility of exercising a fundamental right of Principal Project Company or City under the Contract Documents. The final court order shall be treated as the Notice of termination. In the event of such termination, Principal Project Company will be entitled to compensation in an amount equal to the amount described in Section 17.2.8 (Termination Compensation for Force Majeure Termination Events and Insurance Unavailability); provided that if the Termination Due to Court Ruling is caused solely and directly by a City Default or a City Fault, Principal Project Company will be entitled to compensation in the amount described in Section 17.1.3.

17.5 Termination if Financial Close Fails to Occur

Sections 3.6 (No-Fault Termination) and 3.7 (Principal Project Company's Failure to Achieve Financial Close) set forth the terms applicable to termination before Financial Close.

17.6 Termination Procedures and Duties

The provisions of this Section 17.6 (Termination Procedures and Duties) shall apply upon expiration of the Term or earlier termination of this Agreement. Principal Project Company shall timely comply with such provisions independently of, and without regard to, the timing for determining, adjusting, settling and paying any amounts due Principal Project Company or City on account of termination. If City determines that Principal Project Company has failed to comply with the provisions of this Section 17.6 (Termination Procedures and Duties), then upon Notice from City to Principal Project Company making reference to this Section 17.6 (Termination Procedures and Duties), Principal Project Company acknowledges and agrees it shall be deemed to have surrendered its access rights in accordance with the Contract Documents.

17.6.1 Performance of Work Pending Early Termination Date

In any case where Notice of termination precedes the effective Early Termination Date, Principal Project Company shall continue performing the Work in accordance with all the standards, requirements and terms of the Contract Documents.

17.6.2 Transition Plan

17.6.2.1 Within 90 days before expiration of the Term, or, if applicable, within three days after Principal Project Company receives or delivers a Notice of termination, Principal Project Company shall meet and confer with City for the purpose of developing a transition plan for the orderly transition of Work, demobilization and transfer of Project management, maintenance, operation, care, custody and control to City. The Parties shall use diligent efforts to complete preparation of the transition plan within 30 days before expiration of the Term or, if applicable,

within 15 days after the date Principal Project Company receives or delivers the Notice of termination.

17.6.2.2 The transition plan shall include a plan to promptly deliver to City or its designee possession of all the property, data and documents described in Sections 17.6.5.1 and 17.6.5.2.

17.6.2.3 The transition plan shall include an estimate of costs and expenses to be incurred by both Parties in connection with implementation of the transition plan. Neither Party shall be liable for the other Party's transition costs and expenses, regardless of the reason for termination.

17.6.2.4 The transition plan shall:

(a) be in form and substance acceptable to City and shall include and be consistent with the other provisions and procedures in this Section 17.6 (Termination Procedures and Duties);

(b) reserve the last calendar month for City's operation of the system with technical support and other necessary management support from Principal Project Company similar to the demonstration test performed by Principal Project Company before Substantial Completion; and

(c) if required by City, provide for Principal Project Company to continue to perform specified Work during the period between the Termination Date and the effective date of the release and discharge, following payment of Termination Compensation.

17.6.3 Relinquishment and Possession of Project

17.6.3.1 On or as soon as possible after the Termination Date as provided in the approved transition plan, Principal Project Company shall relinquish and surrender care, custody and control of the Project, to City, and shall cause all persons and entities claiming under or through Principal Project Company to do likewise (except as may be set forth in any Direct Agreement), in at least the condition required by Section 8.5.1 (Handback Condition).

17.6.3.2 On the later of the Termination Date or the date Principal Project Company relinquishes all care, custody and control as provided in the transition plan, City shall have the exclusive right to, and shall assume responsibility at its expense for, care, custody and control of the Project and the Project Site, subject to any rights to damages against Principal Project Company where the termination is due to a Termination for PPC Default.

17.6.3.3 If the transition plan developed under Section 17.6.2 (Transition Plan) requires Principal Project Company to perform any obligations under this Agreement after the Termination Date, this Agreement will remain in full force and effect only to the extent necessary for Principal Project Company to perform such obligations. On the Termination Date, or such later date provided in the approved transition plan, City grants to Principal Project Company a right to access the Project Site for the limited purpose of carrying out Principal Project Company's obligations contemplated by this Section 17.6 (Termination Procedures and Duties), including execution of the transition plan contemplated in Section 17.6.2 (Transition Plan). This right of access is subject to rescission by City for Principal Project Company's failure to perform

any of its obligations under this Agreement after the Termination Date, and shall automatically expire upon Principal Project Company's fulfillment of such obligations.

17.6.4 Continuance or Termination of Key Contracts Before Work Completion

17.6.4.1 If, as of the Termination Date, Principal Project Company has not completed the Work, in whole or in part, City may elect, by written Notice to Principal Project Company to continue in effect some or all of the Key Contracts or to require their termination. If City elects to continue any Key Contracts, then Principal Project Company shall execute and deliver (or shall cause the relevant Key Contractor(s) to execute and deliver) to City a written assignment, in form and substance acceptable to City, acting reasonably, of all Principal Project Company's (or Key Contractor's) right, title and interest in and to such Key Contracts, and City shall assume in writing Principal Project Company's (or such Key Contractor's) obligations thereunder that arise from and after the Termination Date.

17.6.4.2 If City elects (or is deemed to elect) to require termination of any Key Contracts, then Principal Project Company shall:

(a) take such steps as are necessary to terminate the relevant Key Contracts, including providing Notice to each Key Contractor that its Key Contract is being terminated and that each of them is to stop Work on the date and to the extent specified in the Notice of termination and stop and cancel orders for materials, services or facilities, unless otherwise approved by City;

(b) promptly and orderly demobilize and secure in a safe manner the Project Site in a manner satisfactory to City, remove all debris and waste materials and complete any Hazardous Materials Management Work already in process, except as otherwise approved by City;

(c) take such other actions as are necessary or appropriate to mitigate further costs;

(d) subject to City's reasonable prior approval, settle all outstanding liabilities and all claims arising out of, relating to or resulting from such Key Contracts;

(e) as a condition to City's obligation to make payments to Principal Project Company under this Article 17 (Termination) and under the requirements of the transition plan, cause each of the Key Contractors to execute and deliver to City a written assignment, in form and substance acceptable to City, of all of their interest in (i) all Regulatory Approvals, Third Party agreements and permits pertaining to the Project or the Work (excluding Subcontracts), provided that City assumes in writing all of the Key Contractor's obligations under said approvals, agreements and permits that arise after the Termination Date; and (ii) all warranties, to the extent assignable, claims and causes of action held by each of them against Subcontractors and other Third Parties pertaining to the Project or the Work, provided that Principal Project Company shall retain the right to pursue any cause of action against the Subcontractor or other Third Parties for damages incurred by Principal Project Company; and

(f) as a condition to City's obligation to make payments to Principal Project Company under this Article 17 (Termination) and under the requirements of the transition plan, carry out such other reasonable directions as City may give for termination of the Work in accordance with the transition plan.

17.6.5 Other Close-Out Activities

17.6.5.1 Within 90 days before expiration of the Term, or within 30 days after any earlier Notice of termination is delivered, Principal Project Company shall deliver to City a true and complete list of all materials, goods, machinery, equipment, hardware, parts, supplies and other tangible property in inventory or storage (whether then held by Principal Project Company or any Person on behalf of or for the account of Principal Project Company) for use in or respecting the Work or the Project, or on order or previously completed but not yet delivered from Suppliers for use in or respecting the Work or the Project. In addition, on or as soon after the Termination Date as is possible or as is provided in the approved transition plan, Principal Project Company shall transfer title through bills of sale or other documents of title, as directed by City, and deliver to City's Authorized Representative, all such materials, goods, machinery, equipment, hardware, parts, supplies and other property, provided City assumes in writing all of Principal Project Company's obligations under any contracts relating to the foregoing that arise after the later of the Termination Date or the effective date of the transfer.

17.6.5.2 Within 90 days before the expiration of the Term, or within 30 days after any earlier Notice of termination is delivered, Principal Project Company shall provide City with a true and complete list of all the data and documents identified in this Section 17.6.5.2. Subject to Sections 21.4 (Intellectual Property) and 21.5 (Intellectual Property Escrows), Principal Project Company shall execute and deliver to City an executed bill of sale or other written instrument, in form and substance reasonably acceptable to City, assigning and transferring to City the following:

(a) all completed or partially completed drawings (including plans, elevations, sections, details and diagrams), specifications, designs, Design Documents, Record Documents, plans, surveys, and other documents and information pertaining to the design or construction of the Project or the Utility Adjustments;

(b) all samples, borings, boring logs, geotechnical data and similar data and information relating to the Project or the Project Site;

(c) all Books and Records, reports, test reports, studies and other documents of a similar nature relating to the Work, the Project or the Project Site; and

(d) all Intellectual Property, and IP Materials, documents evidencing licenses of PPC Intellectual Property and Third Party IP to City, other work product and other materials relating to all such Intellectual Property and PPC Intellectual Property.

Such bill of sale or other instrument shall be delivered to City as provided in the approved transition plan (or if not specified in the transition plan, shall be delivered on the Termination Date or as soon thereafter as possible), and shall be accompanied by originals or copies, as appropriate, of all of the materials described therein.

17.6.5.3 Principal Project Company shall take all action that may be necessary, or that City may direct, for the protection and preservation of the Project, the Work and such materials, goods, machinery, equipment, hardware, parts, supplies, data, documentation and other property.

17.6.5.4 On or as soon as possible after the Termination Date or as provided in the approved transition plan, Principal Project Company shall execute and deliver to City a written assignment, in form and substance acceptable to City, all of Principal Project Company's interest in any IP Escrows or similar arrangements for the protection of Source Code and Source Code Documentation of others used for or relating to the Project or the Work.

17.6.5.5 On or as soon as possible after the Termination Date or as provided in the approved transition plan, Principal Project Company shall execute and deliver to City a written assignment, in form and substance acceptable to City, of all Principal Project Company's interest in all warranties, claims and causes of action held by Principal Project Company against Third Parties in connection with the Project or the Work, including claims under casualty and business interruption insurance, except to the extent that City has already received credit for such matters in calculating Termination Compensation amounts, in which case they may be pursued by Principal Project Company for its own account.

17.6.5.6 Principal Project Company shall otherwise assist City in such manner as City may require before and for a reasonable period following the Termination Date to ensure the orderly transition of management, maintenance, operation, care, custody and control of the Project, to City, and shall, if appropriate and if requested by City, take all steps as may be necessary to enforce the provisions of the Key Contracts pertaining to the surrender of Project management, maintenance, operation, care, custody and control.

17.6.5.7 For a period of four years following the Termination Date, Principal Project Company shall maintain a secure archive copy of all electronic data transferred to City.

17.6.6 Calculation of Compensation

17.6.6.1 Within 30 days after the Early Termination Date for termination pursuant to Section 17.3 (Termination for PPC Default), and within 15 days after the Early Termination Date for termination pursuant to Section 17.1 (Termination for Convenience; Condemnation), Section 17.2 (Termination for Force Majeure Termination Events or Insurance Unavailability) or Section 17.4 (Principal Project Company Rights to Terminate), Principal Project Company shall:

(a) provide City with a written statement prepared by the Collateral Agent as to (i) the Lenders' Liabilities and (ii) the Account Balances, to the extent such accounts are controlled by the Collateral Agent, with documentation reasonably required by City to support such statement and the Collateral Agent's certification that such amounts are true and correct;

(b) provide a written statement as to the following amounts, (without duplication of any Account Balances verified by the Collateral Agent under Section 17.6.6.1(a)(ii)), together with documentation reasonably required by City to support such statement and a certification that such amounts are true and correct:

(i) for termination pursuant to Section 17.1 (Termination for Convenience; Condemnation) or Section 17.4 (Principal Project Company Rights to Terminate), amounts described in clauses (i) and (ii) of Section 17.1.3(a) and Sections 17.1.3(c) through 17.1.3(f);

(ii) for termination pursuant to Section 17.2 (Termination for Force Majeure Termination Events or Insurance Unavailability), amounts described in Sections 17.2.8(a) and 17.2.8(c) through 17.2.8(f); or

(iii) for termination pursuant to Section 17.3 (Termination for PPC Default), (A) the amounts described in clauses (ii) through (vii) of Section 17.3.2.1(b), and (B) the Insurance Proceeds (excluding proceeds of personal injury, property damage or other Third Party liability insurance payable to or for the account of a Third Party; and

(c) for termination pursuant to Section 17.1 (Termination for Convenience Condemnation), Section 17.2 (Termination for Force Majeure Termination Events or Insurance Unavailability), or Section 17.4 (Principal Project Company Rights to Terminate), an estimate of any interest and fees that will accrue (on a daily basis) on the outstanding principal due to Lenders at the rate due (excluding default interest), under the Financing Documents over the period between the Early Termination Date and the anticipated date that the Termination Compensation will be paid by City.

17.6.6.2 From and after the Termination Date, except as otherwise stated in this Article 17 (Termination), Principal Project Company shall cease to have any right to (a) Availability Payments except for those accrued and owing before the Early Termination Date and (b) any other compensation, except as provided under Section 17.8.2.

17.7 Payment of Termination Compensation

17.7.1 For termination under Section 17.1 (Termination for Convenience; Condemnation) or Section 17.4 (Principal Project Company Rights to Terminate), provided Principal Project Company has timely provided to City the statements and information required under Section 17.6.6.1, City shall, within 120 days of the Early Termination Date, pay to Principal Project Company an amount equal to the:

(a) Termination Compensation; plus

(b) interest and fees that accrued on the outstanding principal due to Lenders (excluding default interest) under the Financing Documents over the period between the Early Termination Date and such payment date.

17.7.2 For termination under Section 17.2 (Termination for Force Majeure Termination Events or Insurance Unavailability), provided Principal Project Company has timely provided to City the statements and information required under Section 17.6.6.1, City shall, within 120 days of the Early Termination Date, pay to Principal Project Company an amount equal to the:

(a) Termination Compensation; plus

(b) interest and fees that accrued on the outstanding principal due to Lenders (excluding default interest) under the Financing Documents over the period between the Early Termination Date and such payment date.

17.7.3 For termination pursuant to Section 17.3 (Termination for PPC Default), provided Principal Project Company has timely provided to City the statements and information required under Section 17.6.6.1, City shall, within 120 days of the Early Termination Date, pay to Principal Project Company an amount equal to the Termination Compensation.

17.7.4 If as of the date that City is required to tender payment of Termination Compensation under Sections 17.7.1, 17.7.2 or 17.7.3, as applicable, the Parties have not agreed upon the amount of Termination Compensation due, then:

(a) City shall proceed to make payment to Principal Project Company of the undisputed portion of the Termination Compensation;

(b) Within 30 days after receiving such payment Principal Project Company shall deliver to City written Notice of the additional amount of Termination Compensation that Principal Project Company in good faith determines is still owing (the "**disputed portion**"); and

(c) City shall pay the disputed portion of the Termination Compensation to Principal Project Company in immediately available funds after the disputed portion is agreed to by the Parties or otherwise determined to be payable pursuant to **Error! Reference source not found.** (Contract Dispute Procedures), as the case may be.

17.8 Effect of Termination

17.8.1 Except to the extent set out in Section 17.6.3.3, and regardless of City's prior Actual Knowledge or constructive knowledge thereof:

(a) no Contract or agreement to which Principal Project Company is a party as of the Termination Date shall bind City, unless City elects to assume such Contract or agreement; and

(b) except in the case of City's express written assumption, no such Contract or agreement shall entitle the contracting party to continue performance of work or services respecting the Project following Principal Project Company's relinquishment to City of Project care, custody and control, or to any claim, legal or equitable, against City.

17.8.2 Termination of this Agreement shall not:

(a) relieve Principal Project Company or any Surety of its obligation for any claims arising before the Termination Date;

(b) excuse either Party from any liability arising out of, related to or resulting from any default as provided in this Agreement that occurred before the Termination Date; and

(c) relieve City of claims of Principal Project Company to payment of Compensation Amounts for adverse cost and revenue impacts accruing before the Termination Date due to Compensable Delay Events or Compensable Relief Events that occurred before the Termination Date.

17.9 Liability after Termination; Final Release

Notwithstanding the foregoing, any termination of this Agreement under Sections 17.2 (Termination for Force Majeure Termination Events or Insurance Unavailability), 17.3 (Termination for PPC Default), 17.4.3 (Termination Due to Court Ruling) or 17.5 (Termination if Financial Close Fails to Occur) shall automatically extinguish any claim of Principal Project Company to payment of Compensation Amounts for adverse cost and revenue impacts accruing after the Early Termination Date due to Relief Events that occurred before termination. Except as otherwise expressly provided in this Agreement (other than Section 16.2.10 (Cumulative, Non-Exclusive Remedies)), if this Agreement is earlier terminated for any reason, then City's payment to Principal Project Company of the amounts required under this Agreement (if any) shall constitute full and final satisfaction of, and upon payment City shall be forever released and discharged from, any and all claims, causes of action, suits, demands and Losses, known or unknown, suspected or unsuspected, that Principal Project Company may have against City arising out of, relating to or resulting from this Agreement or termination thereof, the other Contract Documents, or the Project, excluding any proceedings that are pending as of 30 days after the Termination Date, remain unresolved at the time of such payment, and are not related to termination or Termination Compensation. Upon such payment, Principal Project Company shall execute and deliver to City all such releases and discharges, including a release pursuant to Civil Code Section 1542, as City may reasonably require to confirm the foregoing, but no such written release and discharge shall be necessary to give effect to the foregoing satisfaction and release.

17.10 Exclusive Termination Rights

This Article 17 (Termination) contain the entire and exclusive provisions and rights of City and Principal Project Company regarding termination of this Agreement, and each Party waives, to the maximum extent permitted by Law, any and all other rights to terminate at law.

17.11 Access to Information

Principal Project Company shall conduct all discussions and negotiations to determine any Termination Compensation, and shall share with City all data, documents and information pertaining to the termination, on an Open Book Basis.

ARTICLE 18. PARTNERING; CONTRACT DISPUTE PROCEDURES

18.1 Introduction

18.1.1 The Parties acknowledge fostering a collaborative working relationship during the entire Term is critical to early identification and resolution of issues, claims, and Contract Disputes. This Article 18 provides a structured approach for the Parties to address issues, claims, and Contract Disputes within the framework of informal project-level partnering and formal Contract Dispute procedures.

18.1.2 The procedures in this Article 18 (Partnering; Contract Dispute Procedures) are necessary for the City to address potential and actual Contract Disputes. Prior knowledge of potential Contract Disputes before Principal Project Company starts disputed Work, and proper documentation from Principal Project Company during that Work, are critical for the City to make informed decisions affecting the Project's budget and schedule.

18.2 Partnering

18.2.1 Collaborative Partnering

The Parties will engage in a partnering process to foster effective communication, enhance cooperation, and proactively address issues and claims to prevent them from escalating into Contract Disputes. The requirements for the partnering process are set forth in Part 3 of Section 01 31 33 (Partnering Procedures) of Division 10 of the Technical Requirements.

18.2.2 Confidentiality

In accordance with California Evidence Code sections 1119 and 1152, and Federal Rule of Evidence 408, and similar prohibitions, statements made during the partnering process, including the workshops and informal negotiations within the framework of the Issue Resolution Ladder, are confidential and not admissible or discoverable in any proceeding to resolve a Contract Dispute.

18.3 Contract Dispute Procedures

18.3.1 Disputes Generally

18.3.1.1 Outline of Dispute Process

The following is an outline of the sequential process for submitting and resolving Contract Disputes, with each step serving as a condition precedent for Principal Project Company to proceed to subsequent steps, beginning with the Notice of Potential Dispute. These steps must be completed prior to submission by Principal Project Company of any Contract Dispute to litigation in San Francisco Superior Court.

(a) Principal Project Company must submit a timely Notice of Contract Dispute in compliance with Section 18.3.2 before Principal Project Company can file a Contract Dispute.

(b) Principal Project Company must submit a timely Contract Dispute in compliance with Section 18.3.3 before Principal Project Company can participate in the Issue Resolution Ladder.

(c) Principal Project Company must timely comply with the Issue Resolution Ladder provisions in compliance with Section 18.3.3.5 before Principal Project Company can participate in mediation.

(d) Principal Project Company must timely comply with the mediation provisions in Section 18.3.3.6 in order to exhaust its administrative remedies under this Agreement.

(e) Principal Project Company must complete all steps outlined in this Section 18.3.1.1 above prior to commencing litigation against the City for disputes arising out of or related to this Agreement that are not expressly excluded from the Contract Dispute process by Section 18.3.1.3. The Principal Project Company must also submit a timely Government Code Claim in order to commence litigation against the City for disputes arising out of or related to this Agreement pursuant to Section 18.3.3.7.

18.3.1.2 Disputed issues not timely raised and properly documented by Principal Project Company in conformance with this Section 18.3 will be deemed waived by Principal Project Company and may not be asserted in any subsequent litigation, or legal action. Furthermore, by executing this Agreement, Principal Project Company waives any and all claims or defenses of waiver, estoppel, or any other type of excuse of non-compliance with the Contract Dispute submission requirements.

18.3.1.3 The Contract Dispute procedures specified in this Section 18.3 (Contract Dispute Procedures) do not apply to the following:

(a) claims respecting penalties for forfeitures prescribed by statute or regulation that a government agency is specifically authorized to administer, settle, or determine;

(b) claims respecting personal injury, death, reimbursement, or other compensation arising out of or resulting from personal injury of death;

(c) claims by the City;

(d) stop notices.

(e) any matters that this Contract expressly states are final, binding, or not subject to Dispute resolution (including any Person's exercise of sole discretion);

(f) disputes regarding compliance with applicable Law, the rights of City to terminate this Contract, or indemnification;

(g) any claim for injunctive relief;

(h) claims arising solely in tort;

(i) any claim against an insurance company, including any Contractor Dispute that is covered by insurance;

(j) Disputes regarding matters under the jurisdiction of OSHA;

(k) issues regarding DBE participation;

(l) any claim for, or Dispute based on, remedies expressly created by statute;

(m) any Dispute that is actionable only against a Surety;

(n) any claim arising out of or relating to the Work where a third party is a necessary or appropriate party (excluding any PPC-Related Entity); and

(o) any claim or dispute that does not arise under the Contract.

18.3.2 Notice of Contract Dispute

18.3.2.1 Timely Submission

Principal Project Company must submit a Notice of Contract Dispute to the City within seven-Days of the event, activity, occurrence, or other cause that gives rise to the Contract Dispute. If the Contract Dispute pertains to a Change or the rejection of a Relief Event by the City, the seven-Day period starts when the City's Authorized Representative issues a final written decision denying, in whole or in part, the corresponding PPC Change Request or Relevant Event claim.

18.3.2.2 Content Requirements

Notices of Contract Dispute must include:

(a) description of the Contract Dispute's nature and circumstances;

(b) reasons Principal Project Company believes additional compensation or time may be due, including Contract Document references and citations supporting its position;

(c) good faith estimates of the potential cost and/or time impacts; and

(d) for Contract Disputes related to a disputed Relevant Event, identification of items in the Implementation Proposal that form the basis for Principal Project Company's performance the affected Work.

18.3.3 Contract Dispute

18.3.3.1 Timely Submission

(a) Principal Project Company must submit a Contract Dispute to the City no later than 30 Days after the City's receipt of the corresponding Notice of Contract Dispute.

18.3.3.2 Content Requirements of all Contract Disputes

Contract Disputes must include:

(a) cover letter;

(b) certification, signed by Principal Project Company's Authorized Representative, stating, under penalty of perjury, that:

(i) the Contract Dispute is made in good faith;

(ii) supporting data are accurate and complete, to the best of their knowledge and belief; and

(iii) the amount requested accurately reflects adjustment in compensation or time for which Principal Project Company believes the City is liable;

(c) narrative summary of Contract Dispute's merits and amount, and the specific provisions of Contract Documents under which the Contract Dispute is made;

(d) list and copy of documents relating to Contract Dispute:

(i) Contract Documents;

(ii) correspondence; and

(iii) Agreement Exhibits;

(e) detailed chronology of events and correspondence;

(f) analysis of Contract Dispute merit; and

(g) analysis of Contract Dispute cost (money and time).

18.3.3.3 Additional Requirements for Contract Disputes Relating to Delay Events Impacting the Critical Path

(a) In addition to the contents required under Section 18.3.3.3 (Content Requirements of all Contract Disputes), Contract Disputes related to Delay Events prior to Substantial Completion and seeking time extensions or challenging the assessment of delay or liquidated damages shall include a written analysis of all changes and all delays impacting the Critical Path, including a TIA.

(b) The TIA shall be updated to include the most recent information about the Project Schedule and the TIA shall include all activities represented or affected by the change, with activity numbers, durations, predecessor and successor activities, resources and cost, and with a narrative report, in form satisfactory to City, which compares the proposed new schedule to the Project Schedule, as appropriate. Principal Project Company shall reschedule

activities not otherwise affected by the event, in order to take advantage of additional Float available as the result of the time extension. Any such rescheduling shall be reflected in the Project Schedule.

(c) The TIA shall account for all Delay Events in the relevant time frame with actual logic ties.

18.3.3.4 Procedure for City Review and Determination

(a) The City will review only a timely, certified, and properly documented Contract Dispute.

(b) The City will respond to a Contract Dispute in writing, within 45 days of receipt of such Contract Dispute. In its response, City will either grant or deny the Contract Dispute in whole or in part. If City does not respond to a Contract Dispute within the 45-day period, the Contract Dispute is deemed denied in its entirety.

18.3.3.5 Issue Resolution Ladder

After the City issues its written decision under Section 18.3.3.4 or the Contract Dispute is deemed denied in its entirety, the Parties shall utilize the Issue Resolution Ladder to negotiate and attempt to resolve the Contract Dispute in a timely and efficient manner before proceeding to mediation in accordance with Section 18.3.3.6. The requirements for the Issue Resolution Ladder are set forth in Part 3 of Section 01 31 33 (Partnering Procedures) of Division 10 of the Technical Requirements.

18.3.3.6 Non-binding Mediation

If the Parties are unable to resolve a Contract Dispute during the Issue Resolution Ladder process, either Party may submit the dispute to mediation, by written notice to the other, that a mutually acceptable third-party mediator shall be selected for the purpose of facilitating a negotiated resolution of the Contract Dispute. The Contract Dispute shall be submitted to mediation within 10 Days of the conclusion of the Issue Resolution Ladder process. The Parties will share the costs of the mediation equally. If the mediation is unsuccessful, the Principal Project Company shall submit a Government Claims Act claim pursuant to Section 18.3.3.7, Government Code Claim Requirement.

18.3.3.7 Government Code Claim

The timely submittal of a complete and proper PPC Change Request or Relevant Event claim and compliance with the procedures specified in this Article 18 (Partnering; Contract Dispute Procedures) shall operate to toll Principal Project Company's compliance with the Government Code dispute requirements under California Government Code section 900, et seq., and Administrative Code Chapter 10 until the Parties complete mediation. The Principal Project Company must comply with California Government Code section 900, et seq. and Administrative Code Chapter 10 prior to submitting a Contract Dispute to litigation in San Francisco Superior Court.

ARTICLE 19. REPRESENTATIONS AND WARRANTIES

19.1 Principal Project Company Representations and Warranties

Principal Project Company represents and warrants to City, as of the Effective Date, as follows:

19.1.1 The Financial Model (a) was prepared by or on behalf of Principal Project Company in good faith, (b) uses financial formulas that, as of the Effective Date are mathematically and formulaically correct and suitable for making reasonable projections, (c) was audited and verified by an independent recognized model auditor immediately before the Effective Date, (d) fully discloses all cost, revenue and other financial assumptions and projections that Principal Project Company has used or is using in making its decision to enter into this Agreement and in making disclosures to potential equity investors and Lenders under the Initial Financing Agreements and (e) as of the Effective Date represents the projections that Principal Project Company believes in good faith are the most realistic and reasonable for the Project; subject to the understanding that such projections are based upon a number of estimates and assumptions and are subject to significant business, economic and competitive uncertainties and contingencies, and that Principal Project Company's stated belief regarding the projections does not constitute a representation that any of the assumptions are correct, that such projections will be achieved or that the forward-looking statements expressed in such projections will correspond to actual results.

19.1.2 Principal Project Company has evaluated the feasibility of performing the Work by the Contract Deadlines and for the Milestone Payment and Availability Payments, and has reasonable grounds for believing and does believe, subject to the express terms of this Agreement, that such performance is feasible and practicable.

19.1.3 Principal Project Company has reviewed all applicable Laws relating to Taxes, and has taken into account all requirements imposed by such Laws in preparing the Financial Model.

19.1.4 Based upon the work undertaken by PPC-Related Entities pursuant to the Predevelopment Agreement, review of information provided by City, and other Reasonable Investigations undertaken by PPC-Related Entities, Principal Project Company has evaluated the constraints affecting the development, design, and construction of the Project, including the Project Site, surface and subsurface conditions discoverable through such investigation, the terms of the CEQA Approval, the terms of the NEPA Approval and requirements of applicable Laws, and, based on the foregoing, Principal Project Company has reasonable grounds for believing and does believe that the Project can be developed, designed, and constructed.

19.1.5 Principal Project Company conducted a Reasonable Investigation of property to which it had access and other available information regarding conditions at the Project Site, and as a result of such investigation, Principal Project Company is familiar with and accepts the physical requirements of the Work, subject to Principal Project Company's rights regarding Relief Events. Principal Project Company shall undertake and complete the Work and the Project at its sole cost and without any additional compensation, any extension of time, excuse from compliance or other relief on account of such compliance, regardless of whether such compliance would require additional time for performance or additional design, construction operations, maintenance, financing, labor, equipment, supplies and/or materials not expressly

provided for in the Contract Documents or would have an adverse effect on costs, subject only to Principal Project Company's rights regarding Delay Events and Relief Events.

19.1.6 Principal Project Company familiarized itself with the requirements of all applicable Laws and the conditions of any required Regulatory Approvals.

19.1.7 Principal Project Company has no reason to believe that any Regulatory Approval required to be obtained by Principal Project Company will not be granted in due course and thereafter remain in effect so as to enable the Work to proceed in accordance with the Contract Documents.

19.1.8 All Work furnished by Principal Project Company will be performed by or under the supervision of Persons who hold all necessary licenses, certifications, registrations, permits or approvals to practice in the State, by personnel who are experienced, competent and skilled in their respective trades or professions, who are professionally qualified to perform the Work in accordance with the Contract Documents and who shall assume professional responsibility for the accuracy and completeness of the Design Documents, Construction Documents and other documents prepared or checked by them.

19.1.9 Principal Project Company is a [_______________], duly organized and validly existing under the laws of the [_______________], has the requisite power and all required licenses to carry on its present and proposed activities, and has full power, right and authority to execute, and deliver this Agreement and to perform each and all of the obligations of Principal Project Company provided for under this Agreement. Principal Project Company is duly qualified to do business and is in good standing in the State as of the Effective Date, and will remain duly qualified and in good standing throughout the Term and for as long as any obligations remain outstanding under the Contract Documents.

19.1.10 The execution, delivery and performance of this Agreement has been duly authorized by all necessary action of Principal Project Company's governing body, each person executing this Agreement has been duly authorized to execute and deliver each such document on behalf of Principal Project Company and this Agreement has been duly executed and delivered by Principal Project Company.

19.1.11 No default under, violation of, or conflict with the governing instruments of Principal Project Company or any agreement, judgment or decree to which Principal Project Company is a party or is bound will result from (a) the execution and delivery by Principal Project Company of this Agreement, or (b) performance by Principal Project Company of its obligations under this Agreement.

19.1.12 The execution and delivery by Principal Project Company of this Agreement, and the performance by Principal Project Company of its obligations under this Agreement will not conflict with any Laws applicable to Principal Project Company that are valid and in effect on the date of execution and delivery. As of the Effective Date, Principal Project Company is not in breach of any applicable Law that would have a material adverse effect on the Work or the performance of any of its obligations under the Contract Documents.

19.1.13 This Agreement constitutes the legal, valid and binding obligation of Principal Project Company, enforceable against Principal Project Company in accordance with its terms, subject

only to applicable bankruptcy, insolvency and similar laws affecting the enforceability of the rights of creditors generally and the general principles of equity.

19.1.14 No proceeds of or commitments to provide the Committed Investment, as applicable, is or shall be from a Prohibited Person.

19.1.15 There is no action, suit, proceeding, investigation or litigation pending and served on Principal Project Company which challenges Principal Project Company's authority to execute, deliver or perform, or the validity or enforceability of, this Agreement or which challenges the authority of the representative of Principal Project Company executing this Agreement; and Principal Project Company has disclosed to City any pending and un-served or threatened action, suit, proceeding, investigation or litigation with respect to such matters of which Principal Project Company is aware. No current, pending or outstanding criminal, civil, or enforcement actions have been initiated against Principal Project Company by City or the State, and Principal Project Company agrees that it will immediately provide Notice to City if any such action is initiated during the Term.

19.1.16 Principal Project Company has disclosed to City in writing all organizational conflicts of interest of Principal Project Company and its Contractors of which Principal Project Company was actually aware, which have not been approved in writing by City.

19.1.17 As of the effective date of the relevant Key Contract, (a) each Key Contractor is duly organized, validly existing and in good standing under the laws of the state of its organization and is duly qualified to do business, and is in good standing, in the State, (b) the ownership interests (including options, warrants and other rights to acquire ownership interests) of each Key Contractor that is a single purpose entity formed for the Project are held by those Persons identified in a written certification delivered by Principal Project Company to City before such effective date; (c) each Key Contractor has the power and authority to do all acts and things and execute and deliver all other documents as are required to be done, observed or performed by it in connection with its engagement by Principal Project Company; (d) each Key Contractor has (i) obtained and will maintain all required registrations, licenses, certifications, permits and approvals required under applicable Law as of such date and (ii) expertise, qualifications, experience, competence, and skills and is qualified to perform the Work for which it is responsible; (e) each Key Contractor will be required by the applicable Key Contract to comply with all health, safety and Environmental Laws in the performance of any work activities for, or on behalf of, Principal Project Company for the benefit of City; and (f) no Key Contractor is in breach of any applicable Law that would have a material adverse effect on any aspect of the Work.

19.1.18 Principal Project Company has not employed or retained, and Principal Project Company shall not employ or retain, any Person other than employees, agents, attorneys, consultants and advisors of a PPC-Related Entity, to solicit or secure this Agreement, and that it has not paid or agreed to pay any Person any fee or any other consideration contingent on the making of this Agreement.

19.1.19 Principal Project Company warrants that it owns, or will own, and has, or will have, good and marketable title and sufficient rights to all materials, Intellectual Property, equipment, tools and supplies furnished, or to be furnished, by any PPC-Related Entity that become part of the Project or are purchased for City for the development, operation, maintenance or repair of

the Project, free and clear of all liens, royalties, fees or other charges of any kind or nature. All such materials, Intellectual Property, equipment, devices, or processes shall be delivered free of any claim of any Third Party for infringement of any Intellectual Property rights or ownership. Refer to Section 2.4.3 (Passage of Title) for provisions regarding transfer of title to City.

19.1.20 Principal Project Company warrants that the individual signing this Agreement on behalf of Principal Project Company is the properly authorized representative, agent, member or officer of Principal Project Company, that he/she has not, nor has any other member, employee, representative, agent or officer of Principal Project Company, directly or indirectly, to the best of the undersigned's knowledge, entered into or offered to enter into any combination, collusion or agreement to receive or pay, and that he/she has not received or paid, any sum of money or other consideration for the execution of this Agreement other than that which appears upon the face of this Agreement.

19.1.21 [______________________] is a [_____________________], duly organized and validly existing under the laws of [_____________________], has the requisite power and all required licenses to carry on its present and proposed activities, and has full power, right and authority to perform each and all of the obligations of an Equity Member provided for under this Agreement. **[Note to PNC: Include for each Equity Member of PPC.]**

19.2 City Representations and Warranties

City represents and warrants to Principal Project Company as follows:

19.2.1 The City and County of San Francisco is a charter city and municipal corporation duly organized and validly existing under the Constitution of the State of California. As of the Effective Date, City has full power, right and authority to execute, deliver this Agreement and City has full power, right and authority to perform its obligations under this Agreement.

19.2.2 Each person executing this Agreement on behalf of City is duly authorized to execute and deliver this Agreement, and this Agreement has been duly executed and delivered by City.

19.2.3 This Agreement has each been duly authorized by City, and constitutes a legal, valid and binding obligation of City enforceable against City in accordance with its terms.

19.2.4 As of the Effective Date, there is no action, suit, proceeding, investigation or litigation pending and served on City which challenges City 's authority to execute, deliver and perform this Agreement, or which challenges the validity or enforceability of, this Agreement or which challenges the authority of City officials executing this Agreement; and City has disclosed any pending action, suit, proceeding, investigation or litigation against City (including filed but un-served complaints of which City has Actual Knowledge) relating to this Agreement or the Project.

19.2.5 Neither the execution and delivery by City of this Agreement, nor the consummation of the transactions contemplated under this Agreement, is in conflict with or has resulted or will result in a default under or a violation of any agreement, judgment or decree to which City is a party or is bound.

19.2.6 The execution and delivery by City of this Agreement, and the performance by City of its obligations under this Agreement, will not conflict with any Laws applicable to City that are

valid and in effect on the date of execution and delivery. City is not in breach of any applicable Law that would have a material adverse effect on the performance of any of its obligations under the Contract Documents.

19.2.7 City's execution and delivery of this Agreement is not subject to any requirement to obtain consent or approval of any other Person (including Governmental Entities), other than consents and approvals already obtained.

19.3 Special Remedies for Mutual Breach of Warranty

Notwithstanding any other provision of this Agreement, if any circumstance or event occurs that constitutes or results in a concurrent breach by both Principal Project Company and City of similar warranties referenced in Section 16.1.1(f) or 16.3.1(c) but does not also constitute or result in any other breach or default by either Party, then the only remedies shall be for the Parties to take action to rectify or mitigate the effects of such circumstance or event, to pursue severance and reformation of the Contract Documents in accordance with Section 23.11 (Severability), or Termination Due to Court Ruling in accordance with Section 17.4.3 (Termination Due to Court Ruling).

ARTICLE 20. ASSIGNMENT AND TRANSFER

20.1 Restrictions on Equity Transfers and Change of Control

20.1.1 Except as provided in Section 20.1.3, any:

(a) Change of Control of Principal Project Company; or

(b) Equity Transfer that results in any Equity Member ceasing to own (directly or indirectly) the same percentage of the issued share capital, partnership or membership interests, as applicable, in Principal Project Company that it owned (directly or indirectly) as of the Financial Close Date,

shall be subject to City's prior written approval in accordance with Section 20.2 (Standards and Procedures for City Approval).

20.1.2 Neither an Equity Transfer to a Prohibited Person, nor a Change of Control that would involve the provision of any amount of Committed Investment directly or indirectly from a Prohibited Person, is permitted at any time. Further, none of the events described in clauses (b) through (g) of the definition of Change of Control are permitted at any time if it would result in the direct or indirect ownership by a Prohibited Person of any interest in Principal Project Company.

20.1.3 Transfers and transactions within any of the exceptions described in clauses (a) through (g) of the definition of Change of Control are allowed at any time without necessity for City's approval, provided that:

(a) for an exception described in clause (a) (with respect to any initial public offering), or clause (b), (c) or (d), Principal Project Company shall deliver to City, on or before 10 Business Days before the effectiveness of the transfer or transaction, written Notice describing the transfer or transaction and (if applicable) the names of the transferor and transferee, together with documentation demonstrating that the transfer or transaction is within such an exception; and

(b) for an exception described in clause (a) (other than with respect to an initial public offering), Principal Project Company shall deliver to City, within five days after the effectiveness of the transfer or transaction, written Notice describing the transfer or transaction and (if applicable) the names of the transferor and transferee, together with documentation demonstrating that the transfer or transaction is within such an exception.

20.2 Standards and Procedures for City Approval

20.2.1 Where City's prior written approval is required for a proposed sale, assignment, conveyance, transfer, pledge, mortgage, encumbrance, grant of right of entry, or grant of other special use, management or control, or for any proposed Equity Transfer or Change of Control (each, a "**Transaction**"), and such Transaction is proposed at any time during the period ending two years after the Substantial Completion Date, City may withhold or condition its approval in

its sole discretion. Any such decision of City to withhold consent shall be final, binding and not subject to the Contract Dispute Procedures.

20.2.2 After the second anniversary of the Substantial Completion Date, City shall not unreasonably withhold its approval of a Transaction.

20.2.3 Among other factors and considerations, it shall be reasonable for City to withhold its approval if:

(a) Principal Project Company fails to demonstrate to City's reasonable satisfaction that: (i) the proposed Transaction that would amount to a Change of Control of Principal Project Company will not have any adverse effect on Principal Project Company's ability to timely perform its obligations under the Contract Documents and the Principal Project Documents, taking into account the financial resources, qualifications and experience of the proposed assignee, grantee or transferee; and (ii) the proposed assignee, grantee or transferee is in compliance with City's rules, regulations, and adopted written policies regarding organizational conflicts of interest; or

(b) at the time of the proposed Transaction, there exists any uncured PPC Default or any event or circumstance that with the lapse of time, the giving of Notice or both would constitute a PPC Default, unless City receives from the proposed transferee assurances of cure and performance acceptable to City in its reasonable discretion.

20.2.4 For Transactions subject to City's prior reasonable approval, City will approve or disapprove in writing within 60 days after it receives from Principal Project Company:

(a) a request for approval;

(b) a reasonably detailed description of the proposed Transaction;

(c) such information, evidence, and supporting documentation as City may request concerning the identity, financial resources, qualifications, experience, and potential conflicts of interest of the proposed transferee and its proposed contractors; and

(d) such evidence of organization and authority, and such incumbency certificates, certificates regarding debarment or suspension, and other certificates, representations, and warranties as City may reasonably request.

20.2.5 For Transactions subject to City's prior reasonable approval, City will evaluate the identity, financial resources, qualifications, experience, and potential conflicts of interest using the same standards and criteria that it is then currently applying, or if there is no current application, then the same standards and criteria it most recently applied, to the evaluation of Persons responding to City's requests for qualifications for similar agreements for comparable projects and facilities.

20.2.6 If for any reason City does not act within such 60 day period, or any extension thereof by mutual agreement of the Parties, then the proposed Transaction shall not be permitted,

subject to Principal Project Company's right, in the case of a proposed Transaction governed by Section 20.2.2, to submit a Contract Dispute for resolution according to the Contract Dispute Procedures.

20.3 Restrictions on Assignment, Subletting and Other Transfers of PPC's Interest or the Project

20.3.1 Principal Project Company shall not voluntarily or involuntarily sell, assign, convey, transfer, pledge, mortgage or otherwise encumber PPC's Interest or any portion thereof without City's prior written approval, in its sole discretion, except:

(a) to Lenders for security as permitted by this Agreement, provided Principal Project Company retains responsibility for the performance of Principal Project Company's obligations under the Contract Documents; or

(b) to any Substituted Entity approved by City in accordance with the Direct Agreement, provided that such Substituted Entity assumes in writing full responsibility for performance of the obligations of Principal Project Company under this Agreement, the other Contract Documents, and the Key Contracts and Financing Documents arising from and after the date of assignment.

20.3.2 Subject to Section 20.3.1, assignments and transfers of the PPC's Interest permitted under this Section 20.3 (Restrictions on Assignment, Subletting and Other Transfers of PPC's Interest or the Project), or otherwise approved in writing by City, shall be effective only upon City's receipt of a written instrument executed by the transferee of PPC's Interest, including any Person who acquires PPC's Interest through foreclosure, transfer in lieu of foreclosure or similar proceeding, in form and substance acceptable to City, in which the transferee, without condition or reservation, (i) assumes all of PPC's Interest then in effect, (ii) agrees to perform and observe all of PPC's Interest, and (iii) agrees to be bound by, the Project Management Plan, the Key Contracts, the Regulatory Approvals, all agreements between the transferor and Third Parties related to or arising out of the Work and/or the Project, and all agreements between the transferor and Governmental Entities with jurisdiction over the Project or the Work, except to the extent otherwise approved by City, in its sole discretion.

20.3.3 Principal Project Company shall not grant any right of entry onto, use of, or right to manage and control the Project to any other Person except as expressly contemplated in this Agreement without City's prior written approval, in its sole discretion. Any purported voluntary or involuntary sale, assignment, subletting, conveyance, transfer, pledge, mortgage, encumbrance or grant of other special use, management or control of the Project in violation of this provision shall be null and void ab initio and City, at its option, may declare any such attempted action to be a material PPC Default.

20.4 Assignment by City

City may assign all or any portion of its right, title and interest in the Contract Documents, Payment Bonds and Performance Bonds, guarantees, letters of credit and other security for payment or performance:

(a) in its sole discretion and without Principal Project Company's consent, to any other Person that succeeds to the powers and authority of SFMTA under the

San Francisco City Charter and San Francisco Administrative Code, has the legal authority to perform its obligations and has sources of funds to perform the payment obligations of the City that are at least as adequate and secure as the City's as of the time of the assignment; and

(b) to others with the prior written consent of Principal Project Company, which consent cannot be unreasonably withheld if City's assignee has a credit rating equal to or better than City's senior lien rating at the time of the assignment as measured by a Rating Agency.

20.5 Change of Organization or Name

20.5.1 Principal Project Company shall not change the legal form of its organization in a manner that adversely affects City's rights, protections and remedies under the Contract Documents without the prior written approval of City.

20.5.2 If either Party changes its name, such Party agrees to promptly furnish the other Party with Notice of change of name and appropriate supporting documentation.

ARTICLE 21. RECORDS AND AUDITS; INTELLECTUAL PROPERTY

21.1 Maintenance and Inspection of Records

21.1.1 Principal Project Company shall undertake the following with respect to its Books and Records:

(a) keep and maintain Books and Records, including copies of all original documents delivered to City, in San Francisco, California, or in another location approved by City in writing, and provide Notice to City where the Books and Records are kept;

(b) keep and maintain Books and Records in accordance with applicable provisions of the Contract Documents, including the Technical Requirements, applicable provisions of the Project Management Plan, and in accordance with Good Industry Practice;

(c) make all Books and Records available for inspection by City and its representatives in Principal Project Company's principal offices in San Francisco, California, or in accordance with each IP Escrow, at all times during normal business hours, or at other reasonable times during the Term;

(d) provide to City, or make available to City for review in accordance with each IP Escrow, copies of any Books and Records as and when reasonably requested by City. City may inspect upon 48 hours' prior Notice or without prior Notice where there is good faith suspicion of fraud. City's right of inspection includes the right to make extracts and take notes and shall not be construed as a waiver by Principal Project Company of the attorney-client privilege;

(e) retain all Books and Records related to the D&C Work until five years after the Substantial Completion Date and retain all Books and Records related to the IFM Services until five years after the date of final payment under the Contract Documents, provided that all records which are being audited or which relate to Claims and Contract Disputes being processed or actions brought under the Contract Dispute Procedures shall be retained and made available until any later date that such audits, Claims, Contract Disputes and actions are finally resolved; and

(f) permit City, upon 10 days' prior Notice to Principal Project Company (which Notice shall identify the persons City requests to be present for an interview and describe with reasonable specificity the subject matter to be raised in the interview), to discuss the obligations of Principal Project Company under this Agreement with any of the directors, chief executive officer and chief financial officer of Principal Project Company or its representatives, for the purpose of enabling City to determine whether Principal Project Company is in compliance with this Agreement and applicable Law. The interviewees and their employers may have counsel present at the interviews.

21.1.2 Principal Project Company shall cause each Key Contract to include the provisions of Section 21.1.1, to the extent applicable, modified as appropriate to apply to the Contractor's Books and Records.

21.1.3 Exhibit 16 (Federal, State and City Requirements) includes additional requirements regarding maintenance and inspection of Books and Records.

21.2 Audits

21.2.1 City may review and audit Principal Project Company, its Contractors and their respective Books and Records as and when City deems necessary for purposes of verifying compliance with the Contract Documents and applicable Law and verifying Claims.

21.2.2 Without limiting Section 21.2.1:

(a) City may audit the Project Management Plan and compliance therewith, including the right to inspect Work and/or activities and to verify the accuracy and adequacy of the Project Management Plan and its component parts, plans and other documentation;

(b) the audits may be performed by employees or consultants of City, City or the City's Controller, or by an auditor under contract with City, City or the City's Controller;

(c) Principal Project Company shall provide adequate and appropriate work space for City or its representative(s) to conduct audits;

(d) Principal Project Company shall: allow auditor(s) access to such Books and Records during normal business hours; provide to City copies thereof, in any physical and/or digital medium, as and when reasonably requested by City; allow interviews of any employee who might have information related to such Books and Records; and otherwise cooperate with the auditors including furnishing a management representation letter upon request of the auditor; and

(e) Principal Project Company shall cause each Contract to include a similar right of City to audit records and interview staff of the Contractor, and a similar covenant to cooperate with the auditors.

The foregoing shall not be deemed to waive the right of Principal Project Company or Contractor to have counsel or other appropriate representatives present at the interview.

21.2.3 If any City audit results in a material correction to the Books and Records, as determined by City in its reasonable discretion, Principal Project Company shall pay the reasonable costs of City in conducting the audit, but if not, City will bear the costs of the audit.

21.2.4 Failure of Principal Project Company, Contractors or their agents to maintain and retain sufficient Books and Records to allow the auditors to verify all or a portion of a Claim or to permit the auditor access to its Books and Records to verify a Claim shall be sufficient basis for City to deny recovery by Principal Project Company of the Claim to the extent of such failure.

21.2.5 Full compliance by Principal Project Company with the provisions of Section 21.2 (Audits) is a contractual condition precedent to Principal Project Company's right to seek relief on a Claim.

21.2.6 City's rights of audit include the right to observe the business operations of Principal Project Company and its Contractors to confirm the accuracy of Books and Records.

21.2.7 Principal Project Company shall include in the Project Management Plan internal procedures to facilitate review and audit by City and, if applicable, City representatives and the City's Controller or their employees and consultants.

21.2.8 Principal Project Company represents and warrants the completeness and accuracy of all information it or its agents provides in connection with City audits, and shall cause all Contractors to represent and warrant the completeness and accuracy of all information such Contractors provide in connection with City audits.

21.2.9 Principal Project Company's internal and Third Party quality and compliance auditing responsibilities shall be identified in the Project Management Plan, in accordance with Section 1.4 of Division 1 of the Technical Requirements and other related provisions concerning QA and compliance auditing.

21.2.10 Nothing in the Contract Documents shall in any way limit the constitutional and statutory powers, duties and rights of elected officials, including the independent rights of the City's Controller, in carrying out his or her legal authority.

21.3 Public Records Act and San Francisco Sunshine Ordinance

21.3.1 Principal Project Company acknowledges and agrees that all Submittals, records, documents, drawings, plans, specifications and other materials in City's possession, including any Books and Records submitted by Principal Project Company to City, may be considered public information subject to disclosure under the California Public Records Act (the "**PRA**") and San Francisco Sunshine Ordinance.

21.3.2 If Principal Project Company believes any Books and Records submitted to City constitute trade secrets, proprietary information or other information that is not subject to or excepted from disclosure under the PRA, Principal Project Company shall be solely responsible for specifically and conspicuously designating that information by placing "CONFIDENTIAL" in the center header of each such page affected, as it determines to be appropriate. Any such designation of trade secret or other basis for exemption shall be accompanied by a concise statement of reasons supporting the claim including the specific Law that authorizes the exemption from disclosure under the PRA.

21.3.3 If City receives a request for public disclosure of information or materials that have been designated by Principal Project Company as "CONFIDENTIAL," City will use reasonable efforts to provide Notice to Principal Project Company of the request and may request advice from City's counsel before disclosing any such documents in accordance with applicable Law. Principal Project Company shall then have the opportunity to either consent to the disclosure or assert its basis for non-disclosure and claimed exception under the PRA or other applicable Law to City within the time period specified in the Notice issued by City (if any) and before the deadlines for release in the PRA and other applicable Law. However, it is the responsibility of

Principal Project Company to monitor requests for disclosure and proceedings and make timely filings. City may make filings of its own concerning possible disclosure; however, City is under no obligation to support Principal Project Company's positions. By entering into this Agreement, Principal Project Company consents to, and expressly waives any right to contest, provision by City to City's counsel of all, or representative samples of, information or materials designated as "CONFIDENTIAL" by Principal Project Company, in accordance with the PRA. City shall have no responsibility or obligation for a failure of Principal Project Company to respond or to respond timely to any request for disclosure of information or materials designated as "CONFIDENTIAL" by Principal Project Company, in accordance with the PRA, and City shall not be required to wait for a response before making a disclosure or otherwise taking action under the PRA or other applicable Law. Under no circumstances will City be responsible or liable to Principal Project Company or any other party as a result of disclosing any such materials, including materials marked "CONFIDENTIAL", whether the disclosure is deemed required by Law or by an order of court or City's general counsel or occurs through inadvertence, mistake or negligence on the part of City or its officers, employees, contractors or consultants.

21.3.4 Nothing contained in this Section 21.3 (Public Records Act and San Francisco Sunshine Ordinance) shall modify or amend requirements and obligations imposed on City by the PRA or other applicable Law, and the provisions of the PRA or other Laws shall control to the extent of a conflict between the procedures under this Agreement and applicable Law. City will not advise a submitting party or Principal Project Company as to the nature or content of documents entitled to protection from disclosure under the PRA or other applicable Laws, as to the interpretation of such Laws, or as to definition of trade secret. Principal Project Company is advised to contact its own legal counsel concerning the effect of applicable Laws to Principal Project Company's Books and Records and actions to be taken to preserve confidentiality.

21.3.5 In the event of any proceeding or litigation concerning the disclosure of any Books and Records to Third Parties, City's sole involvement will be as a stakeholder retaining the material until otherwise ordered by a court or other authority having jurisdiction. Principal Project Company shall be responsible for prosecuting or defending any action, acting on its own behalf, concerning such materials at its sole expense and risk; provided, however, that City may intervene or participate in the litigation in such manner as it deems necessary or desirable. Principal Project Company shall indemnify and hold harmless Indemnitees from and against any and all claims, causes of action, suits, legal or administrative proceedings, damages, losses, liabilities, response costs, costs and expenses, including any injury to or death of persons or damage to or loss of property (including damage to utility facilities), and including attorneys' and expert witness fees and costs, arising out of, relating to or resulting from City's refusal to disclose any material that Principal Project Company has designated as a trade secret.

21.4 Intellectual Property

21.4.1 Developed IP

21.4.1.1 Principal Project Company acknowledges and agrees that all Developed IP, in any medium, is either owned by City or specially ordered or commissioned by City, including works made for hire pursuant to 17 U.S.C. § 101 (the U.S. Copyright Act of 1976), and shall be owned by City upon authorship, creation, development or invention. Principal Project Company hereby assigns to City all rights, title and interest in and to the Developed IP including any and all Software, Work Product and designs. If any Developed IP is not the proper subject matter or is determined not to be a work-made-for-hire pursuant to the U.S. Copyright Act, Principal Project

Company hereby assigns, and shall cause all PPC-Related Entities to assign, to City all rights, title and interest in and to the Developed IP including any deliverable. Principal Project Company agrees to execute, and shall cause all PPC-Related Entities to execute, such further documents and to do such further acts as may be necessary to perfect, register, or enforce City's ownership of such rights, in whole or in part. If any PPC-Related Entity fails or refuses to execute any such documents, Principal Project Company, for itself and on behalf of any PPC-Related Entity, hereby appoints City as the necessary PPC-Related Entity's attorney-in-fact (this appointment is irrevocable and is coupled with an interest) to act on PPC-Related Entity's behalf and to execute such documents. Principal Project Company hereby forever waives and agrees never to assert, and shall cause any PPC-Related Entity to waive and never to assert, against City, its successors or licensees any and all "moral rights" (including claims based on 17 U.S.C. §§ 101-810 (the Copyright Act of 1976, as modified), specifically including 17 U.S.C. § 106A(a) (the Visual Artists Rights Act of 1990, "**VARA**")) that such PPC-Related Entity may have in any Intellectual Property or deliverable even after expiration or termination of this Agreement.

21.4.1.2 All deliverables authored, created or developed under or for the purpose of this Agreement, the Work or the Project shall be owned by City immediately upon creation or generation, physically or digitally, and whether or not such deliverable and/or work product have been delivered to City under the terms of this Agreement.

21.4.1.3 Principal Project Company shall deliver to City all deliverables and/or other work product authored, created or developed under or for the purpose of this Agreement (i) at time(s)/dates(s) pursuant to this Agreement, or (ii) as soon as reasonably practicable after such creation or generation, but in no event later than the effective date of termination of this Agreement.

21.4.2 Principal Project Company IP

21.4.2.1 Principal Project Company hereby grants to City an irrevocable, perpetual, non-exclusive, transferable (solely to a permitted City's assignee), fully paid-up right and license to use, execute, perform, sublicense, exploit, manufacture, distribute, reproduce, adapt, display, and prepare derivative works ("**Base License Rights**") of Principal Project Company IP in connection with the Work or the Project. The rights granted herein shall survive the termination, expiration or cancellation of this Agreement or any rights related thereto.

21.4.2.2 Principal Project Company shall identify and disclose to City all Principal Project Company IP required by, incorporated in, or combined with the Work or the Project.

21.4.3 Third Party IP

21.4.3.1 Principal Project Company shall use commercially reasonable efforts to secure Base License Rights in the name of City to license Third Party IP in connection with the Project or Work, and shall pay any and all royalties and license fees required to be paid for any Intellectual Property required by, incorporated in, or combined with the Project IP.

21.4.3.2 Subject to Section 21.4.3.3, if the owner of Third Party IP refuses to grant Base License Rights pursuant to Section 21.4.3.1, Principal Project Company shall:

(a) obtain City's prior written approval, which shall not to be unreasonably withheld, of the terms and conditions of Third Party IP licenses;

(b) identify and disclose to City all Third Party IP required by, incorporated in, or combined with the Project IP; and

(c) obtain from each owner of the Third Party IP prior consent to have the relevant Third Party IP deposited into an IP Escrow in accordance with Section 21.5 (Intellectual Property Escrows), or, to the extent the owner of the relevant Third Party IP has not provided such consent, obtain City's prior written approval for a waiver of this requirement, not to be unreasonably withheld.

21.4.3.3 COTS. Only if the owner of Third Party IP refuses to grant Base License Rights pursuant to Section 21.4.3.1 and the subject Third Party IP is COTS, Principal Project Company shall secure license(s) in the name of City, based on commercially available terms for the COTS, including any standard end user license Contract. Principal Project Company shall provide (i) an outline of license deficiencies vs. Base License Rights and (ii) the identification of at least one (1) other COTS available for the same purpose, function or design. Principal Project Company shall identify and disclose to City all COTS required by, incorporated in, or combined with the Work and/or the Project.

21.4.4 City IP and City Data

21.4.4.1 City hereby grants to PPC-Related Entities a limited, non-exclusive license to use, exploit, manufacture, distribute, reproduce, adapt and display the Project IP, City IP, and City Data, and any deliverable and/or other work product incorporating such Intellectual Property, solely in connection with and limited to the Allowed Uses. All rights not specifically granted in this Section 21.4.4.1 are reserved to City. For the avoidance of doubt, no rights to City trademarks, whether or not the subject of a trademark state or US application or registration, ("City Marks") are granted to Principal Project Company and Principal Project Company may not incorporate, refer to, or otherwise use City Marks for any marketing, promotional or advertising purposes.

21.4.4.2 In addition to Principal Project Company's obligations and restrictions related to City Data in this Agreement, Principal Project Company acknowledges and agrees that all City Data, including the results or creation of any anonymization, de-identification, aggregation or other analysis of such City Data, whether physical or digital, is owned by City. Except as specifically provided in this Agreement, no PPC-Related Entity shall make use of City Data, including any anonymized, de-identified, or aggregated versions thereof, even if such use is for such PPC-Related Entity's internal use or analysis, whether or not commercial value is available or received, and/or such information or data is available in other, separate or cumulative sources.

21.4.4.3 Notwithstanding any other term or condition of this Agreement, the rights and permissions granted under this Section 21.4.4 (City IP and City Data) shall terminate (i) upon the effective date of termination of this Agreement or (ii) upon 24-hour written Notice by City to Principal Project Company, whichever is earlier.

21.4.4.4 Except as, and to the limited extent, required by applicable Laws, Principal Project Company shall keep and maintain, and shall cause all PPC-Related Entities to keep and maintain, all City IP and City Data strictly confidential. Before any release of any City IP or CTIP Data pursuant to applicable Laws, Principal Project Company must consult with City and the

City Attorney's Office regarding such release and obtain consent to such release. Any release shall be limited to the minimum required to satisfy the applicable Law.

21.4.5 Delivery of IP Materials

Principal Project Company shall deliver to City all IP Materials related to Principal Project Company IP and Third Party IP, or deposit such IP Materials into IP Escrow(s) in accordance with Section 21.5 (Intellectual Property Escrows), as soon as reasonably practicable following incorporation of the relevant Intellectual Property into the Project or Work.

21.4.6 Payments Inclusive

Principal Project Company acknowledges and agrees that the payments provided for in Article 11 (Payments to Principal Project Company) include all royalties, fees, costs and expenses arising from or related to the Project IP, including any fees pursuant to Section 21.5 (Intellectual Property Escrows).

21.5 Intellectual Property Escrows

21.5.1 City and Principal Project Company acknowledge that Principal Project Company or other PPC-Related Entities may deliver IP Materials pursuant to Section 21.4.5 (Delivery of IP Materials) that include Software, Source Code and Documentation or other Intellectual Property and may not wish to deliver the applicable IP Materials directly to City as public disclosure could deprive such Person of commercial value. Principal Project Company further acknowledges that City nevertheless must be ensured access to such IP Materials at any time, and must be assured that the IP Materials are delivered to City pursuant to Section 21.4.5 (Delivery of IP Materials).

21.5.2 In lieu of delivering the IP Materials directly to City, Principal Project Company may elect to deposit the IP Materials with a neutral depository. In such event, City and Principal Project Company shall: (a) mutually select one or more escrow companies or other neutral depositories (each an "**IP Escrow Agent**") engaged in the business of receiving and maintaining escrows of software source code and/or other Intellectual Property; (b) establish one or more escrows (each an "**IP Escrow**") with the IP Escrow Agent on terms and conditions reasonably acceptable to City and Principal Project Company for the deposit, retention, upkeep, authentication, confirmation and release of IP Materials to City pursuant to this Agreement; (c) determine the date(s) for Principal Project Company's deposit of the IP Materials into the IP Escrow; and (d) determine a process for releasing from escrow the IP Materials to be delivered to City pursuant to this Agreement. IP Escrows also may include Affiliates as parties and may include deposit of their Intellectual Property. Principal Project Company shall be responsible for the fees and costs of the IP Escrow Agent(s).

21.5.3 The IP Escrows shall survive expiration or earlier termination of this Agreement regardless of the reason.

21.5.4 The IP Materials shall be released and delivered to City in any of the following circumstances:

(a) this Agreement expires or is terminated prior to expiration for any reason;

(b) voluntary or involuntary bankruptcy of Principal Project Company, PPC-Related Entity or the owner of Third Party IP, as to Principal Project Company IP or Third Party IP respectively; or

(c) Principal Project Company, PPC-Related Entity or the owner of Third Party IP is dissolved or liquidated or otherwise ceases to engage in the ordinary course of the business of manufacturing, supplying, maintaining, and servicing the Software, product, part, or other item containing the relevant Intellectual Property.

21.6 City's Use of IP Materials

21.6.1 City may exercise all rights, including the Base License Rights, granted to City pursuant to Section 21.4 (Intellectual Property) for the purposes of the Project, including any subsequent expansion or additions, except that City's ownership or assigned rights pursuant to Section 21.4.1 (Developed IP) shall not be limited in any way, for any purpose. For the avoidance of doubt, City's rights include the right to sublicense any City rights to a future vendor. City's rights under this clause shall survive the termination, expiration or cancellation of this Agreement.

21.6.2 City shall maintain the confidentiality of any IP Materials released pursuant to Section 21.5 (Intellectual Property Escrows) pursuant to Section 21.4 (Intellectual Property) and shall enter into a non-disclosure agreement with any third party to whom City, in its sole discretion, grants access to such IP Materials to the extent that such IP Materials contain Confidential Information.

ARTICLE 22. ADVERTISING AND OTHER BUSINESS OPPORTUNITIES

22.1 Rights and Interests in the Project and Project Site

Principal Project Company's rights and interests in the Project and Project Site under this Agreement are limited to such rights and interests that are required for performing the Work and Principal Project Company's timely fulfillment of its obligations under the Contract Documents. Principal Project Company's rights and interests exclude any Airspace or other real property interest.

22.2 Advertising and Business Opportunities

22.2.1 City reserves all rights and opportunities concerning:

(a) advertising on the Infrastructure Facility and, as between Principal Project Company and City, within the Project Site, including use of Infrastructure Facility physical assets for advertising purposes; and

(b) entrepreneurial, commercial and business activities that are ancillary or collateral to the use and operation of the Infrastructure Facility and Project Site, whether developed or pursued by City or through others worldwide. The rights and opportunities reserved to City under this Section 22.2.1(b) include the rights described in Section 22.2.1(a) and any sponsorships, naming rights, etc. (collectively, "**Business Opportunities**").

22.2.2 Principal Project Company shall cooperate and, during the D&C Period, grant all necessary access to the Project Site to City and any Third Party designees, including tenants and vendors, authorized by City in connection with City's exercise of its rights relating to the Project Site and any advertising and Business Opportunities. During the IFM Period, Principal Project Company shall not interfere with access to the Infrastructure Facility by City and any Third Party designees, including tenants and vendors, authorized by City in connection with City's exercise of its rights relating to its operations at the Project Site and any advertising and Business Opportunities. Unless otherwise agreed to by the Parties, City shall be entitled to all revenues generated by business opportunities arising out of, relating to or resulting from the Infrastructure Facility or in the Project Site's Airspace, except rents paid by any Housing and Commercial Component tenants. Principal Project Company shall be compensated for reasonable costs and expenses incurred directly by Principal Project Company in installing and maintaining facilities for advertising or Business Opportunities (other than routine maintenance), through a Change Order.

22.2.3 Except as authorized by City, Principal Project Company shall not engage in, and shall not permit:

(a) any advertising within the Project Site or within or on the exterior of the Infrastructure Facility;

(b) use or occupation of the Project for any Business Opportunities; and

(c) operation of any business at the Project Site or the Infrastructure Facility, including (i) the sale of products or services (including any newsstand or concession stand for the sale of food, beverages or gifts or other retail or rental services); or (ii) the sale or rental of any wire, cable, transmission or receiving device or any other utility on, or transmission or receipt of any electronic communication to or from, any part of the Project.

22.2.4 Principal Project Company may request City to consider Business Opportunities. If City, in its sole discretion, consents, the Parties shall execute an amendment to the Contract Documents memorializing the agreement reached, including any agreement as to any revenue and cost attribution. Notwithstanding the foregoing, Principal Project Company shall be compensated pursuant to a City Change for Principal Project Company's reasonable costs and expenses that are directly attributable to implementation of such Business Opportunities (other than routine maintenance) as well as any support efforts the City Change requires Principal Project Company to provide.

22.2.5 Unless expressly approved by City, Principal Project Company may not permit any Person to use or occupy the Project for any ancillary or collateral purpose.

22.3 Remedies

If a PPC Default concerns a breach of the provisions of Section 22.2 (Advertising and Business Opportunities), then, in addition to any other remedies available to City under this Agreement or applicable Law, City shall be entitled to receive from Principal Project Company an amount equal to all profits from the prohibited activity, together with interest thereon at the Late Payment Rate from the date of collection until the date payment is made. In addition, City may require Principal Project Company to restore the Project Site and the Infrastructure Facility to its original condition or to transfer to City all of Principal Project Company's interest in the prohibited assets and improvements and revenues derived therefrom, or any combination of the foregoing.

ARTICLE 23. MISCELLANEOUS

23.1 Standard for Approvals

In all cases where approvals, acceptances or consents are required to be provided by City or Principal Project Company hereunder, such approvals, acceptances or consents shall not be withheld unreasonably except in cases where a different standard (such as sole discretion) is specified. Any authorization by City shall be in writing. Any approval required by the SFMTA Board or Board of Supervisors will be at their respective sole discretion. In cases where sole discretion is specified, the decision shall not be subject to Contract Dispute Procedures hereunder.

23.2 Amendments

The Contract Documents may be amended only by a written instrument duly executed by or on behalf of the Parties, except to the extent expressly provided otherwise in this Agreement.

23.3 Waiver

23.3.1 The failure of a Party to exercise or delay in exercising any right under this Agreement shall not:

(a) constitute a waiver of such right or any other right under the Contract Documents; or

(b) relieve the other Party from performance of its obligations under the Contract Documents except as otherwise provided in the Contract Documents.

23.3.2 No waiver of any right under this Agreement shall be effective unless made in a writing duly executed by a duly authorized representative of the Party charged with the waiver.

23.3.3 Any waiver under Section 23.3.2 shall be limited to the specific instance and shall not constitute a waiver of such right in the future or of any other right under this Agreement.

23.3.4 If the Parties make and implement any interpretation of the Contract Documents without documenting such interpretation by an instrument in writing signed by both Parties, such interpretation and implementation thereof will not be binding in the event of any future Contract Disputes.

23.3.5 No waiver of any right under this Agreement shall be deemed to have occurred as the result of any acceptance by City, any payment for or acceptance of the whole or any part of the Work, any extension of time, or any possession taken by City.

23.4 Independent Contractor; No Joint Venture or Partnership

23.4.1 Principal Project Company is an independent contractor. Neither Principal Project Company nor any of its employees or agents is or shall be deemed to be an employee or agent of City, and in no event shall the relationship between City and Principal Project Company be construed as creating any relationship whatsoever between City and Principal Project Company's employees or agents. Except as otherwise provided in the Contract Documents,

Principal Project Company has sole authority and responsibility to employ, discharge and otherwise control its employees and has complete and sole responsibility as a principal for its agents, for all Contractors and for all other Persons that Principal Project Company or any Contractor hires to perform or assist in performing the Work.

23.4.2 Nothing in the Contract Documents is intended or shall be construed to create any partnership, joint venture or similar relationship between City and Principal Project Company; and in no event shall either Party take a position in any tax return or other writing of any kind that a partnership, joint venture or similar relationship exists.

23.4.3 Principal Project Company shall not have, or be deemed to have, power or authority to make any commitments on City's behalf or to execute agreements in the name of or on behalf of City. Principal Project Company shall not enter into any agreement with any Governmental Entity, Utility Owner, property owner or other Third Party having regulatory jurisdiction over any aspect of the Project or Work or having any property interest affected by the Project or the Work that in any way purports to obligate City, or states or implies that City has an obligation to the Third Party, to undertake any activity, unless City otherwise approves.

23.5 Successors and Assigns

The Contract Documents shall be binding upon and inure to the benefit of City and Principal Project Company and each of their permitted successors, assigns and legal representatives.

23.6 Designation of Representatives; Cooperation with Representatives

23.6.1 City and Principal Project Company shall each designate an individual or individuals who shall be authorized to make decisions and bind the Parties on matters relating to the Contract Documents. Exhibit 10 (Initial Designation of Authorized Representatives) provides the initial Authorized Representative designations. A Party may change such designations by written Notice in accordance with Section 23.10 (Notices and Communications).

23.6.2 Principal Project Company shall cooperate with City and all representatives of City designated as described above in performance of their obligations under the Contract Documents.

23.7 Survival

The following provisions shall survive the expiration or earlier termination of this Agreement and/or the completion of the Work:

(a) Principal Project Company's and City's representations and warranties;

(b) the Contract Dispute Procedures;

(c) the indemnifications, limitations and releases contained in Section 10.6 (Indemnities);

(d) the limitations on remedies contained in Section 16.6 (Limitation on Consequential Damages);

(e) the express obligations of the Parties following termination (including those in Articles 17 (Termination) and 20 (Assignment and Transfer);

(f) the Direct Agreement); and

(g) all other provisions which by their inherent character should survive expiration or earlier termination of this Agreement and/or completion of the Work.

23.8 Limitation on Third Party Beneficiaries

Except to the extent that specific provisions (such as the warranty and indemnity provisions, and the provisions for the protection of certain Lenders under any Direct Agreement) identify Third Parties and state that they are entitled to benefits, (a) it is not intended by any of the provisions of the Contract Documents to create any third party beneficiary to this Agreement or to authorize anyone not a Party to maintain a suit for personal injury or property damage under this Agreement, and (b) the duties, obligations and responsibilities of the Parties with respect to third parties shall remain as imposed by Law. The Contract Documents shall not be construed to create a contractual relationship of any kind between City and a Contractor or any Person other than Principal Project Company.

23.9 Governing Law; Venue

The Contract Documents shall be governed by and construed in accordance with the laws of the State, any applicable federal law, the San Francisco City Charter and Municipal Code, and the ordinances, regulations, codes, and Executive Orders enacted and/or promulgated pursuant thereto. The venue for any litigation arising from a Contract Dispute shall be in San Francisco, California to the extent that a court located in San Francisco has subject matter jurisdiction.

23.10 Notices and Communications

23.10.1 All notices, requests, demands, instructions, certificates, consents, explanations, agreements, approvals and other communications (each being a "**Notice**") required or permitted under this Agreement must be in writing (whether or not "written notice" or "notice in writing" is specifically required by the applicable provision of this Agreement) and (a) delivered in person, (b) sent by commercial courier, next business day delivery requested, or (c) by registered, certified mail or express mail, return receipt requested, with postage prepaid, to the mailing addresses below. All Notices under this Agreement will be deemed given, received, made or communicated on the date personal receipt actually occurs or, if mailed, on the delivery date or attempted delivery date shown on the return receipt. For the convenience of the Parties, copies of Notices may also be given by email to the email address given below but the emailed copy will not be binding on either Party.

23.10.2 The effective time of a Notice will not be affected by the receipt of the email copy of the Notice.

23.10.3 Any mailing address, or email address, may be changed at any time by giving written Notice of the change in the manner provided above at least ten (10) days before the effective date of the change.

(a) All Notices to Principal Project Company shall be delivered to the following address or as otherwise directed by Principal Project Company's Authorized Representative:

____

c/o _______________
____
____
Attention: _______________
Telephone: _______________
E-mail: _______________

(b) All Notices to City shall be marked as regarding the Project and shall be delivered to the following address or as otherwise directed by City's Authorized Representative:

San Francisco Municipal Transportation Agency
1 South Van Ness, 8th Floor
San Francisco, CA 94103
Attn: Chris Lazaro
Email: Chris.Lazaro@sfmta.com

With a copy to:

Office of the City Attorney
City Hall, Room 234
1 Dr. Carlton B. Goodlett Place
San Francisco, California 94102-4682
Attn: Real Estate & Finance Group
Re: Potrero Yard Modernization Project
Email: isidro.jimenez@sfcityatty.org

23.10.4 Any technical or other communications pertaining to the Work shall be conducted by Principal Project Company's Authorized Representative and City's Authorized Representative.

23.10.5 Principal Project Company shall promptly provide to City a copy of each communication received from any Lender relating to any default or event of default under any Financing Agreement or Security Document.

23.11 Severability

23.11.1 If any provision or part of the Contract Documents is ruled invalid (including invalidity due to any statutory change or other change in Law) by a court having proper jurisdiction, then the Parties shall: (a) promptly meet and negotiate a substitute for such provision or part, which shall, to the greatest extent legally permissible, effect the original intent of the Parties, including an equitable adjustment to the Financial Model Update (or, if there has been no Update, the original Financial Model) and Principal Project Company's compensation to account for any change in the Work resulting from such invalidated portion; and (b) if necessary or desirable, apply to the court or other decision maker (as applicable) which declared such invalidity for an interpretation of the invalidated portion to guide the negotiations. The invalidity or

unenforceability of any such provision or part shall not affect the validity or enforceability of the balance of the Contract Documents, which shall be construed and enforced as if the Contract Documents did not contain such invalid or unenforceable provision or part.

23.11.2 If after the efforts required by Section 23.11.1, no interpretation or reformation of the Contract Documents can reasonably be adopted that will return the Parties to the benefits of their original bargain, then the court order shall be treated as a Termination Due to Court Ruling under Section 17.4.3 (Termination Due to Court Ruling).

23.12 Construction and Interpretation of Agreement

23.12.1 The Contract Documents shall be construed simply, as a whole and in accordance with the fair meaning of the language used and not strictly for or against any Party.

23.12.2 The Parties acknowledge and agree that: (a) the Contract Documents are the product of an extensive and thorough, arm's-length exchange of ideas, questions, answers, information and drafts during the Implementation Proposal preparation process; (b) each Party has been given the opportunity to independently review the Contract Documents with legal counsel; and (c) each Party has the requisite experience and sophistication to negotiate, understand, interpret and agree to the particular language of the provisions of the Contract Documents. Accordingly, in the event of a conflict, ambiguity or inconsistency in or Contract Dispute regarding the interpretation of the Contract Documents, the Contract Documents shall not be interpreted or construed against the Party preparing it, and instead the Contract Dispute resolver shall consult other customary rules of interpretation and construction.

23.12.3 City's final answers to the questions posed during the Implementation Proposal preparation process for the Contract Documents shall in no event be deemed part of the Contract Documents and shall not be relevant in interpreting the Contract Documents except as they may clarify provisions otherwise considered ambiguous.

23.12.4 The captions of the articles, sections and subsections in the Contract Documents are for convenience only and are not to be treated or construed as part of this Agreement.

23.12.5 Unless otherwise expressly stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meaning.

23.12.6 Wherever the word "including", "includes" or "include" is used in the Contract Documents, it is deemed to be followed by the words "without limitation." Wherever reference is made in the Contract Documents to a particular Governmental Entity, it includes any public agency succeeding to the powers and authority of such Governmental Entity.

23.12.7 References to "days" contained in the Contract Documents shall mean calendar days unless otherwise stated.

23.12.8 Subject to Section 23.12.9, if the day on or by which any thing is to be done in accordance with this Agreement is not a Business Day, that thing must be done on the next Business Day.

23.12.9 If the Contract Documents require action to be taken in the event of an emergency and otherwise where it is clear that performance is intended to occur on a non-Business Day, Principal Project Company shall be required to perform such obligations, even though the date in question may fall on a non-Business Day.

23.12.10 As used in this Agreement and as the context may require, the singular includes the plural and vice versa, and the masculine gender includes the feminine and vice versa.

23.12.11 All monetary amounts and obligations in the Contract Documents are expressed and payable in U.S. dollars.

23.12.12 Each party must perform its obligations in accordance with this Agreement at its own cost, unless expressly provided otherwise.

23.12.13 If this Agreement requires calculation of an amount payable to a party there must be no double counting in calculating that amount.

23.13 Further Assurances

Each Party shall promptly execute and deliver to the other Party all such instruments and other documents and assurances as are reasonably requested by the second Party to further evidence its obligations hereunder, including, specifically with respect to Principal Project Company, assurances regarding the validity of (a) the assignments of Contracts contained herein, and (b) any instruments securing performance hereof.

23.14 Entire Agreement

City and Principal Project Company agree and expressly intend for the Contract Documents to constitute a single, non-severable, integrated agreement whose terms are interdependent and non-divisible. The Contract Documents contain the entire understanding of the Parties with respect to the subject matter of this Agreement and supersede all prior agreements, understandings, statements, representations and negotiations, in each case oral or written, between the Parties with respect to the subject matter of this Agreement.

23.15 Counterparts

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

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

APPROVED AS TO FORM

David Chiu, City Attorney

By:______________________________

[●]
Deputy City Attorney

Date:______________________________

CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation, operating by and through the San Francisco Municipal Transportation Agency

By:______________________________

Jeffrey Tumlin
Director of Transportation

Date:______________________________

APPROVED BY:

San Francisco Municipal Transportation Agency
Board of Directors
Resolution No: ______________________
Adopted: __________________________
Attest:

____
Secretary, SFMTA Board of Directors

[PRINCIPAL PROJECT COMPANY]

By:______________________________
Signature

____
Print Name

____
Print Title

By:______________________________
Signature

____
Print Name

____
Print Title

EXHIBIT 1
ABBREVIATIONS AND DEFINITIONS

EXHIBIT 1

ABBREVIATIONS AND DEFINITIONS

Unless otherwise specified, whenever the following abbreviations or terms are used in this Agreement and the other Contract Documents, they have the meanings given below. References in this Exhibit 1 (Abbreviations and Definitions) to Sections and Exhibits shall mean sections of and exhibits to this Agreement.

ACI	American Concrete Institute
ACM	Asbestos Containing Material
ADA	Americans with Disabilities Act
ADAAG	Americans with Disabilities Act Accessibility Guidelines
AED	Automatic Electronic Defibrillator
AHA	Activity Hazard Analysis
AHJ	Authority(ies) Having Jurisdiction
AISC	American Institute of Steel Construction
ANSI	American National Standards Institute
APTA	American Public Transportation Association
AQMD	Air Quality Management District
ARI	Air Conditioning and Refrigerator Institute
ASCE	American Society of Civil Engineers
ASHRAE	American Society of Heating, Refrigerating and Air-Conditioning Engineers
ASME	American Society of Mechanical Engineers
ASTM	ASTM International (formerly known as the American Society for Testing and Materials)
AW	Assigned Weight
AWS	American Welding Society
BCI	Buildings Cost Index
BEB	Battery Electric Bus
BAS	Building Automation System
BIL	Basic Insulation Level
BIM	Building Information Modeling
BOCC	Building Operations Control Center
BODR	Basis of Design Report
BTU	British Thermal Unit
CADD	Computer Aided Design and Drafting
CALM	Coordination and Logistics Management Program
CAFM	Computer Aided Facility Management
CAP	Compliance Action Plan
CARPP	Capital Asset Replacement Program Plan
CBC	California Building Code
CCTV	Closed-Circuit Television
CDRL	Contract Data Requirements List
CEC	California Electrical Code
CEI	Construction Engineering and Inspection
CEL	Certifiable Elements List
CEQA	California Environmental Quality Act, California Public Resources Code § 21000 et seq., as it may be amended
CFA	Certificate of Final Acceptance
CFR	Code of Federal Regulations

CIB	Communications Infrastructure Backbone
CIDH	Cast In Drilled Hole
CIH	Central Instrument House
CIL	Certifiable Items List
CIR	Committed Information Rate
CIS	Customer Information System
CL	Checklist
CM	Construction Management
CO	Carbon Monoxide
CPESEC	Customer Premises Equipment
CPI	Consumer Price Index
CPM	Critical Path Method
CPT	Cone Penetrometer Test
CPTED	Crime Prevention through Environmental Design
CPU	Central Processing Unit
CPUC	California Public Utilities Commission
CQCM	Construction Quality Control Manager
CS	Construction/Installation Supervisor
CSEMS	Construction Site Environmental Management Supervisor
CSP	Construction Security Plan
CWA	Clean Water Act
D&C	Design and Construction
D/CID	Design Construction Integration Documents
DC	Direct Current
DTS	Data Transmission System
DVD	Digital Video Disc
DVMS	Digital Video Management System
EA	Environmental Assessment
ECI	Environmental Compliance Inspector
ECP	Environmental Compliance Plan
EEO	Equal Employment Opportunity
EIA	Electronic Industries Association
EMP	Emergency Management Panel
EMS	Emergency Medical Services
EP	Extraction Procedure (toxicity)
EPA	Environmental Protection Agency
EPS	Electrical Power System
ER	Equipment Room
ERRS	Electricity Rate Risk Share
ESC	Erosion and Sediment Control
ESD	Environmental Site Design
ET	Environmental Team
ETEL	Emergency Telephone
EVP	Emergency Vehicle Preemption
FCI	Facility Condition Index
FA	Forced Air
FAS	Fire Alarm System
FC	Footcandle
FDC	Fire Department Connections
FEIR	Final Environmental Impact Report
FF&E	Furniture, Fixtures and Equipment
FMP	Fire Management Panel

FMS	Fire Management System
FOD	Foreign Object Debris
FONSI	Finding of No Significant Impact
FOV	Field of View
FTA	Federal Transit Administration
GDR	Geotechnical Data Report
GER	Geotechnical Engineering Reports
GIS	Geographical Information System
GPM	Gallons per Minute
GPR	Geotechnical Planning Report
GRS	Galvanized Rigid Steel
GSD	General System Display
HCF	Hundred Cubic Feet
HVAC	Heating, Ventilation, and Air Conditioning
ICEA	Insulated Cable Engineers Association
ID	Identifier
IDF	Intermediate Distribution Frame
IDO	Interdepartmental Order
IEC	International Electrotechnical Commission
IEEE	Institute of Electrical and Electronics Engineers
IESNA	Illuminating Engineer Society of North America (also known as IES)
IF	Infrastructure Facility
IFM	Infrastructure Facility Maintenance
IMP	Incident Management Plan
IPMVP	International Performance Measurement and Verification Protocol
IAQ	Indoor Air Quality
ISO	International Organization for Standardization
LAN	Local Area Network
LCD	Liquid Crystal Display
LED	Light Emitting Diode
LEED	Leadership in Energy & Environmental Design
LEED NC	LEED New Construction
LFMC	Liquidtight Flexible Metallic Conduit
LiDAR	Light Detecting and Ranging
LOE	Level of Effort
LRFD	Load and Resistance Factor Design
LRU	Lowest Replaceable Unit
LTA	Lenders' Technical Advisor
MAC	Media Access Control
MaxAP	Maximum Availability Payment
MDE	Maximum Design Earthquake
MDF	Main Distribution Frame
MEP	Mechanical, Electrical and Plumbing
MMIS	Maintenance Management Information System
MMRP	Mitigation Monitoring and Reporting Program
MOT	Maintenance of Traffic
MOU	Memorandum of Understanding
MPH	Miles Per Hour
MSD	Major Service Degradation
MSDS	Material Safety Data Sheets
MSI	Master Systems Integrator
MTBHE	Mean Time Between Hazard Events

MUTCD	Manual on Uniform Traffic Control Devices
MW	Megawatt
NACE	National Association of Corrosion Engineers
NCE	Noncompliance Event
NCEER	National Center for Earthquake Engineering Research
NCHRP	National Cooperative Highway Research Program
NCR	Non-Conformance Report
NEC	National Electrical Code
NEMA	National Electrical Manufacturers Association
NEPA	National Environmental Policy Act of 1969, 42 U.S.C. §§ 4321 et seq., as it may be amended
NESC	National Electrical Safety Code
NETA	International Electrical Testing Association
NFPA	National Fire Protection Association
NIST	National Institute of Standards and Technology
NOI	Notice of Intent
NPDES	National Pollutant Discharge Elimination System
NRC	Noise Reduction Coefficient
NRCS	Natural Resource Conservation Service
NRHP	National Register of Historic Places
NSC	National Safety Council
NVR	Network Video Recorder
OA	Other Adjustments
O&SHA	Operating and Support Hazards Analysis
O/S-SSPP	Operating System Safety Program Plan
OCC	Operations Control Center
OCR	Optical Character Recognition
OCS	Overhead Catenary System
ODE	Operating Design Earthquake
OEM	Original Equipment Manufacturer
OH	Overhead
OSHA	Occupational Safety and Health Administration
PA	Public Address
PAB	Private Activity Bond
PABX	Private Automatic Branch Exchange
PCB	Polychlorinated Biphenyl
PCI	Precast/Prestressed Concrete Institute
PDF	Portable Document Format
PDM	Precedence Diagram Method
PDS	Power Distribution System
PHA	Preliminary Hazards Analysis
PICO	Post-Installation Checkout
PM	Project Management
PMP	Project Management Plan
PNC	Potrero Neighborhood Collective LLC
PoE	Power over Ethernet
POH	Point of Handoff
PPC	Principal Project Company
PCQP	Principal Project Company’s Construction Quality Plan
PDQP	Principal Project Company's Design Quality Plan
PQP	Principal Project Company's Quality Program
PPCECP	Principal Project Company's Environmental Compliance Plan

PPCQPP	Principal Project Company's Quality Program Plan
PPCSE	Principal Project Company's Safety Engineer
PPCSHP	Principal Project Company Safety & Health Plan
PPCSS	Principal Project Company's Safety Supervisor
PPCSSSP	Principal Project Company Site Specific Safety Plan
PQM	Program Quality Manager
PRA	California Public Records Act
P-S	P-S Suspension Loggings
PSTN	Public Switched Telephone Network
PTZ	Pan, Tilt, Zoom
PVC	Polyvinyl Chloride
QA	Quality Assurance
QC	Quality Control
QM	Quality Management
QMP	Quality Management Plan
QMS	Quality Management System
QoS	Quality of Service
QPM	Quality Program Manager
QSD	Qualified SWPPP Developer
QT	Qualification Test
RAMS	Reliability, Availability, Maintainability, and Safety/Security/Service
RDE	Restorable Design Earthquake
RFC	Request for Comments
RFCCD	Release for Conformed Construction Documents
RFCD	Release for Construction Documents
RFP	Request for Proposals
RGS	Rigid Galvanized Steel
RTLS	Real-Time Location System
SBE	Small Business Enterprise
SC	Safety Certification
SC Plan	Safety Certification Plan
SCADA	Supervisory Control and Data Acquisition
SCI	System Condition Index
SCS	Structured Cabling System
SCVM	System Compliance Verification Matrix
SCVR	Safety Certification Verification Report
SF	Square Feet
SF6	Sulfur Hexafluoride
SFMTA	San Francisco Municipal Transportation Agency
SHA	System Hazards Analysis
SHPO	State Historic Preservation Officer
SLP	Service Loss Percentage,
SMARTS	Stormwater Multi-Application and Report Tracking System
SNMP	Simple Network Management Protocol
SOP	Standard Operating Procedure
SOQ	Principal Project Company's Statement of Qualification
SPCCP	Spill Prevention Control and Countermeasures Plan
SPFMA	System Performance and Failure Management Analysis
SQAP	Software Quality Assurance Plan
SSEPP	System Security Emergency Preparedness Plan
SSHA	System Subsystem Hazards Analysis
SSI	Sensitive Security Information

SSO	State Safety Oversight
SSP	System Security Plan
SSPP	System Safety Program Plan
SSPWC	Standard Specifications for Public Works Construction
SSRC	Safety and Security Review Committee
SUE	Subsurface Utility Engineering
SUSMP/LID BMP	Standard Urban Stormwater Mitigation Plan/Low Impact Development Best Management Practices
SWP	Safe Work Plan
SWPPP	Storm Water Pollution Prevention Plan
SWRCB	State Water Resources Control Board
TIA	Time Impact Analysis
TMP	Transportation Management Plan
TR	Technical Requirements
TRB	Transportation Research Board
TRO	Temporary Restraining Order
TSC	Traffic Signal Coordination
TVC	Terminal Vertical Core
U.S.C.	United States Code
UL	Underwriters Laboratory
UPS	Uninterruptable Power Supply
USDOT	United States Department of Transportation, or its successor entity
USO	United Service Organizations Inc.
VAR	Volt-Amp Resistance
VLAN	Virtual Local Area Network
VMS	Variable Message Sign
VoIP	Voice over Internet Protocol
VRLA	Valve-Regulated, Lead Acid
VSS	Video Surveillance System
VT	Verification Test
WAN	Wide Area Network
WBS	Work Breakdown Structure

1 Year Scheduled Maintenance Plan means detailed schedule, which highlights IFM Services activities that may impact SFMTA O&M Services, identifies implications and provides plans on how the potential impact will be mitigated or eliminated, prepared and submitted by Principal Project Company in accordance with Section C.6.7.1 of the IFM Specifications, as updated and approved by the City in accordance with this Agreement.

24/7/365(6) means 24 hours per day 7 days per week, 365(6) days per year.

5 Year Scheduled Maintenance Plan means detailed schedule, which identifies all major IFM Services activities that may impact SFMTA O&M Services, prepared and submitted by Principal Project Company in accordance with Section C.6.7.2 of the IFM Specifications, as updated and approved by the City in accordance with this Agreement.

Access Date has the meaning set forth in Section 2.2 (Right of Entry).

Accessibility Condition means a state or condition of the relevant Functional Unit or the means of access to it which allows all persons who are entitled to enter, occupy or use the

relevant Functional Unit to enter and leave the Functional Unit safely and conveniently and using normal access routes.

Account Balances means all amounts standing to the credit of any bank account held by or on behalf of Principal Project Company (excluding the Handback Requirements Reserve Account), or the value of any letter of credit issued in lieu of any bank account held or required to be held by or on behalf of Principal Project Company (excluding the Handback Requirements Reserve Account), at the Early Termination Date.

Actual Insurance Policy(ies) has the meaning set forth in Section 10.1.3(b)(ii).

Actual Insurance Premiums has the meaning set forth in Section 10.1.3(e)(i).

Actual Knowledge means (i) as to Principal Project Company, facts and information actually known to Principal Project Company or Principal Project Company's Authorized Representative (in each case, as applicable), after reasonable consultation with other personnel of each PPC-Related Entity that are involved with the performance of the Work or this Agreement, as applicable; and (ii) as to City, City's Authorized Representative, facts and information actually known to City's Authorized Representative.

Additional Property(ies) has the meaning set forth in Section 7.5.1.2.

Adhoc Services means services which, in accordance with the IFM Specifications, City is entitled to require Principal Project Company to provide but where Principal Project Company's obligation to provide those services does not arise unless and until it is requested to do so by City.

Adjusted Annual Energy Target or **AAET** means the Annual Energy Target in any Contract Year after adjusting pursuit to Section 3.2.1 of Exhibit 12.

Adverse Event means:

(a) an Affordability Event, with the understanding that an Affordability Event occurring before the Effective Date shall be deemed to occur the day after the Effective Date;

(b) either or both of the CEQA Approval or the NEPA Approval is invalidated for a reason other than PPC Fault;

(c) a temporary restraining order, injunction or other form of legal order by a court prohibiting City or Principal Project Company from performing any of their respective material obligations under this Agreement or materially delaying the critical path;

(d) the occurrence of exceptional circumstances in the financial markets in one or more of Europe, the United States of America, Japan/Asia Pacific and Canada that, in City's opinion determined in City's reasonable discretion, (i) results in material and substantial cessation of lending activity in national or relevant international capital or interbank markets and (ii) adversely affects access by Principal Project Company to such markets preventing Financial Close by the Scheduled Financial Close Date;

(e) any action, litigation or proceeding pending against City or affecting the Project, which, in each case, has a material likelihood of success and if determined adversely would have the effect of (i) preventing Financial Close; or (ii) prohibiting or materially impairing City from performing any of its material obligations under the Principal Project Documents;

(f) a downgrade to City's credit rating by a Rating Agency that has a material negative impact on the credit rating of any bond financing included in the Finance Plan when compared to the indicative investment grade rating(s) of such bonds included in the Finance Plan as of the Effective Date;

(g) the approval of this Agreement by the SFMTA Board or the Board of Supervisors is invalidated for any reason other than PPC Fault;

(h) failure of City to timely provide the deliverables set forth in Section 3.2.2 (City Deliverables);

(i) any event set forth in clauses (b), (e)-(f), (h), (l)-(m), (o), and (s)-(t) of the definition of Compensable Delay Event; or

(j) any event set forth in clauses (a)-(h) of the definition of "Force Majeure Event".

Adverse Event Notice has the meaning set forth in Section 3.4.2.

Adverse Weather means heavy rain, windstorm, flood, or any severe atmospheric condition that: (i) occurs at the Project Site during the D&C Period; and (ii) prevents Principal Project Company from proceeding with at least 75 percent of the scheduled labor, material, and equipment resources for at least five hours per Day on activities shown in the Critical Path on the Project Schedule).

Adverse Weather Event means Adverse Weather that exceeds the anticipated number of Days of Adverse Weather specified per year in Section 14.1.8 (Relief for Adverse Weather Event).

Affiliate means:

(a) any Equity Member;

(b) any Person which directly or indirectly through one or more intermediaries controls, or is controlled by, or is under common control with, Principal Project Company or any Equity Member; and

(c) any Person owned in whole or in part by (i) Principal Project Company, (ii) any Equity Member or (iii) any Affiliate of Principal Project Company under clause (b) of this definition, whether the ownership interest is direct or indirect, beneficial or of record, provided that ownership of less than 10% of the equity interest in a Person shall not give rise to Affiliate status.

For purposes of this definition, the term "control" means the possession, directly or indirectly, of the power to cause the direction of the management of a Person, whether through voting rights or securities, by contract, family relationship or otherwise.

Affordability Event means the occurrence of a fluctuation in the Base Interest Rates and/or Baseline Credit Spreads during the Bank Debt Rate Protection Period or Bond Rate Protection Period that results, or in the good faith opinion of City is likely to result, in an increase to the Base Capital MaxAP of 10% or greater.

Aggregate Actual Consumption means the actual consumption of all Energy at the Infrastructure Facility, as invoiced by the relevant Utility companies for each Contract Year.

Agreement means the Design-Build-Finance-Operate-Maintain Agreement to which this Exhibit 1 (Abbreviations and Definitions) is attached, including all exhibits, appendices and attachments, as such agreement may be modified from time to time.

Airspace means any and all real property, including the surface of the ground, within the vertical column extending above and below the surface boundaries of the Project Site and not necessary or required for the Infrastructure Facility (including Upgrades) or developing, permitting, designing, financing, constructing, installing, equipping, operating, maintaining, repairing, reconstructing, restoring, rehabilitating, renewing or replacing the Infrastructure Facility (including Upgrades) or Principal Project Company's timely fulfillment of its obligations under the Contract Documents. If the Project Site is a separate legal parcel with specific vertical limits, then the Airspace shall only mean the area within those vertical limits.

Allowance means the Office/Admin and Training Spaces FF&E Allowance, the City-Furnished IT/Comms Allowance and the Partnering Allowance, and **Allowances** means all of them as the context requires.

Annual Energy Target or **AET** means the targeted consumption of Energy in any Contract Year in respect of the Regulated Load, and, for clarity, does not include Non-Regulated Load consumption. Metered, Non-Regulated Load consumption shall be included for reference only.

Annual Energy Review Meeting has the meaning set forth in Section 4.3 of Exhibit 12.

Annual Service Plan means the plan prepared and submitted by Principal Project Company that provides, at a minimum, the required items listed in Section B.5.1 of the IFM Specifications, as updated and approved by the City in accordance with this Agreement.

Annual Vandalism Deductible has the meaning set forth in Section 8.3.4.

Applicable Law and Standards means applicable Law, all applicable Standards and Specifications, manufacturers' recommended maintenance and operations activities and maintenance and operations activities that would normally be undertaken in accordance with Good Industry Practices.

As-Built Documents means, collectively, the documents referred to in Section 1.6.3 of Division 1 of the Technical Requirements, as well as the following items referred to in Division 1 of the Technical Requirements: As-Built Schedule, As-Built Drawings, and LOD 500 As-Built Model (Section 1.10.1.2).

As-Built Drawings means, revised sets of drawings submitted to reflect any changes made during the construction process, depicting the actual conditions, dimensions, and locations of installed elements as opposed to the originally planned design.

As-Built Schedule means has the meaning set forth in Section 1.2.5 of Division 1 of the technical Requirements.

As-Built Schedule Analysis has the meaning set forth in Section 18.3.5 (Additional Requirements for Contract Disputes Relating to Delay Events Impacting the Critical Path).

Authority(ies) Having Jurisdiction means an organization, including City acting in its regulatory capacity, office or individual responsible for enforcing the requirements of a code or standard, or for approving equipment, materials, an installation, or a procedure. The term "Authorities Having Jurisdiction" refers to more than one such organization, office or individual.

Authorized Representative means the authorized representative for either Party identified in Exhibit 10 (Initial Designation of Authorized Representatives) or otherwise designated in accordance with this Agreement.

Availability Condition means any of (i) the Accessibility Condition, (ii) the Safety Condition or (iii) the Use Condition.

Availability Deduction means a Deduction from an Availability Payment as a result of Functional Unit or Functional Component being deemed Unavailable.

Availability Failure means an IFM Failure Event which has not been Rectified within the relevant Rectification Time and which causes a Functional Unit to be Unavailable. For the avoidance of doubt, an Availability Failure may be applied to one or more Functional Components.

Availability Failure Deduction means a deduction from the Availability Payment as a result of an Availability Failure.

Availability Payment means the payments to be made by City to Principal Project Company under Section 11.2 (Availability Payments), determined on an annual basis in accordance with Exhibit 4B (Availability Payment Mechanism) and payable quarterly.

Bank Debt means any debt financing, other than Bond Financing, provided by a bank or similar financial institution.

Bank Debt Pricing Date means with respect to any Bank Debt proposed in the Finance Plan, the earliest to occur of:

(a) the date of Financial Close;

(b) the date at which the Bank Debt is fixed or hedged by Principal Project Company; and

(c) such other date as is mutually agreed to by Principal Project Company and City.

Bank Debt Rate Protection Period means the period beginning at 3:00 p.m. Pacific Time on [●], 2025 and ending on, with respect to any Bank Debt, the Bank Debt Pricing Date.

Bankruptcy Event means any of the following events:

(a) a receiver, receiver manager or other encumbrance holder taking possession of or being appointed over, or any distress, execution or other process being levied or enforced upon, the whole or any material part of the assets of an entity;

(b) any proceedings with respect to the entity being commenced under the Bankruptcy Law and if such proceedings are commenced against and are disputed by the entity, such proceedings are not discontinued, withdrawn, dismissed or otherwise remedied within 60 days of such proceedings being instituted;

(c) the entity making an assignment for the benefit of its creditors, being declared bankrupt or committing an act of bankruptcy, becoming insolvent, making a proposal or otherwise taking advantage of provisions for relief under the Bankruptcy Law or similar legislation in any jurisdiction, or any other type of insolvency proceedings being commenced by or against the entity under the Bankruptcy Law or otherwise and, if proceedings are commenced against the entity and are disputed by the entity, such proceedings are not stayed, dismissed or otherwise remedied within 60 days of such proceedings being instituted;

(d) in any voluntary or involuntary case seeking liquidation, reorganization or other relief with respect to the entity or its debts under any bankruptcy Law or foreign bankruptcy, insolvency or other similar law now or hereafter in effect, this Agreement or any of the other Contract Documents is rejected, including a rejection under 11 U.S.C. § 365 or any successor statute; or

(e) the entity ceasing to carry on business.

Bankruptcy Law means the United States Bankruptcy Code, 11 U.S.C. §§ 101 *et seq.* as amended from time to time and any successor statute thereto. "Bankruptcy Law" also includes any similar state law relating to bankruptcy, insolvency, the rights and remedies of creditors, the appointment of receivers or the liquidation of companies and estates that are unable to pay their debts when due.

Base Capital MaxAP means, initially, **[$●]**, which is the Base Capital MaxAP reflected in the Financial Model for the first Contract Year, as adjusted from time to time in accordance with this Agreement.

Base Case Financial Model means the Financial Model as approved by the Parties as of the Effective Date.

Base IFM MaxAP means, initially, **[$●],** which is the Base IFM MaxAP reflected in the Financial Model for the first Contract Year, as adjusted from time to time in accordance with this Agreement.

Base Interest Rate means the publicly-documented interest rates of each maturity included in the following indices:

(a) [●];

(b) [●];

(c) [●].

The Base Interest Rates do not include any additional credit spread, margin or fee components.

Baseline Credit Spreads means the set of credit spreads issued by City that assumes different coupons for the range of maturities, ratings and types of Bond Financings that will serve as the basis for the Credit Spread Risk Mitigation.

Basis of Design Report (BODR) means the report described in Section 1.8.5.2.3 of Division 1 of the Technical Requirements, concerning design methodology and approach for the D&C Work, key assumptions and operations and maintenance design methodology.

Bedding-In Period means the three-month period following the Substantial Completion Date.

Benchmarking Date has the meaning set forth in Section 10.1.3(b).

Best Management Practices (BMP) has the meaning set forth in Storm Water Management For Construction Activities: Developing Pollution Prevention Plans and Best Management Practices (EPA Document 832 R 92-005).

BIM Project Execution Plan means Principal Project Company's plan describing BIM-enabled workflows and systems to successfully deliver, design, construct, operate, and maintain the Project, prepared and submitted by Principal Project Company in accordance with Section 1.10.2 of Division 1 of the Technical Requirements, as updated and approved by the City in accordance with this Agreement.

Board of Supervisors means the Board of Supervisors of the City and County of San Francisco.

Bond Financing means any debt financing comprising of bonds, which includes tax-exempt bonds issued by a Conduit Issuer or taxable capital market instruments.

Bond Pricing Date means with respect to any Bond Financing proposed in the Finance Plan, the earliest to occur of (a) the date of Financial Close, (b) the date at which any Bond Financing is priced, and (c) the date at which any Bond Financing is fixed or hedged.

Bond Rate Protection Period means the period beginning at 3:00 p.m. Pacific Time on [●], 2025 and ending on, with respect to any Bond Financing, the Bond Pricing Date.

Books and Records means any and all documents, books, records, papers, or other information of any PPC-Related Entity or Affiliate relating to the Project, the Work, the PPC-Furnished FF&E and the Project Site, including (a) all design and construction documents, and all operations and maintenance documents (including drawings, specifications, Submittals, Contracts, invoices, schedules, meeting minutes, budgets, forecasts, requests for change proposals, change responses, change requests, plans (including the Project Management Plan), reports and manuals), (b) daily time sheets and supervisor's daily reports, union agreements, insurance, welfare and benefits records, payroll registers, earning records, payroll tax forms, invoices and requisitions, equipment records, payment certificates, cancelled checks, job cost reports, job payroll ledges, general ledger, cash disbursement journal; (c) income statements, balance sheets, statements of cash flow and changes in financial position, details regarding operating income, expenses, capital expenditures and budgeted operating results; (d) all budgets, certificates, claims, correspondence, data (including test data), documents, expert

analyses, facts, files, information, investigations, materials, notices, plans, projections, proposals, records, reports, requests, samples, schedules, settlements, statements, studies, surveys, tests, test results, vehicular traffic information, operational information analyzed, categorized, characterized, created, collected, generated, maintained, processed, produced, prepared, provided, recorded, stored or used by Principal Project Company or its Contractors or any of their representatives in connection with the Project, (e) the Base Case Financial Model, Financial Model, subsequent Financial Model Updates and Financial Modeling Data, (f) records of the expenditure and investment of the Milestone Payment including records identifying expenditures for D&C Work and debt service payments, and (g) with respect to all of the above, any information that is stored electronically or on computer-related media (in its original source and not converted to PDF or other format). For purposes of the requirements of the Contract Documents to maintain Books and Records, the term "Books and Records" includes documents or information that are subject to the attorney-client privilege, but for purposes of requirements of the Contract Documents to provide access to Books and Records, the term specifically excludes the disclosure by any Party of Books and Records that are protected by the attorney-client or other legal privilege based upon an opinion of counsel reasonably satisfactory to the other Party.

Breakage Costs means any commercially reasonable prepayment premiums or penalties (including documented SOFR breakage fees, customary and reasonable trustee, Collateral Agent and Lender fees but excluding any fees related to legal or other consulting costs), make-whole payments or other prepayment amounts, including costs of early termination of interest rate and inflation rate hedging, swap, collar or cap arrangements, payable by or on behalf of, or credited against payments owing to, Principal Project Company, under any Financing Agreement or Security Document or otherwise as a result of the payment (including pre-payment), redemption or acceleration of all or any portion of the principal amount of Project Debt prior to its scheduled payment date (less any breakage benefits), excluding, however, any such amounts included in the principal amount of any Refinancing. The term "Breakage Costs" excludes any such premiums, penalties, payments or other amounts relating to Equity Member Debt.

Building Automation System or **BAS** means the computer-based control system installed in buildings that controls, monitors and integrates the buildings' systems, including HVAC, lighting, security, fire alarm and elevator control. The BAS controls building environmental conditions including temperature, humidity, CO_2, illumination, heating and cooling and air flow distribution.

Building Occupant(s) means City Personnel, City Parties, Visitors, PPC-Related Entities and third party members of the public lawfully present on or using the Infrastructure Facility including, or each of them as the context requires.

Buildings Cost Index (BCI) means the "Buildings Cost Index" in San Francisco, as published by Engineering News-Record. If the BCI is discontinued or substantially altered, a suitable replacement will be determined by the Parties in accordance with general market practice at the time.

Bus Yard Component means the Facility's transit component, which (a) will include the spaces needed for City's operation and maintenance activities at the Facility after Substantial Completion of the Infrastructure Facility, (b) must meet the Bus Yard Component criteria in the Technical Requirements except as otherwise approved by City in writing, which approval shall be at its sole discretion, and (c) is not Common Infrastructure. The Bus Yard Component is

generally described in the "Project Description" included in Division 1 of the Technical Requirements.

Business Day means any weekday (i.e., Monday through Friday) except for those weekdays on which (a) City is officially closed for business or (b) banks are not required or authorized by Law to be open in the State.

Business Opportunity(ies) has the meaning set forth in Section 22.2.1(b).

CAFM (Computerized Aided Facility Management) System means, the computerized system used to track, record, manage and communicate day-to-day Infrastructure Facility operations and to support long-term planning. Modules may include asset, location, inventory, work order/request, Scheduled Maintenance, personnel and reports.

Capacity Improvement means any Project expansion, improvement, measure or procedure that both (a) maintains or increases the throughput capacity of the Project or any portion thereof and (b) improves the level of service of the Project.

CEQA Approval means the Final Environmental Impact Report for the Potrero Yard Modernization Project at 2500 Mariposa Street (Planning Department Case No. 2019-021884ENV), certified by the Planning Commission on January 11, 2024 and available at https://sfplanning.org/environmental-review-documents?title=Potrero+Yard+Modernization+Project.

CEQA Event means:

(a) any new or modified CEQA Approval necessitated solely by a City Change, a Delay Event or Relief Event;

(b) legal action being taken in respect of the CEQA Approval that results in a temporary restraining order, preliminary injunction or other form of interlocutory relief by a court of competent jurisdiction that prohibits prosecution of, or by complying with such temporary restraining order, preliminary injunction or other form of interlocutory relief by a court of competent jurisdiction results in prohibiting the prosecution of, a material portion of the Work;

(c) review or revocation or material change to, the CEQA Approval; or

(d) any review or revocation of, or change to, a CEQA Approval directly resulting from the circumstances specified in clauses (b) and (c),

except, in each case, to the extent resulting, in whole or in part, from Principal Project Company's design, Work or from any PPC Fault.

Certificate of Final Acceptance means the certificate issued by City as contemplated in Section 7.9 (Final Acceptance).

Certificate of Substantial Completion means the certificate issued by City as contemplated in Section 7.8 (Substantial Completion).

Change means any acceleration, addition, decrease, omission, deletion, removal or modification from or to the Work.

Change in Law means:

(a) any repeal (in whole or in part) of, or amendment or modification to, any applicable Law by, any Governmental Entity or any written change in interpretation or application of, any applicable Law, in each case, after the Setting Date; and

(b) the adoption or enactment of any new applicable Law by any Governmental Entity after the Setting Date,

which, in either case, is materially inconsistent with any existing applicable Law or any existing interpretation or application of, any such applicable Law in effect prior to the Setting Date; but excluding, (i) any repeal of, or amendment or modification to, a written change in interpretation or application of, and applicable Law, or any new applicable Law, in each case, that is pending, passed or adopted but not yet effective as of the Setting Date, (ii) any repeal of, or amendment or modification to, or written change in interpretation or application of, or the adoption or enactment of, state or federal tax laws of general application, and (iii) any repeal of, or amendment or modification to, or written change in interpretation or application of, or adoption or enactment of, state labor laws.

Change of Control means any Equity Transfer, transfer of an interest, direct or indirect, in an Equity Member, or other assignment, sale, financing, grant of security interest, hypothecation, conveyance, transfer of interest or transaction of any type or description, including by or through voting securities, asset transfer, contract, merger, acquisition, succession, dissolution, liquidation, bankruptcy or otherwise, that results, directly or indirectly, in a change in possession of the power to direct or control or cause the direction or control of the management of Principal Project Company or a material aspect of its business. A change in possession of the power to direct or control or cause the direction or control of the management of an Equity Member may constitute a Change of Control of Principal Project Company if such Equity Member possesses, immediately prior to such Change of Control, the power to direct or control or cause the direction or control of the management of Principal Project Company. Notwithstanding the foregoing, the following shall not constitute a Change of Control:

(a) a change in possession of the power to direct or control the management of Principal Project Company or a material aspect of its business due solely to bona fide open market transactions in securities effected on a recognized public stock exchange, including such transactions involving an initial public offering;

(b) an upstream reorganization or transfer of indirect interests in Principal Project Company (including, for greater certainty, in connection with the issuance or redemption of interests pursuant to any employee ownership program) so long as no change occurs in the entity with ultimate power to direct or control or cause the direction or control of the management of Principal Project Company;

(c) a change in possession of the power to direct or control the management of Principal Project Company or a material aspect of its business due solely to a bona fide transaction involving a beneficial interest in the ultimate parent

organization of an Equity Member (but not if the Equity Member is the ultimate parent organization), provided, however, that this exception shall not apply if at the time of the transaction the transferee is suspended or debarred from bidding, proposing or contracting with the City or any federal or State department or agency, or is subject to a suspension or debarment proceeding;

(d) an Equity Transfer, where the transferring Equity Member and the transferee are under the same ultimate parent organization ownership, management and control before and after the transfer;

(e) a transfer of interests (i) between managed funds that are under common ownership, management or control or (ii) by an Equity Member to a fund, investment vehicle or other entity managed by or under common control of such Equity Member, except, in each case, a change in the management or control of a fund, investment vehicle or other entity, as applicable, that manages or controls;

(f) the exercise of minority veto or voting rights (whether pursuant to applicable Law, by Principal Project Company's organizational documents or by related member or shareholder agreements or similar agreements) over major business decisions of Principal Project Company, provided that if such minority veto or voting rights are exercised pursuant to shareholder or similar agreements, City received copies of such agreements on or before the date of this Agreement; and

(g) the grant of Security Documents, including the Initial Security Documents, in compliance with the Direct Agreement or the exercise of lender remedies under such Security Documents, including foreclosure.

Change Order has the meaning set forth in Section 1.4.3 of Exhibit 9 (Change Procedures).

Change Proposal has the meaning set forth in Section 1.3.1 of Exhibit 9 (Change Procedures).

City has the meaning set forth in the Preamble.

City Access Period has the meaning set forth in Section 7.13.5.1.

City Additional Insured(s) means any (and all) of the City and County of San Francisco, and its respective successors, assigns, officeholders, officers, directors, agents, representatives, consultants and employees.

City-Caused Delay Event means any event falling under clauses (a)-(e), (k), (n), (q), (r) and (u)-(v) of the definition of Compensable Delay Event.

City-Caused Relief Event means any event falling under clauses (a)-(c), (g), (j), (l) and (r) of the definition of Compensable Relief Event.

City Change has the meaning set forth in Section 12.2.1.

City Data means any information, data, or document, whether or not protectable Intellectual Property, which is created, developed, or collected by, or on behalf of, City related to

transportation operations, national infrastructure planning and personal information of the City employees, vendors and consumers. For the avoidance of doubt, City Data shall include, but not be limited to, (a) all "nonpublic information," as defined by the Gramm-Leach-Bliley Act (15 USC § 6801 et seq.), (b) personal information as defined by California Civil Code §§ 1798.29, 1798.82, and 1798.140 (California Consumer Privacy Act of 2018, effective January 1, 2020), as amended and supplemented by the California Privacy Rights Act of 2020 (effective December 16, 2020; operative January 1, 2023), (c) protected health information or individually identifiable health information as defined by the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the Health Information Technology for Economic and Clinical Health (HiTECH) Act or as defined by the Code of Federal Regulations (45 CFR § 160.103), and/or (d) personal data as defined by the EU General Data Protection Regulation (Regulation (EU) 2016/679). For the further avoidance of doubt, City Data is not limited to proprietary or confidential information, and need not constitute trade secret information.

City Default has the meaning set forth in Section 16.3.1 (City Default).

City Fault means:

(a) a breach by City of any of its obligations or any representation or warranty under this Agreement;

(b) City's violation of any applicable Law; or

(c) fraud, criminal conduct, intentional misconduct, recklessness, bad faith or gross negligence of the City.

City-Furnished Equipment means all FF&E classified as City-Furnished Equipment (or City-furnished) in the Technical Requirements (including items marked OP in the Equipment List, Table 5 and Table 6 of Division 1 of the Technical Requirements) or otherwise required to be included as such under Section 7.13.2 (Selection of City-Furnished Equipment).

City-Furnished Equipment List means the list of equipment identified as being City-Furnished Equipment in the Equipment List and Tables 5 and 6 of Division 1 of the Technical Requirements, as updated or amended in accordance with Section 7.13.2 (Selection of City-Furnished Equipment).

City-Furnished IT/Comms Allowance means the Allowance to be used pursuant to Section 11.11.3 (City-Furnished IT/Comms Allowance) by City for City-Furnished IT/Comms Equipment. The initial City-Furnished IT/Comms Allowance amount is identified in Section 11.11.3.

City-Furnished IT/Comms FF&E means all FF&E classified as City-Furnished IT/Comms FF&E in the Technical Requirements, all additional FF&E identified as City-furnished "IT/Comms FF&E" in Table 5 and Table 6 of Division 1 of the Technical Requirements and all additional IT/Comms Equipment selected by City under Section 7.13.1 (Selection and Procurement of PPC-Furnished FF&E).

City IP means all Intellectual Property owned by, or sufficiently licensed to, City including, without limitation, all rights, grants and interests pursuant to the Predevelopment Agreement.

City Personnel means every person employed, engaged, or hired by City or every person

employed, engaged, or hired by City Contractors to carry out any of the responsibilities or any of the services provided by City with respect to the Infrastructure Facility.

City Ready for Move Condition means the following state of condition of the Project Site:

(a) With respect to Utilities, all Utility infrastructure will remain in place and will not be sealed, capped, disconnected, turned off and or controlled prior to vacation of the Project Site by City;

(b) The buildings, grounds and existing structures will remain in their current state as of the Access Date, including all furniture, equipment, materials and supplies; and

(c) All furniture, equipment, materials and supplies that are to be moved by Principal Project Company shall be boxed or otherwise prepared so they may be moved.

City Relocation Plan means the plan developed by Principal Project Company pursuant to the Predevelopment Agreement, and approved by City, that describes the scope of Work to be undertaken by Principal Project Company to fully relocate the applicable City equipment, supplies and materials from the Project Site.

City Relocation Scope means the scope of Work undertaken by Principal Project Company to fully relocate the applicable City equipment, furniture, supplies and materials from the Project Site, as more particularly described in the approved City Relocation Plan.

City Policies means policies developed, administered and maintained by City on a specific topic that are directly applicable to the IFM Services and are required to be complied with by the Principal Project Company.

Claim means any claim, proceeding, action, cause of action, investigation, demand or suit (including by way of contribution or indemnity) made:

(a) in connection with this Agreement or the Infrastructure Facility; and

(b) at law or for specific performance, in equity, restitution, payment of money (including damages), increase in the Milestone Payment or Availability Payments and extension of time or other form of relief.

Cleaning Services has the meaning given in Section C.5.2 of the IFM Specifications.

Climate Baseline means, for each year, the CAEC will be adjusted based on the Weather Data from the Energy Performance Commencement Date to the Current Contract Year.

Collateral Agent means (a) the Institutional Lender listed or otherwise designated in the Security Documents as trustee or agent and authorized to act on behalf of or at the direction of the other Lenders, or (b) the Institutional Lender designated to act as trustee or agent on behalf of or at the direction of the other Lenders in an intercreditor agreement or other document executed by all Lenders to whom Security Documents are outstanding at the time of execution of such document, a copy of which shall be delivered by Principal Project Company to City. For

any Project Debt issued and held by a single Lender, Collateral Agent means such Lender. The bond trustee, if an Institutional Lender, may also be the Collateral Agent.

Commercial Close means the execution and delivery of this Agreement by Principal Project Company and City on the Effective Date.

Commercially Reasonable Insurance Rates means insurance premiums that are less than or equal to the greater of (a) rates that a reasonable and prudent risk manager for a Person seeking to insure comparable risks would conclude are justified by the risk protection afforded, and (b) 200% of the rates indicated for the period in question in the Base Case Financial Model and related Financial Modeling Data.

Committed Investment means the sum of the Equity Investments and Deferred Equity Amounts.

Common Infrastructure means the physical infrastructure component of the Facility that is shared by the Bus Yard Component and the Joint Development Alternative, as further described in the Technical Requirements, including Division 1 of the Technical Requirements.

Communication Protocol means the protocol prepared and submitted by Principal Project Company and approved by the City in accordance with Section B.9.1.1 of the IFM Specifications, as updated in accordance with this Agreement.

Compensable Delay Event means any of the following events or circumstances to the extent, in each case, that it directly and adversely impacts (i) the D&C Work during the D&C Period or (ii) Principal Project Company's completion of Punch List items between the Substantial Completion Date and the Final Acceptance Date:

(a) the implementation of a City Change, excluding any Change following a Change Request;

(b) City Fault;

(c) failure by City to (i) provide Principal Project Company with access to the Project Site on the Access Date; or (ii) leave the Project Site in the City Ready for Move Condition as of 90 days after the Access Date;

(d) failure by City to issue NTP 1 or NTP 2, as applicable, within 10 Business Days after full and complete satisfaction of the conditions precedent to the relevant NTP under this Agreement;

(e) a Hazardous Materials Event caused by City;

(f) a Relevant Change in Law;

(g) discovery of an Unidentified Utility within the Project Site;

(h) a CEQA Event or a NEPA Event;

(i) compliance by Principal Project Company with an order or direction of an

Emergency service provider in an Emergency (except for Emergencies that are or arise out of Force Majeure Termination Events);

(j) any condemnation or other taking by eminent domain of any material portion of the Project Site or the D&C Work;

(k) except with respect to Regulatory Approvals under the jurisdiction of the City acting in its regulatory capacity, failure of City to provide responses to proposed schedules, plans, design documents, and other Submittals and matters submitted to City after the Commercial Close for which response is required under this Agreement as an express prerequisite to Principal Project Company's right to proceed or act, within the time periods indicated in this Agreement, or if no time period is indicated, within a reasonable time, taking into consideration the nature, importance and complexity of the Submittal or matter; provided, however, that the foregoing shall apply only following delivery of Notice after the expiration of the applicable time period from Principal Project Company requesting such action in accordance with the terms and requirements of this Agreement;

(l) discovery at, near or on the Project Site of any archeological, paleontological or cultural resources (including historic properties), excluding any such substance or resources known or disclosed to Principal Project Company as of the Setting Date (or which should have been known to Principal Project Company pursuant to a Reasonable Investigation);

(m) discovery at, near or on the Project Site of any threatened or endangered species, excluding any such presence of species known or disclosed to Principal Project Company as of the Setting Date (or which should have been known to Principal Project Company pursuant to a Reasonable Investigation);

(n) loss or damage to the Work directly caused by City Fault;

(o) issuance of a temporary restraining order, preliminary injunction or other form of interlocutory relief by a court of competent jurisdiction that prohibits prosecution of, or by complying with such temporary restraining order, preliminary injunction or other form of interlocutory relief by a court of competent jurisdiction results in prohibiting the prosecution of, any material portion of the D&C Work;

(p) discovery of:

(i) actual subsurface or latent physical conditions that differ materially from the baseline subsurface conditions indicated in the Geotechnical Baseline Report, excluding any such conditions (w) that are not defined in the Geotechnical Baseline Report; (x) known or disclosed to Principal Project Company prior to the Setting Date; or (y) that could have been reasonably anticipated as potentially present by an experienced global civil works contractor based on the information contained in such Geotechnical Baseline Report; or

(ii) discovery of actual subsurface physical conditions within the Project Site of an unusual nature, differing materially from those ordinarily

encountered in the area and generally recognized as inherent in the type of work provided for in this Agreement, excluding any such conditions known or disclosed to Principal Project Company prior to the Setting Date;

(q) any order of City to suspend for convenience under Section 16.2.8.3 exceeding 24 hours in total for a single suspension or 144 cumulative hours in total across multiple suspensions;

(r) subject to Principal Project Company complying with its obligations for coordination set forth in this Agreement, actions of the City (including its employees) or Other Contractors (other than any PPC-Related Entities, JDA-Related Entities and any entity that is not a JDA-Related-Entity but that executes an interface agreement substantially in the form of Exhibit 8 (Form of Interface Agreement)), that materially and directly disrupts, damages or interferes with the D&C Work;

(s) a change in Standards and Specifications materially impacting the D&C Work or the Project with which City directs Principal Project Company to comply under this Agreement;

(t) a Hazardous Materials Event caused by Third Parties or which exists prior to the Access Date; and

(u) issuance by City of a Safety Compliance Order for a reason other than to comply with Safety Standards, perform valid previously issued Safety Compliance Orders or correct a violation of Law or Regulatory Approval respecting health, safety or right of use and access.

Compensable Relief Event means any of the following events or circumstances to the extent, in each case, that it interferes directly and adversely with, or causes a failure of, the performance of the IFM after the Substantial Completion Date:

(a) the implementation of a City Change, excluding any Change following a Change Request;

(b) City Fault;

(c) a Hazardous Materials Event caused by the City;

(d) compliance by Principal Project Company with an order or direction of an Emergency service provider in an Emergency (except for Emergencies that are or arise out of Force Majeure Termination Events);

(e) a change in Standards and Specifications during the IFM Period materially impacting the IFM or the Project with which City directs Principal Project Company to comply under this Agreement;

(f) a Relevant Change in Law;

(g) failure of City to provide responses to proposed schedules, plans, design documents, and other Submittals and matters submitted to City after the Effective Date for which response is required under this Agreement as an express prerequisite to Principal Project Company's right to proceed or act, within the time periods (if any) indicated in this Agreement, or if no time period is indicated, within a reasonable time, taking into consideration the nature, importance and complexity of the Submittal or matter; provided, however, that the foregoing shall apply only following delivery of Notice after the expiration of the applicable time period from the Principal Project Company requesting such action in accordance with the terms and requirements of this Agreement;

(h) discovery at, near or on the Project Site of any archeological, paleontological or cultural resources (including historic properties), excluding any such substance or resources known or disclosed to the Principal Project Company as of the Setting Date (or which should have been known to Principal Project Company pursuant to a Reasonable Investigation);

(i) discovery at, near or on the Project Site of any Threatened or Endangered Species (regardless of when the species was listed as threatened or endangered), excluding any such presence of species known to the Principal Project Company as of the Setting Date (or which should have been known or disclosed to Principal Project Company pursuant to a Reasonable Investigation);

(j) loss or damage to the Infrastructure Facility directly caused by City Fault;

(k) issuance of a temporary restraining order, preliminary injunction or other form of interlocutory relief by a court of competent jurisdiction that prohibits prosecution of a material portion of the IFM;

(l) subject to Principal Project Company complying with its coordination obligations under this Agreement, actions of the City (including its employees) or Other Contractors (other than any PPC-Related Entities)), except JDA-Related Entities and any entity that is not a JDA-Related-Entity but that executes an interface agreement substantially in the form of Exhibit 8 (Form of Interface Agreement), that materially and directly disrupts, damages or interferes with the IFM Services;

(m) Vandalism, excluding any Vandalism affecting the Infrastructure Facility building envelope or exterior grounds;

(n) any condemnation or other taking by eminent domain of any material portion of the Project Site or the Project;

(o) a Hazardous Materials Event caused by Third Parties or which exists prior to the Access Date;

(p) issuance by City of a Safety Compliance Order for a reason other than to comply with Safety Standards, perform valid previously issued Safety Compliance Orders or correct a violation of Law or Regulatory Approval respecting health, safety or right of use and access;

(q) a permanent change in voltage by a Utility Owner supplying electricity to the Project that is greater than 10%, has a material adverse effect on the IFM Services and requires the purchase and installation of one or more new transformers by Principal Project Company; and

(r) any order of City to suspend IFM Services for convenience under Section 16.2.8.3.

Computerized Aided Facility Management System or **CAFM** means the computerized system used to track, record, manage and communicate day-to-day Infrastructure Facility operations and to support long-term planning. Modules may include: asset, location, inventory, work order/request, scheduled maintenance, personnel and reports.

Condition Report has the meaning set forth in Section 8.5.4.2.

Conditions to Assistance has the meaning set forth in Section 7.6.12.2.

Conduit Issuer means an existing agency that will issue Private Activity Bonds in connection with the Project.

Confidential Information means, subject to Section 21 and without limiting applicable Law, all confidential and proprietary information that a party has designated as confidential and which is supplied, or to which access is granted, to or on behalf of the other party (whether before or after the date of this Agreement), either in writing, or in any other form, directly or indirectly pursuant to discussions with the other party and includes all analyses, compilations, studies and other documents whether prepared by or on behalf of a party which contain or otherwise reflect or are derived from such designated information.

Construction Documents means all shop drawings, working drawings, fabrication plans, material and hardware descriptions, specifications, construction quality control reports, construction quality assurance reports and samples necessary or desirable for construction of the Project included in the Construction Work, in accordance with the Contract Documents.

Construction Equity Ratio means, at any time, the ratio between:

(a) the Committed Investments at the time; and

(b) the sum of (i) Committed Investments at the time and (ii) the amount of Project Debt scheduled to be outstanding at the time as set forth in the Financial Model.

Construction Management Plan means Principal Project Company's plan describing its approach to undertake and achieve the requirements in Section 1.11 of Division 1 of the Technical Requirements, prepared and submitted by Principal Project Company in accordance with Section 1.1.7.2 of Division 1 of the Technical Requirements, as updated and approved by the City in accordance with this Agreement.

Construction Work means all Work to build or construct, make, form, manufacture, furnish, install, supply, deliver, landscape, equip, test and commission or demolish any structure, building, or other improvement to real property included in the Project, but excluding:

(a) Design Work, professional environmental services and similar services;

(b) preparing and processing applications for Regulatory Approvals;

(c) coordinating with adjacent property owners and Utility Owners; and

(d) IFM Services.

Consumer Price Index (CPI) means the Consumer Price Index for the City of San Francisco, as published by US Bureau of Labor Statistics from time to time, or failing such publication, such other index as the Parties (acting reasonably) may agree, or as may be determined in accordance with **Error! Reference source not found.** (Contract Dispute Procedures), which most closely resembles such index.

Contract means any agreement, and any modification of such agreement, by Principal Project Company with any Person to perform any part of the Work or provide any materials, equipment or supplies for any part of the Work, or any such agreement, supplement or amendment at a lower tier, between a Contractor and its lower tier Contractor or a Supplier and its lower tier Supplier, at all tiers. The term "Contract" does not include agreements with Utility Owners.

Contract Deadline means the Substantial Completion Deadline, the Final Acceptance Deadline or the Long Stop Date, as the context may require, and "Contract Deadlines" means the Substantial Completion Deadline, the Final Acceptance Deadline and the Long Stop Date, collectively.

Contract Dispute(s) means any dispute, disagreement or controversy between City and Principal Project Company concerning their respective rights and obligations under the Contract Documents, including concerning any Claim, alleged breach or failure to perform and remedies.

Contract Dispute Procedures means the procedures for resolving Contract Disputes set forth in **Error! Reference source not found.** (Contract Dispute Procedures).

Contract Documents means this Agreement and all its exhibits including the Technical Requirements and other documents identified in Section 1.2 (Contract Documents; Rules to Reconcile Conflicting Provisions).

Contract Month means a calendar month, except with respect to the first Contract Month, which runs from the Payment Commencement Date until the end of the calendar month in which the Payment Commencement Date falls, and the last Contract Month, which runs from the first day of the calendar month in which the Termination Date falls until the Termination Date.

Contract Quarter means a Quarter, except with respect to the first Contract Quarter, which runs from the Payment Commencement Date until the end of the calendar quarter in which the Payment Commencement Date falls, and the last Contract Quarter, which runs from the first day of the Quarter in which the Termination Date falls until the Termination Date.

Contract Year means a calendar year, provided that:

(i) the first Contract Year shall be such period that commences on the Payment Commencement Date and ends on the next ensuing December 31st; and

(ii) the final Contract Year shall be such period that commences on the January 1st that precedes the date on which this Agreement expires or is terminated, for whatever reason, and ends on the expiry or termination of this Agreement.

Any computation made on the basis of a Contract Year shall be adjusted on a pro rata basis to take into account any Contract Year of less than 365 or 366 days, whichever is applicable.

Contractor means any Person or entity with whom Principal Project Company has entered into any Contract to perform any part of the Work or provide any materials, equipment or supplies for the Project on behalf of Principal Project Company, and any other Person or entity with whom any Contractor has further subcontracted any part of the Work, at all tiers.

Controlling Affiliate means any Person which directly, or indirectly through one or more intermediaries, controls a majority of the voting shares of Principal Project Company, or controls the election of a majority of the board of directors, trustees or other persons exercising similar functions for Principal Project Company. For purposes of this definition, the term "control" means the possession, directly or indirectly, of the power to cause the direction of the management of a Person, whether through voting rights or securities, by contract, family relationship or otherwise.

Controlling Work Item means the activity or work item on the Critical Path of the D&C Work having the least amount of total float.

Core Hours means the period:

(a) for Maintenance and Transit Spaces, commencing at 4am and ending at 10pm, every day of every week.

(b) for Office/Admin and Training Spaces, commencing at 8am and ending at 5pm, Monday to Friday of every week.

Corrected Aggregate Energy Consumption or **CAEC** means, for a Contract Year, the Aggregate Actual Consumption less the Non-Regulated Load consumption with appropriate adjustments for the Climate Baseline.

Cost and Pricing Data means the data (including calculations, formulas, unit and material prices, and other cost and fee information) acknowledged and accepted by Principal Project Company and delivered by Lead Developer as specified in the Predevelopment Agreement, which data supports and explains the basis of Principal Project Company's cost estimates for development, design, construction, operations, and maintenance of the Project and provides all cost assumptions for human resources, including salary and benefits for non-management personnel performing the Work.

Cost to Complete means (without double-counting):

(a) those costs (internal and external) that City reasonably and properly projects that it will incur in carrying out any process to request tenders from any parties interested in entering into a contract with City to achieve Final Acceptance, including all costs related to the preparation of tender documentation, evaluation of tenders and negotiation and execution of relevant contracts; plus

(b) costs that City reasonably and properly projects that it will incur in achieving Final Acceptance; plus

(c) any other Losses that, but for the termination of this Agreement, City would not have incurred prior to Final Acceptance; minus

(d) any insurance proceeds available to City for the purposes of achieving Final Acceptance.

COTS (or, **Commercially Available Off-the-Shelf Software**) means Software (i) sold in substantial quantities, (ii) readily available to City without Principal Project Company or third party participation, (iii) provided without modification in the same form in which it is sold in the commercial marketplace, and (iv) for which there are at least two (2) readily available alternative solutions or items with the same or substantially similar design, use or function as the proposed COTS. For the avoidance of doubt, COTS does not include so-called open source software or sole-source software.

Credit Spread Risk Mitigation has the meaning set forth in Section 3.2.3.2.

Critical Path means each critical path on the Project Schedule, which ends on the Substantial Completion Deadline or the Final Acceptance Deadline, as applicable (i.e., the term shall apply only following consumption of all available Float in the schedule for Substantial Completion or Final Acceptance, as applicable). The lower case term "critical path" means the activities and durations associated with the longest chain(s) of logically connected activities through the Project Schedule with the least amount of total float for all chains.

Critical Path Method (CPM) is a method of planning and scheduling a construction project where activities are arranged based on activity relationships.

Current Status Documents has the meaning set forth in Section 1.6.3(C) of Division 1 of the Technical Requirements.

D&C Contract means:

(a) this Agreement, where Principal Project Company will self-perform the D&C Work; or

(b) the contract for the D&C Work entered into between Principal Project Company and D&C Contractor dated on or about the date of this Agreement, where Principal Project Company will not self-perform the D&C Work; and

(c) any other contract between Principal Project Company and a Subcontractor for the undertaking of the D&C Work.

D&C Contract Amount means [$●].

D&C Contractor means the Contractor primarily responsible for the D&C Work.

D&C Noncompliance means and where a D&C Failure Event occurs which, where a Rectification Time applies, has not been Rectified within the relevant time. For the avoidance of

doubt, where no Rectification Time applies (for example, in respect of scheduled activities) there shall be a D&C Failure at the point at which the D&C Failure Event occurred (for example, non-performance of the scheduled activity by the scheduled time).

D&C Failure Event means each event identified in Appendix A (D&C Noncompliance Points and Deductions) of Exhibit 4 (Payment Mechanism) which occurs prior to the Final Acceptance Date.

D&C Noncompliance Points means points accrued in association with each D&C Noncompliance as set out in Section 2 (Escalation Factor) of Exhibit 4B (Availability Payment Mechanism).

D&C Management Plan means the City-approved document attached at Exhibit 2 (Project Management Plan) setting forth Principal Project Company's prescribed approaches to, and plan for, its scope of Work, as it may be modified and updated from time to time, following written approval thereof by City. The preliminary D&C Management Plan shall be replaced by the final approved D&C Management Plan, which shall be developed by Principal Project Company and approved by City pursuant to Division 1 of the Technical Requirements, as a condition precedent to issuance of NTP 2, as updated in accordance with this Agreement.

D&C Payment Bond means the payment bond(s) to secure payment for labor and materials for the D&C Work, as required under this Agreement.

D&C Percentage means the value of Design Work, Construction Work, and Work relating to the manufacturing and supply of equipment, completed at a given point in time divided by the value of the total Design Work, Construction Work, and Work relating to the manufacturing and supply of equipment required to be completed to achieve Final Acceptance.

D&C Performance Bond means the performance bond(s) securing performance of the D&C Work required under this Agreement.

D&C Performance Security has the meaning set forth in Section **Error! Reference source not found.**.

D&C Period means that portion of the Term that commences on the Effective Date and ends at 11:59 p.m. on the day immediately preceding the Substantial Completion Date.

D&C Period Deduction means a deduction from the Milestone Payment made in accordance with Section 2 (D&C Period Deductions) of Exhibit 4A (Milestone Payment Mechanism).

D&C Site means the real property owned by City, under the jurisdiction of SFMTA, commonly known as 2500 Mariposa Street in San Francisco, California, which is a 4.4-acre site comprised of Assessor's Block No. 3971-001, bounded by Bryant S[tr]eets, 17th Street, Hampshire Street, and Mariposa Street, any Additional Properties acquired by City in accordance with Section 7.5.1 (Additional Acquisitions), and such additional areas as may, from time to time, be designated in writing by City for Principal Project Company's use in performance of the Work. If the parcel is later subdivided to accommodate a Joint Development Alternative, this definition may be amended upon mutual agreement. For purposes of insurance (subject to any notification and other requirements imposed by the insurer(s) for approval), indemnification, safety and security requirements, the prevailing wage requirements, and payment for use of

equipment, the term "Project Site" shall also include (a) the field office sites, (b) any property used for bonded storage of material for the Project approved by City, (c) staging areas dedicated to the Project, and (d) areas where activities incidental to the Project are being performed by Principal Project Company and Contractors covered by the worker's compensation policy but excluding any permanent locations of Principal Project Company or such covered Contractors.

D&C Quality Management Plan means Principal Project Company's plan to ensure that the Project deliverables and completed Work meet the minimum required standards of quality, prepared and submitted by Principal Project Company in accordance with Section 1.4 of Division 1 of the Technical Requirements, as updated and approved by the City in accordance with this Agreement.

D&C Work means all Work to be performed to achieve Final Acceptance, including Design Work and Construction Work.

D&C Work Value means an amount equal to the D&C Contract Amount minus the aggregate of (i) the Cost to Complete, (ii) the amount of the Milestone Payment if paid to Principal Project Company prior to the Early Termination Date, (and (iii) any Deduction or other reduction to the Milestone Payment or any Availability Payments under Exhibit 4 (Payment Mechanism) accrued prior to the Early Termination Date that has, in each case, not been deducted from the Milestone Payment or any Availability Payment (as applicable).

Day means calendar day, unless otherwise expressly specified.

DBE Compliance Manual means **[Note: City to provide definition]**

DBE Contractor means **[Note: City to provide definition]**

Deduction means a D&C Period Deduction or an IFM Period Deduction, or both as the context requires.

Deduction Amounts means the amount in dollars of each Deduction associated with a D&C Period Deduction, and/or an IFM Period Deduction in accordance with the applicable Functional Component Rank category in Appendix B (Response and Rectification Times) to Exhibit 4B (Availability Payment Mechanism).

Default Notice has the meaning set forth in Section 16.1.2.2.

Default Termination Event has the meaning set forth in Section 17.3.1.1.

Defect means a defect, whether due to design, construction, installation, damage or wear, affecting the condition, use, functionality or operation of any element of the Project, which would cause or have the potential to cause one or more of the following:

(a) a hazard, nuisance or other risk to public or worker health or safety, including the health and safety of Building Occupants;

(b) a structural deterioration of the affected element or any other part of the Project;

(c) damage to a Third Party's property or equipment;

(d) damage to the Environment; and

(e) failure of the affected element to meet the requirements of the Contract Documents.

Deferred Equity Amounts means, on any date, any amount of unfunded cash equity that has been committed to Principal Project Company (including commitments to provide an Equity Investment or Equity Member Debt) and is shown to be available for use in the Financial Model prior to the Final Acceptance Date, but only to the extent that the commitment to provide such amount is supported by an Equity Letter of Credit.

Delay Costs means direct costs incurred by Principal Project Company relating to Controlling Work Items that result solely and directly from a Delay Event, which are limited to those costs identified in and calculated in accordance with Exhibit 13 (Costs Schedule). The term "Delay Costs" does not include any Extra Work Costs, including those incurred by Principal Project Company that relate to non-Controlling Work Items incident or collateral to a Delay Event or Controlling Work Items that do not result solely and directly from a Delay Event. In any event, Principal Project Company shall not be entitled to Delay Costs to the extent Principal Project Company is responsible for the delay or could have reasonably mitigated.

Delay Event means any of the following events or circumstances that occurs prior to the Final Acceptance Date and directly impacts the D&C Work:

(a) an Unavoidable Delay Event; or

(b) a Compensable Delay Event.

Delayed Financial Close Date has the meaning set forth in Section 3.4.2(a).

Demand Maintenance means all unscheduled, corrective, or first response maintenance (other than Scheduled Maintenance) to the Maintained Elements, which includes the response to malfunctions and provision of minor repairs, adjustments and general maintenance as follows:

(a) first response to equipment malfunctions and assessment of the problem (e.g., operator error, Utility problem, minor or major failure), and required response; and

(b) performance of minor repairs and general maintenance, including topping-up fluids, adjustments, resets, clearing blockages, minor carpentry and replacing minor parts such as rollers, wheels, pulley and hoses.

Demand Requisition means a requisition for Demand Maintenance.

Design Deliverables has the meaning set forth in Section 1.8.5 of Division 1 of the Technical Requirements.

Design Documents means all studies, quantitative assessments, evaluations, reports, documents, calculations, plans, drawings, diagrams, specifications, and other documentation

that manifest the design for the Project, at all stages, as developed by Principal Project Company or any portion, component or element thereof, including design required in connection with the operation and maintenance of the Project and Renewal Work, in each case regardless of whether such documents are required by the Contract Documents or are prepared or used by Principal Project Company in the Design Work. Design Documents include the Final Design Documents.

Design Management Plan means Principal Project Company's plan describing its approach to undertake and achieve the requirements in Section 1.8 of Division 1 of the Technical Requirements, prepared and submitted by Principal Project Company in accordance with Section 1.1.7.1 of Division 1 of the Technical Requirements, as updated and approved by the City in accordance with this Agreement.

Design Work means all Work related to the design, engineering, architecture and other professional services for the Project, including all such Work relating to the Infrastructure Facility. Design Work includes any Early Works related to the design, engineering, architecture and other professional services for the Project.

Developed IP means Intellectual Property that is authored, created, invented or reduced to practice under or for the purposes of this Agreement, the Work or the Project, whether or not such Intellectual Property is incorporated into the Project IP but excluding any adaptation, continuation or derivative work that constitutes PPC Intellectual Property.

Deviation(s) means any change, deviation, modification or alteration from the Technical Requirements (other than Change Orders and amendments to this Agreement). Deviations are not intended to amend or modify portions of this Agreement other than the Technical Requirements.

Direct Agreement means the agreement substantially in the form of Exhibit 5B (Form of Direct Agreement), by and among City, Principal Project Company and the Lender (or if there is more than one Lender, the Collateral Agent on behalf of the Lenders) in connection with Lenders' rights in relation to the Contract Documents.

Dispatch Function means the Functional Components corresponding to Functional Unit references L2-011 as specified in Table B6 (Functional Components and Functional Units for Infrastructure Facility) of Appendix B (Functional Areas, Functional Units, Functional Unit Rankings and Deduction Amounts for Availability Failures and Service Failures) of Exhibit 4B (Availability Payment Mechanism).

Distributions means the proceeds of any Refinancing to the extent such proceeds are distributed to any Equity Member or to any Affiliate of Principal Project Company, and any of the following, whether in cash or in kind, and whether made or projected to be made to any Equity Member, an Affiliate of Principal Project Company. Any:

(a) Dividend or other distribution in respect of any equity interest of any class;

(b) Payments or other distributions in reduction of capital, redemption or purchase of shares or any other reorganization or variation to share capital;

(c) Payments in respect of Equity Member Debt (whether of fees, principal, interest

including capitalized interest and interest on overdue interest, breakage costs, or otherwise and whether or not such items are included or excluded from the definition of Equity Member Debt);

(d) Payment, loan, contractual arrangement, including any management agreement or payment in respect thereof, or transfer of assets or rights, in each case to the extent made or entered into after the date of this Agreement and not in the ordinary course of business nor on reasonable commercial terms including to any Equity Member, or any Affiliate of any Equity Member; and

(e) Conferral of any other benefit which is not received in the ordinary course of business and not on commercially reasonable terms, including to any Equity Member, any Affiliate of any Equity Member or to Principal Project Company;

(f) Other payment to any Equity Member, any current or former Affiliate of any Equity Member or Principal Project Company howsoever arising and whether made under the terms of an agreement or otherwise or in respect of any equity interest of any class in the capital of Principal Project Company if, in any such case, such payment would not have been made were it not for the occurrence of any Refinancing or Change in Control; or

(g) Early release of any contingent funding liabilities, the amount of such release being deemed to be a gain for the purposes of any calculation of Refinancing Gain.

Early Termination Date means the effective date of termination of this Agreement prior to the stated expiration of the Term set forth in Section 2.3 (Term).

Early Works has the meaning set forth in the Early Works Agreement.

Early Works Agreement means the agreement entered into by City and Principal Project Company or an Affiliate with respect to the performance of certain Work by Principal Project Company or such Affiliate during the PDA Term and prior to Financial Close.

Earthquake means all land movement due to seismic activity, including shocks, tremors, volcanic action, tsunami and earth rising or shifting, including any aftershocks or other Earthquakes for a period of 168 hours after the initial event, which proximately causes damage to the physical improvements of the Project or interrupts the Work.

Earthquake Inspection Plan means the plan detailing an approach to minimize delay in re-occupying the Infrastructure Facility following a significant seismic event as part of the City of San Francisco's Building Occupancy Resumption Program (BORP), prepared and submitted by Principal Project Company in accordance with Section B.23.1(5) of the IFM Specifications, as updated and approved by the City in accordance with this Agreement.

Effective Date means the date of Commercial Close.

Eligible Investments has the meaning set forth in Section 8.6.2.3.

Eligible LC Issuer means a financial institution with long term unsecured debt ratings of at least the following, from at least two of the listed major rating agencies: (a) A- by Standard & Poor's Ratings Services; (b) A3 by Moody's Investor Service, Inc.; or (c) A- by Fitch Ratings.

Eligible Surety(ies) means a surety or insurance company, as applicable, meeting the requirements of applicable Law, licensed or authorized to do business in the State and rated at least "A" (excellent or above) according to A.M. Best's Financial Strength Rating and "VIII" or better according to A.M. Best's Financial Size Rating.

Emergency means any unplanned event within or adjacent to the Project Site that (a) causes or has the potential to cause disruption to operation of the Infrastructure Facility, (b) presents an immediate or imminent threat to the long term integrity of any part of the Facility, to the Environment, to property immediately adjacent to the Facility or to the safety of Building Occupants or the traveling public, or (c) is recognized or declared to be an emergency by the Mayor, Board of Supervisors, any other City official authorized under law, the Governor of the State, the Federal Emergency Management Administration (FEMA), the U.S. Department of Homeland Security or other Governmental Entity with authority to declare an emergency.

Energy means energy/power including electricity and natural gas.

Energy Analysis Report has the meaning set forth in Section 4.7 of Exhibit 12.

Energy Pain Share/Gain Share Mechanism means the energy risk share amount calculated pursuant to Appendix B (Functional Areas, Functional Units, Functional Unit Rankings and Deduction Amounts for Availability Failures) to Exhibit 4B (Availability Payment Mechanism).

Energy Performance Commencement Date means the date on which the Independent Energy Auditor issues the AET that is agreed to by Principal Project Company and City.

Energy Service means any calculated or metered provision of Energy in respect of the Regulated Load and Non-Regulated Load at the Utility connection.

Engineer of Record (EOR) has the meaning set forth in Section 1.1.4.2 of Division 10 of the Technical Requirements.

Environment means air, soils, submerged lands, surface waters, groundwaters, land, stream sediments, surface or subsurface strata, biological resources, including endangered, threatened and sensitive species, natural systems, including ecosystems, cultural (including historic and archaeological) resources and paleontological resources.

Environmental Approvals means all Regulatory Approvals arising from or required by any Environmental Law in connection with the Project.

Environmental Compliance Plan means the procedures and plans described in Sections 01 35 49, 01 35 50 and 01 35 51 of Division 10 of the Technical Requirements.

Environmental Law(s) means (a) any Law applicable to the Project or the Work regulating or imposing liability or standards of conduct that pertains to the Environment, Hazardous Materials, contamination of any type whatsoever, or health and safety matters, and (b) any requirements and standards that pertain to the protection of the Environment, or to the management or

Release of Hazardous Materials, contamination of any type whatsoever, or health and safety matters with respect to Hazardous Materials, set forth in any agreements, permits, licenses, approvals, plans, rules, regulations or ordinances adopted, or other criteria and guidelines promulgated, pursuant to Laws applicable to the Project or the Work, as each of the foregoing have been or are amended, modified, or supplemented from time to time (including any present and future amendments thereto and reauthorizations thereof), including those relating to:

(a) the manufacture, processing, use, distribution, existence, treatment, storage, disposal, generation and transportation of Hazardous Materials;

(b) air, soil, surface and subsurface strata, stream sediments, surface water, and groundwater;

(c) releases of Hazardous Materials;

(d) protection of wildlife, endangered, threatened, and sensitive species, wetlands, water courses and water bodies, paleontological, cultural, archaeological and historical resources and natural resources;

(e) the operation and closure of underground or aboveground storage tanks;

(f) health and safety of employees and other persons with respect to Hazardous Materials; and

(g) notification, documentation and record keeping requirements relating to the foregoing.

Without limiting the above, the term "Environmental Laws" shall also include the following (each as may be amended from time to time):

(i) the National Environmental Policy Act (42 U.S.C. § 4321 et seq.);

(ii) the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. § 9601 et seq.) and associated Superfund Amendments and Reauthorization Act (42 U.S.C. § 9601 et seq.);

(iii) the Solid Waste Disposal Act (42 U.S.C. § 6901 et seq.);

(iv) the Emergency Planning and Community Right to Know Act of 1986 (42 U.S.C. § 11001 et seq.);

(v) the Clean Air Act (42 U.S.C. § 7401 et seq.);

(vi) the Federal Water Pollution Control Act, as amended by the Clean Water Act (33 U.S.C. § 1251 et seq.);

(vii) the Resource Conservation and Recovery Act (42 U.S.C. § 6901 et seq.);

(viii) the Hazardous and Solid Waste Amendments of 1984 (42 U.S.C. § 6924 et seq.);

(ix) the Toxic Substances Control Act (15 U.S.C. § 2601 et seq.);

(x) the Hazardous Materials Transportation Act (49 U.S.C. § 5101 et seq.);

(xi) section 404 of the Clean Water Act (33 U.S.C. § 1344);

(xii) the Oil Pollution Act (33 U.S.C. § 2701 et. seq.);

(xiii) the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. § 136 et seq.);

(xiv) the Federal Safe Drinking Water Act (42 U.S.C. § 300 et seq.);

(xv) the Federal Radon and Indoor Air Quality Research Act (42 U.S.C. § 7401 et seq.);

(xvi) the Occupational Safety and Health Act (29 U.S.C. § 651 et seq.);

(xvii) the Endangered Species Act (16 U.S.C. § 1531 et seq.);

(xviii) the Fish and Wildlife Coordination Act (16 U.S.C. § 661 et seq.);

(xix) the California Environmental Quality Act (§ 21000 et seq. of the California Public Resources Code);

(xx) the California Clean Air Act of 1988 (§ 39000 et seq. of the California Health and Safety Code);

(xxi) the California Occupational Safety and Health Act of 1973 (§ 6300 et seq. of the California Labor Code);

(xxii) the Porter-Cologne Water Quality Act (§ 13000 et seq. of the California Water Code);

(xxiii) the Integrated Waste Management Act of 1989 (§ 40000 et seq. of the California Public Resources Code);

(xxiv) the Safe Drinking Water and Toxic Enforcement Act of 1986 (§ 25249.5 et seq. of the California Health and Safety Code);

(xxv) Hazardous Waste Control (§ 25100 et seq. of the California Health and Safety Code); and

(xxvi) Fish and Wildlife Protection and Conservation (§ 1600 et seq. of the California Fish and Game Code).

Environmental Management System or **EMS** means the system prepared and submitted by Principal Project Company and approved by the City in accordance with Section B.22.2 of the IFM Specifications, as updated in accordance with this Agreement.

Environmental Protection Program means the overarching system by which Principal Project Company shall ensure that commitments made during the environmental approval and permitting processes, and other environmental requirements, be carried forward and reflected, as appropriate, in the design and implemented throughout the Work, as provided in Sections 01 35 49, 01 35 50 and 01 35 51 of Division 10 of the Technical Requirements.

Equipment List means the list of all FF&E for the Infrastructure Facility prepared and maintained in accordance with this Agreement which identifies PPC-Furnished FF&E, City-Furnished Equipment and Existing FF&E. The initial form of the Equipment List is included in Appendix 1 of Division 3 of the Technical Requirements.

Equity Investment(s) means (a) any form of direct cash investment by Equity Members, including the purchase of newly issued equity shares in Principal Project Company and/or subordinated loans to Principal Project Company, and (b) any cash draws by or on behalf of Principal Project Company under the letter(s) of credit described in the definition of Deferred Equity Amount.

Equity IRR means the nominal post-tax internal rate of return to the Committed Investment over the full Term calculated, using the Financial Model, at the discount rate that, when applied to Committed Investment cash flows, gives a zero net present value. Equity IRR is initially equal to the Original Equity IRR and can change when and if the Financial Model is updated pursuant to Section 4.7.2 (Updates to the Financial Model). For purposes of this definition the phrase "post-tax" refers only to U.S. federal income tax, state income tax, and San Francisco gross receipts, homelessness gross receipts, and overpaid executive gross receipts taxes liability of Principal Project Company or its Equity Members (or, if an Equity Member is a single-member limited liability company disregarded for federal and state income tax purposes, the owner of such Equity Member) and specifically excludes (a) any foreign income tax and other tax of any kind, and (b) any withholding tax, including any tax that Principal Project Company or an Equity Member is obligated to withhold on Distributions (whether actual or constructive) or other payments or allocations to Equity Members or holders of debt of or equity interests in an Equity Member under 26 U.S.C. §§ 1441 – 1446, notwithstanding 26 U.S.C. § 1461.

Equity Letter of Credit means an irrevocable and unconditional on-demand letter of credit (which may be annually renewable) issued by an Eligible LC Issuer for the account of an Equity Member naming Principal Project Company and/or the Collateral Agent as beneficiary and securing the provision of any Deferred Equity Amounts by a date that is not later than the Final Acceptance Date.

Equity Member(s) means (a) [________________] and any Person that holds a direct ownership interest (legal and beneficial) in [________________] either based on Committed Investments or as a result of an Equity Transfer; or (b) each Person that will hold a 10% or greater indirect interest in Principal Project Company.

Equity Member(s) Debt means bona fide indebtedness for funds borrowed that: (a) is held by any Equity Member or Affiliate of any Equity Member; and (b) is subordinated in priority of payment and security to all Project Debt held by Persons who are not Equity Members or Affiliates of any Equity Member.

Equity Members Funding Agreement means any loan agreement, credit agreement or other similar financing agreement or subordination agreement providing for or evidencing Equity Member Debt.

Equity Transfer means any assignment, mortgage, encumbrance, hypothecation, conveyance, sale, or other transfer of equity interest in Principal Project Company.

Escalated Benchmark Insurance Premiums has the meaning set forth in Section 10.1.3(d)(ii).

Escalation Factor means the escalation factor calculated in accordance with Section 2 (Escalation Factor) of Exhibit 4B (Availability Payment Mechanism).

Exempt Refinancing means:

(a) any Refinancing that was fully and specifically identified and taken into account in the Base Case Financial Model;

(b) any of the following, provided that Principal Project Company does not receive a direct or indirect financial benefit therefrom, individually or in the aggregate: (i) amendments, modifications, supplements or consents to Financing Agreements and Security Documents; or (ii) the exercise by a Lender of rights, waivers, consents and similar actions, in the ordinary course of day-to-day loan administration and supervision;

(c) movement of monies between the Project accounts in accordance with the terms of Financing Agreements and Security Documents;

(d) any of the following acts by a Lender of senior lien priority Project Debt: (i) the syndication of any of such Lender's rights and interests in the senior Financing Agreements; (ii) the grant by such Lender of any rights of participation, or the disposition by such Lender of any of its rights or interests, with respect to the senior Financing Agreements in favor of any other Lender of senior lien Project Debt or any other investor; or (iii) the grant by such Lender of any other form of benefit or interest in either the senior Financing Agreements or the revenues or assets of Principal Project Company, whether by way of security or otherwise, in favor of any other Lender of senior lien Project Debt or any investor; and

(e) periodic resetting and remarketing of tax-exempt or taxable bonds that bear interest at a variable or floating rate and are money market eligible under SEC Rule 2a-7.

Existing FF&E means all FF&E identified by City in the updated Equipment List under Section 7.13.2 (Selection of City-Furnished Equipment and Existing FF&E).

External Energy Auditor means a company licensed in California, specializing in assessing the energy efficiency of commercial and industrial buildings ('audit'), including the review of specifications, analysis of consumption data, energy modeling, and provision of recommendations.

Extra Work means any Work in the nature of additional work, altered work or deleted work that is directly attributable to the occurrence of a Compensable Delay Event, a Compensable Relief Event or uninsured Force Majeure Event (to the extent permitted under Section 14.6 (Loss or Damage Due to Force Majeure Termination Event)) and, absent the Compensable Delay Event, Compensable Relief Event or uninsured Force Majeure Event (to the extent permitted under Section 14.6 (Loss or Damage Due to Force Majeure Termination Event)), would not be required by the Contract Documents. The term "Extra Work" does not include "Delay".

Extra Work Costs means the incremental increase in Principal Project Company's cost of labor, material, equipment and other direct and indirect costs directly attributable to Extra Work, calculated in accordance with Section 1 of Exhibit 13 (Costs Schedule).

Facility means the Bus Yard Component, Joint Development Alternative (if built), and Common Infrastructure, collectively.

Facility Condition Index or **FCI** means the total maintenance, repair and replacement deficiencies of the Infrastructure Facility divided by the current replacement value of the Infrastructure Facility.

Failure Event means a D&C Failure Event or an IFM Failure Event, or both as the context requires.

Failure Type means the designation of either "SF" (Service Failure), in the Performance Measurements Table or "AF" (Availability Failure) in the case of an IFM Failure Event which has not been rectified within the relevant Rectification Time and which causes a Functional Part to be Unavailable.

Final Acceptance means that all D&C Work is complete and all other prerequisites for Final Acceptance have been met. Final Acceptance is deemed to have occurred upon satisfaction of all the conditions in Section 7.9 (Final Acceptance), as confirmed by City's issuance of a certificate in accordance with the procedures and within the time frame established in Section 7.9 (Final Acceptance).

Final Acceptance Date means the date that Final Acceptance is achieved.

Final Acceptance Deadline means 180 days after the Substantial Completion Date, as such date may be extended from time to time pursuant to Section 14.1.2 (Extension of Deadlines for General Delay Events).

Final Design means the general design stage, consistent of all elements, collections of elements or areas of the Project at 100% design completion, as more fully set forth in the Technical Requirements, and depending on the context: the term "Final Design" may refer to (a) the Final Design Documents, (b) the design concepts set forth in the Final Design Documents or (c) the process of development of the Final Design Documents.

Final Design Documents means the complete final construction plans (including plan sheets, specifications, technical memoranda, reports, studies, calculations, drawings, elevations, sections, details and diagrams) and specifications needed for performance of Construction Work, which includes all Submittals specified as required to be part of the Final Design or Final Design Documents under the Technical Requirements.

Final Environmental Impact Report (FEIR) means the Final Environmental Impact Report for the Potrero Yard Modernization Project at 2500 Mariposa Street (Planning Department Case No. [________]), dated [________] and available at https://sfplanning.org/environmental-review-documents?title=Potrero+Yard+Modernization+Project.

Final Schedule Report means has the meaning set forth in Section 1.2.5 of Division 1 of the Technical Requirements.

Finance Plan means Principal Project Company's plan for financing the Project submitted to City at Performance Milestone 32 of the Predevelopment Agreement.

Finance Plan Due Date means the date on which Principal Project Company submitted its final Finance Plan to City at Performance Milestone 32 of the Predevelopment Agreement.

Finance Plan Validity Period means the period of 180 consecutive days commencing on the Finance Plan Due Date, as such period may be extended under the terms of the Predevelopment Agreement. If the period of 180 consecutive days commencing on the Finance Plan Due Date ends on a weekend or national holiday, then the Final Finance Plan Validity Period shall end on the next Business Day.

Financial Close means satisfaction by Principal Project Company of (a) all conditions precedent to the effectiveness of commitments of the Lenders under the Financing Documents; and (b) the conditions set forth in Section 3.2.4 (Conditions Precedent to Financial Close).

Financial Close Date means the date on which Financial Close occurs.

Financial Close Deadline means [___________, 2025], as such date may be extended by agreement of the Parties or as a result of an Adverse Event or other excuse set forth in this Agreement.

Financial Close Security means the bond or letter of credit in the amount of $15,000,000 provided by Principal Project Company to City as a condition precedent to execution and delivery of this Agreement by both City and Principal Project Company.

Financial Model means the Microsoft Excel-based financial model that includes financial forecasts, projections and calculations with respect to revenues, expenses, the repayment of Project Debt and Distributions to Equity Members that result in achievement of the Equity IRR, which shall be in macro-enabled excel format, on electronic storage media, or in such other format and medium as the Parties may agree in writing.

Financial Model Update(s) has the meaning set forth in Section 4.7.2.1.

Financial Modeling Data means all books, documents and back-up information in any media or format setting forth all assumptions, estimates, projections, calculations and methodology used in the preparation of the Implementation Proposal, the Financial Model, and in Financial Model Updates of revenues, pricing, costs, expenses, repayment of Project Debt, Distributions and internal rate of return, including:

(a) the logical layout and structure of the Financial Model, including the names of all worksheets and a description of the color coding and/or labeling scheme(s);

(b) an assumptions book, fully describing all assumptions and their sources underlying the estimates, projections and calculations in the Financial Model, revisions to the Base Case Financial Model in accordance with Sections 3.2.4 (Conditions Precedent to Financial Close) and 3.3.1, and updates to such assumptions book related to Financial Model Updates;

(c) a detailed description of the function and intended use of all macros (each of which must be logically structured and well documented with comments included within the programming code);

(d) the step-by-step instructions on the procedure to run and to optimize the Financial Model submitted with the Finance Plan and each Financial Model Update, such that City will be able to read, use and modify the data contained therein, operate the Financial Model and conduct detailed sensitivity analyses;

(e) copies of all offers, and all data and information within this definition, received from all Contractors (at all tiers) identified in the Implementation Proposal;

(f) copies of all offers, and all data and information within this definition, received from all Contractors (at all tiers) related to any Relief Event; and

(g) all other supporting data, technical memoranda, calculations, formulas, unit and materials prices (if applicable) and such other cost, charge, fee, financing, equity return, and revenue information used by Principal Project Company in the creation and derivation of the Implementation Proposal, Finance Plan, the Financial Model, or of any Financial Model Update, or related to any Delay Event, Relief Event or Change Order.

Financial Proposal means the Financial Proposal provided at Exhibit 3A (Financial Proposal). ***[Note to PNC: This will include the Finance Plan, including the Base Case Financial Model, with its audited report, and respective commitment letters for Bank Debt, Equity Investments, Security Documents and Insurance Policies, among other documents, and including the Final Price as determined under the PDA, PPC's financing costs, along with a schedule including the proposed Milestone Payment amount and the proposed Availability Payments payable from Substantial Completion to the end of the PDA Term.]***

Financing Agreement means:

(a) any loan agreement, funding agreement, account maintenance or control agreement, insurance or reimbursement agreement, intercreditor agreement, subordination agreement, trust indenture, agreement from any Equity Member in favor of any Lender, hedging agreement, interest rate swap agreement, guaranty, indemnity agreement, agreement between any Contractor and any Lender, or other agreement by, with or in favor of any Lender pertaining to Project Debt (including any Refinancing), other than Security Documents;

(b) any note, bond or other negotiable or non-negotiable instrument evidencing the indebtedness of Principal Project Company for Project Debt (including any Refinancing); and

(c) any amendment, supplement, variation or waiver of any of the foregoing agreements or instruments.

Financing Delay Costs means:

(a) in the case of Delay Events, an amount equal to principal payments, interest payments, hedging costs and other financing costs accrued and/or paid, or which became payable, by Principal Project Company to the Senior Lenders in accordance with the Financing Agreements that accrued during the period of the schedule extension granted pursuant to Section 14.1.2 (Extension of Deadlines for General Delay Events); and

(b) in the case of City-Caused Delay Event only, such other amounts so as to result in Principal Project Company achieving the same Equity IRR (with reference to the Base Case Equity IRR) as if such Compensable Delay Event had not occurred.

Financing Documents means Financing Agreements and Security Documents.

Financing Document Terms means Exhibit 5G (Financing Document Terms).

Fiscal Year means the consecutive 12 calendar month period starting on July 1 and ending on June 30.

Fixed IFM Costs means the sum of those fixed costs:

(a) incurred by the IFM Provider with respect to insurance premiums, office rental and office expenses, equipment hire costs, depreciation on items of equipment used by Principal Project Company in the performance of the IFM Services excluding:

(ii) equipment incorporated into the Infrastructure Facility and not capable of being demobilized and remobilized to a different site or portion of the Work, the Project, the Infrastructure Facility, the Project Site or to another project;

(iii) third party accounting, audit and legal costs; and

(iv) any costs payable by Principal Project Company to the IFM Provider for the provision of labor,

(a) incurred directly by the IFM Provider during the IFM Period in meeting its obligations in accordance with this Agreement and solely and directly attributable to the Project and which are not reasonably capable of being deferred or avoided by the IFM Provider; and

(b) evidenced in writing to the reasonable satisfaction of the City's Authorized Representative.

Float means the amount of time that any given activity or logically connected sequence of activities shown on the Project Schedule may be delayed before it will affect the Substantial

Completion Deadline or Final Acceptance Deadline, as applicable. Float is generally identified on the Project Schedule as the difference between the early start date and late start date, or early completion date and late completion date for activities shown on the Project Schedule, and shall include any float contained within an activity as well as any period containing an artificial activity (that is, an activity that is not encompassed within the meaning of the definition of "D&C Work").

Force Account Work means Change Order work that City authorizes and will pay for on the basis of direct costs plus markup on direct costs for overhead and profit as provided in Exhibit 13 (Costs Schedule).

Force Majeure Event means the occurrence of any of the following events or circumstances which directly causes either Party to be unable to perform all or a material part of its obligations under this Agreement:

(a) war (including civil war or revolution), invasion, violent act of foreign enemy or armed conflict occurring within the continental United States or military or armed blockade, or military or armed takeover of the Project;

(b) any act of terrorism, riot, insurrection, civil commotion or sabotage that causes direct physical damage to, or otherwise directly causes interruption to construction or direct losses during maintenance of, the Project;

(c) national or state-wide strikes not specific to Principal Project Company, or embargoes, that, in each case, directly cause interruption to construction or direct losses during maintenance of the Project;

(d) nuclear, radioactive, or biological contamination of the Project unless the source or cause of the contamination is brought to or near the Project Site by PPC-Related Entities, or is the result of any PPC Fault;

(e) flood, fire, explosion, tidal wave, sinkhole caused by natural events, or landslide caused by natural events, in each case, occurring within the City and directly impacting the Project or performance of Work;

(f) SFMTA staff strikes and work stoppages not caused by PPC Fault that directly cause interruption to construction or direct losses during maintenance of the Project;

(g) any City, or governor-declared, Emergency within the limits or precluding access to the Project Site;

(h) (i) any epidemic in the State; or (ii) Pandemic (defined as the worldwide spread of a disease due to lack of immunity in most people, excluding COVID-19);

(i) a Change in Law (other than a Relevant Change in Law);

(j) an electricity outage upstream from the connection to the Project Site that affects prosecution of the IFM Services, provided that Principal Project Company was not, in whole or in part, the cause of such outage and was in compliance with

Section 2.10.5 of Division 3 of the Technical Requirements and all other requirements in the Contract Documents regarding back-up power for the Project; and

(k) a seismic event in excess of a magnitude 3.5 on the Richter Scale, where (i) such Earthquakes, ground shaking, liquefaction, settlement, or ground movements directly impact, and cause damage to, temporary or permanent works of the Project; and (ii) such event is not insured or required to be insured under the terms of the Contract Documents.

Force Majeure Termination Event has the meaning given in Section 17.2.1.

Functional Component means a room, space or system within a Functional Unit in the Infrastructure Facility, which is specified as such in Appendix C (Functional Areas, Functional Units, Functional Unit Rankings and Deduction Amounts for Availability Failures) of Exhibit 4 (Payment Mechanism).

Functional Component Rank means the rank on a scale of 1 to 5 ascribed to each Functional Component in the Infrastructure Facility for the purpose of establishing Deduction Amounts associated with each Functional Component and calculating Deductions for Availability Failures based on the Rectification Time as set out in Appendix B (Response and Rectification Times) of Exhibit 4 (Payment Mechanism).

Functional Part means either a Functional Unit or a Functional Component.

Functional Unit means an area of the Infrastructure Facility specified as such in Appendix C (Functional Areas, Functional Units, Functional Unit Rankings and Deduction Amounts for Availability Failures) of Exhibit 4 (Payment Mechanism) comprising one or more Functional Components.

Geotechnical Baseline Report (GBR) means the report entitled Geotechnical Baseline Report, set forth in Appendix A of Division 3 of the Technical Requirements.

Good Faith Efforts means (a) with respect to DBE, the efforts to meet the DBE goal required under 49 CFR Part 26, Appendix A, (B) with respect to SBE, the efforts to meet the SBE Goal required by the Project Agreement.

Good Industry Practice means:

(a) in the case of Work (excluding the Design Work), the exercise of the degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced constructor, supplier, operator or maintenance provider, as applicable, operating in the United States under the same or similar circumstances and conditions, seeking in good faith to comply with its contractual obligations, the Contract Documents and all applicable Laws and Regulatory Approvals in conformance with all professional engineering principles, construction, operations and maintenance practices generally accepted as standards of the industry in the State. With respect to storm water management for construction activities, Good Industry Practice means Best Management Practices;

in the case of Design Work, the exercise of the degree of skill, diligence, prudence, and foresight which would reasonably and ordinarily be expected from a professional designer or engineer, as applicable, operating in the United States under the same or similar circumstances and conditions, seeking in good faith to comply with its contractual obligations, the Contract Documents and all applicable Laws and Regulatory Approvals and engaged in the same type of undertaking under circumstances similar to the Project and conditions similar to those within the same geographic area as the Project Site.

Government Code Dispute has the meaning set forth in Section 18.4 (Government Code Dispute).

Governmental Entity(ies) means City in its regulatory capacity, any federal, state, local or foreign government and any political subdivision or any governmental, quasi-governmental, judicial, public or statutory instrumentality, administrative agency, authority, body or entity other.

Governmental Utility(ies) has the meaning set forth in Section 00 73 20 of Division 10 of the Technical Requirements.

Handback means the stage when Principal Project Company has done everything that this Agreement requires to enable Principal Project Company to handover the Project to meet the Handback Requirements at the end of the Term or Early Termination Date.

Handback Inspection has the meaning set forth in Section 8.5.4.1(c).

Handback Renewal Work means the Renewal Work required in order for the Project to meet the Handback Requirements.

Handback Renewal Work Plan means the plan prepared and submitted by Principal Project Company in accordance with Section F of the IFM Specifications, as updated and approved by the City in accordance with this Agreement.

Handback Requirements means the terms, conditions, requirements and procedures governing the condition in which Principal Project Company is to deliver the Infrastructure Facility and the Project Site upon Handback, as stated in Section F of the IFM Specifications.

Handback Requirements Letter(s) of Credit has the meaning set forth in Section 8.6.5.1.

Handback Requirements Recovery Plan means the plan to perform additional work needed to meet the Handback Requirements at the end of the IFM Period prepared and submitted by Principal Project Company in accordance with Section F.2 of the IFM Specifications, as updated and approved by the City in accordance with this Agreement.

Handback Requirement Recovery Work means the additional work as identified in the Handback Requirements Recovery Plan needed to bring any element of the Infrastructure Facility to meet the Handback Requirements.

Handback Requirements Reserve Account means the account established pursuant to Section 8.6.1.1.

Handback Requirements Reserve Balance means: (a) if no Handback Requirements Letter of Credit is delivered pursuant to Section 8.6.5.1, all amounts standing to the credit of the Handback Requirements Reserve Account on the Termination Date; or (b) if any Handback Requirements Letter of Credit is delivered pursuant to Section 8.6.5.1, all amounts that would have been standing to the credit of the Handback Requirements Reserve Account on the Termination Date if no Handback Requirements Letter of Credit had been delivered pursuant to Section 8.6.5.1.

Handback Reserve Amount has the meaning set forth in Section 8.5.4.2(h).

Handback Year means each consecutive 12 calendar month period commencing seven full years before the expected end of the Term.

Hazardous Material(s) means any (a) substance, product, waste, pollutant, contaminant or other material of any nature whatsoever that exceeds maximum allowable concentrations for that material, as defined by any Environmental Law; (b) substance, product, waste, pollutant, contaminant or other material of any nature whatsoever that is or becomes listed, regulated, or addressed under any Environmental Law; (c) substance, product, waste, pollutant, contaminant or other material of any nature whatsoever which may give rise to liability under clause (a) or (b) or under any statutory or common law theory based on negligence, trespass, intentional tort, nuisance, or strict liability or under any reported decisions of a state or federal court; (d) petroleum hydrocarbons excluding de minimis amounts and excluding petroleum hydrocarbon products contained within regularly operated motor vehicles; and (e) hazardous building materials including asbestos or asbestos-containing materials, lead or PCBs in structures and/or other improvements on or in the Project Site or in subsurface artifacts. The term "Hazardous Materials" includes Hazardous Waste and contaminated materials.

Hazardous Materials Event means Hazardous Materials in, over, under or emanating from the Project Site or which has migrated onto the Project Site from land or premises adjoining the Project Site that (1) render use of the Project unsafe or potentially unsafe absent assessment, containment and/or remediation, or (2) are required by applicable Law to be recycled, treated or stored, excluding Hazardous Materials:

(a) that are Known or Suspected Hazardous Materials; and

(b) to the extent caused, contributed, or, once discovered, exacerbated, by any PPC-Related Entity.

Hazardous Materials Management means procedures, practices and activities to address and comply with Environmental Laws and Environmental Approvals with respect to Hazardous Materials encountered, impacted, caused by or occurring in connection with the Project, Project Site or the Work (including demolition Work), including investigation and remediation of such Hazardous Materials. Hazardous Materials Management may include sampling, characterization, stock-piling, storage, backfilling in place, asphalt batching, recycling, treatment, clean-up, remediation, transportation and/or off-site disposal of Hazardous Materials, whichever approach is effective, most cost-efficient and permitted under applicable Law.

Hazardous Waste means waste as defined in 40 CFR Part 261 and/or 22 California Code of Regulations 66260.10.

HCC Agreement means an agreement between City and the Housing Project Company (or between City and the Principal Project Company and assigned by Principal Project Company to a Housing Project Company), pursuant to which City will grant a long-term real property interest in certain premises for the development of the Housing and Commercial Component.

Health and Safety Plan means Principal Project Company's plan describing the policies and procedures to be followed by all PPC personnel at the Site under CFR Title 29, CCR Title 8 and other applicable regulations, prepared and submitted by Principal Project Company in accordance with Section 01 35 45 of Division 10, as updated and approved by the City in accordance with this Agreement.

Help Desk means the contact point to be established by Principal Project Company pursuant to these IFM Specification for the notification of Failure Events and other day to day matters arising in relation to the provision of IFM Services.

Help Desk Services means services described in Section B.17 of the IFM Specifications, including methods and systems to receive, track and dispatch work requests, and track IFM Failure Events.

Housing and Commercial Component or **HCC** means the Facility's housing and commercial component, which, if implemented, would include the commercial space, the housing units and their associated support spaces (e.g., lobbies, vertical and horizontal circulation, storage, open space, rooms for building systems, offices for property management and residential services, and resident amenities such as laundry and community rooms) that are not used for the Bus Yard Component or the Common Infrastructure.

IFM Contract means each Contract between Principal Project Company and an IFM Provider. There may be more than one IFM Contract concurrently in effect.

IFM Failure Event means an incident or state of affairs which does not meet or comply with the IFM Specifications and/or results in an Availability Condition not being met in a Functional Part. An IFM Failure Event will become:

(a) an Availability Failure, if it causes a Functional Unit or Functional Component (as the case made be) to be Unavailable and the IFM Failure Event is not Rectified within the Rectification Time;

(b) separate and distinct Service Failures, if the IFM Failure Event is not Responded to within the Response Time or Rectified within the Rectification Time (in the case of IFM Failure Events requiring Rectification which do not constitute a breach of the Availability Conditions); or

(c) if, in accordance with Performance Measurements Table, no Rectification Time or Response Time applies, the IFM Failure Event shall be a Service Failure.

IFM Management Plan means the document titled "IFM Management Plan" that is included in the approved PMP, which is attached as part of Exhibit 2 (Project Management Plan). The preliminary "IFM Management Plan" will be replaced with a final approved "IFM Management Plan", which shall be developed and submitted by Principal Project Company and approved by the City pursuant to Section 1.1.8 of Division 1 of the Technical Requirements and applicable

sections of the IFM Specifications, as updated in accordance with this Agreement.

IFM Noncompliance Point(s) means an accrual of points in accordance with Section 6 (IFM Noncompliance Points System) of Exhibit 4B (Availability Payment Mechanism).

IFM Operations Committee has the meaning set forth in Section B.9.1.2 (IFM Operations Committee) of the IFM Specifications.

IFM Period means that portion of the Term commencing on the later of the Substantial Completion Date and the Substantial Completion Deadline and ending on the Termination Date.

IFM Period Deduction(s) means an Availability Deduction and/or a Service Failure Deduction from the Availability Payment in accordance with Section 3 (Deductions from Availability Payments) of Exhibit 4B (Availability Payment Mechanism).

IFM Project Site means the real property owned by City, under the jurisdiction of SFMTA, on which the Infrastructure Facility is located as described and shown on the [IFM Site Plan]t. For purposes of insurance (subject to any notification and other requirements imposed by the insurer(s) for approval), indemnification, safety and security requirements, the prevailing wage requirements, and payment for use of equipment, the term “Project Site” shall also include (a) the field office sites, (b) any property used for bonded storage of material for the Project approved by City, (c) staging areas dedicated to the Project, and (d) areas where activities incidental to the Project are being performed by Principal Project Company and Contractors covered by the worker’s compensation policy but excluding any permanent locations of Principal Project Company or such covered Contractors.

IFM Provider means the Contractor primarily responsible for the IFM Services.

IFM Quality Management Plan means the plan prepared and submitted by Principal Project Company and approved by the City pursuant to Section B.14 of the IFM Specifications, as updated in accordance with this Agreement.

IFM Records means all data in connection with maintenance, operation, renewals and expansion of the Project including (a) all inspection and inventory records, whether generated by Principal Project Company or a Third Party, (b) any communication to and/or from City or a Third Party, and (c) any information system (as may be introduced or amended by City from time to time) in connection with operation, maintenance, renewal or handback of the Project that City requires Principal Project Company to use or operate.

IFM Services means all management, engineering, repairs and maintenance, renewals and replacement, and other ancillary services required at all times for the Infrastructure Facility to allow for the ongoing operations and maintenance activities needed at the Infrastructure Facility and to meet the service requirements specified in the IFM Management Plan and the Technical Requirements. IFM Services includes Maintenance Services, Renewal Work, and Technology Enhancements, but excludes D&C Work and SFMTA O&M Services.

IFM Services Procedures means the procedures prepared and submitted by Principal Project Company and approved by the City in accordance with Section B.6(3) of the IFM Specifications, as updated in accordance with this Agreement.

IFM Services Submittals means all Submittals required to be submitted under this Agreement with respect to the IFM Services.

IFM Specifications means Division 7 of the Technical Requirements.

Implementation Proposal means the Financial Proposal, provided at Exhibit 3A (Financial Proposal); and the specific elements of the following documents included at Exhibit 3B (Technical Proposal Elements): (i) the Lead Developer's design submittals under the Predevelopment Agreement, (ii) the D&C Contractor's design-build proposal for the D&C Contract submitted to Lead Developer in accordance with the Predevelopment Agreement, and (c) the IFM Provider's proposal for the IFM Contract submitted to Lead Developer in accordance with the Predevelopment Agreement.

Incidental Utility Work means, for all Utilities, all of the following work necessary for construction of the Project, including any necessary coordination with Utility Owners and property owners, furnishing design, performing construction, and obtaining and complying with all required Regulatory Approvals:

(a) Service Line relocations;

(b) The adjustment of Utility appurtenances (e.g., manholes, valve boxes and vaults) for line and grade upon completion of roadway work;

(c) Protection in Place of Utilities;

(d) All work necessary to remove and dispose of any Utilities (whether or not in use as of the Effective Date) in situations for which leaving the Utilities in place is not feasible or not permitted, or is required in order to accommodate or permit construction of the Project, regardless of whether replacements for such Utilities are being or have been installed in other locations;

(e) All work necessary to abandon in place any Utility in accordance with applicable Law and proper Utility Owner and/or industry procedures (e.g., flushing, capping, slurry backfill, etc.) regardless of whether replacements for such Utilities are being or have been installed in other locations;

(f) Traffic control for Utility Adjustment work;

(g) Resurfacing and re-striping of streets; reconstruction of curbs, gutters and sidewalks; reinstallation of signage; and reinstallation or replacement of traffic signals;

(h) Supplemental investigation, potholing, electronic detection, surveying and any other methods used to determine Utility locations, preparation of Principal Project Company's Utility conflict matrix and other material information concerning Utilities;

(i) Temporary Relocations; and

(j) Earthwork trenching requested by a Utility Owner.

Increased Oversight Cure Plan means the plan including specific actions (including timeframes) to be taken by Principal Project Company, to improve its performance , prepared and submitted by Principal Project Company in accordance with Section 15.6.4(a) of the Agreement, as updated and approved by the City in accordance with this Agreement.

Increased Oversight Threshold means:

During the D&C Phase;

(a) Principal Project Company receives a total of 200 or more Noncompliance Points over the course of 12 consecutive calendar months (determined on a rolling basis); or

(b) Principal Project Company receives a total of 350 or more Noncompliance Points over the course of 36 consecutive calendar months (determined on a rolling basis);

During the IFM Period;

(c) Principal Project Company receives a total of 1406 or more Noncompliance Points over the course of 12 consecutive calendar months (determined on a rolling basis); or

(d) Principal Project Company receives a total of 3687 or more Noncompliance Points over the course of 36 consecutive calendar months (determined on a rolling basis); or

(e) Principal Project Company receives a second Performance Notice, either on a successive basis or for matters related to a prior Performance Notice.

Indemnitees means City, including its boards and commissions, other persons and entities designated as "Indemnitees" in the Contract Documents, and all of their respective officeholders, officers, directors, agents, members, consultants, employees, authorized representatives, successors, and assigns.

Independent Energy Auditor or **IEA** means a company specializing in energy modelling and reporting that is a licensed, professional engineer in the state of California.

Independent Engineer means the independent engineering consultant retained by the Parties in accordance with Section 8.6.2 (Independent Engineer).

Information Management Plan means Principal Project Company's plan describing procedures to produce and control all documentation and relevant information, prepared and submitted by Principal Project Company in accordance with Section 1.6 of Division 1 of the Technical Requirements, as updated and approved by the City in accordance with this Agreement.

Infrastructure Facility means the Bus Yard Component and the Common Infrastructure.

Initial Financing Agreements means the documents identified in Part A (Initial Financing Agreements) of Exhibit 5A (List of Initial Financing Documents).

Initial Financing Documents means Initial Financing Agreements and Initial Security Documents.

Initial Project Debt means the Project Debt originally incurred to finance the Project and Work, in the total face amount at each lien priority, and with the particular Lenders, set forth in the Contract Documents, which Project Debt is evidenced by the Initial Financing Agreements and secured by the Initial Security Documents.

Initial Schedule means the schedule attached as Exhibit 19 (Initial Schedule), setting out all the relevant D&C Work activities from Commercial Close through Final Acceptance, with key interim milestones during that period of work, and at a minimum at Level 3 defined in AACE 91R-16 “Schedule Development”.

Initial Security Documents means the documents identified in Part B (Initial Security Documents) of Exhibit 5A (List of Initial Financing Documents).

Institutional Lender means:

(a) The United States of America, any state thereof or any agency or instrumentality of either of them, any municipal agency, public benefit corporation or public authority, advancing or insuring mortgage loans or making payments which, in any manner, assist in the financing, development, operation and maintenance of projects;

(b) Any (i) bank, trust company (whether acting individually or in a fiduciary capacity), savings and loan organization or insurance company organized and existing under the laws of the United States of America or any state thereof, (ii) foreign insurance company or bank qualified to do business as such, as applicable under the laws of the United States of America or any state thereof, or (iii) pension fund, foundation or university or college endowment fund; provided that an entity described in this clause (b) only qualifies as an Institutional Lender if it is subject to the jurisdiction of state and federal courts in the State in any actions;

(c) Any “qualified institutional buyer” under Rule 144(a) under the Securities Act of 1933, 15 U.S.C. § 77a et seq., or any other similar Law hereinafter enacted that defines a similar category of investors by substantially similar terms;

(d) Any purchaser of debt securities the proceeds of which are used to finance the Project that are not publicly offered pursuant to the exception to registration provided in Section 4(2) of the U.S. Securities Act of 1933; or

(e) Any other financial institution or entity designated by Principal Project Company and approved in writing by City; provided that such institution or entity, in its activity under this Agreement, is acceptable under then current guidelines and practices of City;

provided, however, that each such entity (other than entities described in clause (c) and (d) of this definition), or combination of such entities if the Institutional Lender is a combination of such entities, shall have individual or combined assets, as applicable, of not less than $1 billion. The foregoing dollar minimums shall automatically increase at the beginning of each calendar year by the percentage increase, if any, in the CPI during the immediately preceding calendar year, determined by comparing the CPI most recently published for the immediately preceding year with the CPI most recently published for the second preceding year.

Insurance Policy(ies) means all of the insurance policies Principal Project Company is required to carry under Exhibit 7 (Insurance Requirements).

Insurance Proceeds means all proceeds from insurance payable to Principal Project Company (or that would have been payable to Principal Project Company but for Principal Project Company's breach of any obligation under this Agreement to procure or maintain said insurance) on or after the Early Termination Date.

Insurance Review Report means the report furnished in accordance with Section 10.1.3(b).

Insurance Unavailability means either:

(a) Any Insurance Policy coverage required under Section 10.1 (Insurance) or Exhibit 7 (Insurance Requirements) is deemed unavailable under Section 10.1.4 (Insurance Unavailability); or

(b) Provision of all such Insurance Policy coverages has become unavailable at Commercially Reasonable Insurance Rates from insurers meeting the requirements in Section 10.1.2.1 (Insurers).

For the purpose of clause (b), the only increases in premiums that may be considered are those caused by changes in general market conditions in the insurance industry affecting insurance for project-financed transit facilities, and Principal Project Company shall bear the burden of proving that premium increases are the result of such changes in general market conditions. No increase in insurance premiums attributable to particular conditions of the Project or Project Site, or to claims or loss experience of any PPC-Related Entity or Affiliate, whether under an Insurance Policy required to be placed under this Agreement or in connection with any unrelated work or activity of PPC-Related Entities or Affiliates, shall be considered in determining whether Insurance Unavailability exists or has occurred.

Intellectual Property means all current and future legal and/or equitable rights and interests, anywhere in the world, in know-how, patents (including applications), copyrights (including moral rights), trademarks (registered and unregistered), service marks, trade secrets (as defined by the Defend Trade Secrets Act § 2(b)(1) (18 USC § 1839(3)), and pursuant to US state and federal laws), designs (registered and unregistered), utility models, circuit layouts, mask works, business and domain names, inventions, solutions embodied in technology, and other intellectual activity, and applications of or for any of the foregoing, subsisting in or relating to the Work or IP Materials. Without limiting the foregoing, Intellectual Property includes Software and City Data. For the avoidance of doubt, Intellectual Property is distinguished from the physical, electronic, and/or mechanical embodiments of such Intellectual Property (see IP Materials).

IP Escrow(s) has the meaning set forth in Section 21.5.2 of this Agreement.

IP Escrow Agent has the meaning set forth in Section 21.5.2 of this Agreement.

IP Materials means all physical, electronic and/or mechanical embodiments of, and documents disclosing, Intellectual Property. Without limiting the generality of the foregoing, IP Materials include embodiments, documents, deliverables and/or Work incorporating concepts, inventions (whether or not protected under patent laws), works of authorship, information, new or useful art, combinations, discoveries, formulae, algorithms, specifications, manufacturing techniques, technical developments, systems, computer architecture, artwork, Software, Source Code, decompilation instructions, programming, applets, scripts, designs, procedures, processes, and methods of doing business, and any other media, materials, plans, reports, project plans, work plans, documentation, training materials, and other tangible objects produced under the Contract or required by, incorporated into or combined with the Work or the Project.

IT / Comms Site means those areas related to City-Furnished IT/Comms FF&E, including locations of each MDF, IDF, wireless access point, RTLS point, a 15-foot radius immediately around each of these locations, and other areas the City, acting reasonably, deems necessary and identifies for PPC at least 14 days prior to the beginning of the City Access Period.

JDA Project Company(ies) means an entity, including a special-purpose entity(ies), that will undertake a Joint Development Alternative pursuant to an amendment to this Agreement or a separate agreement, including an HCC Agreement (with respect to the HCC).

JDA-Related Entity(ies) means:

(a) each JDA Project Company;

(b) any other persons or entities performing any work relating to a JDA;

(c) any Affiliate of the Principal Project Company and any affiliate of any other PPC-Related Entity, any JDA Project Company and any other JDA-Related Entity participating in or responsible for any aspect of a JDA;

(d) any other persons or entities for which a JDA Project Company may be legally or contractually responsible;

(e) any non-City party to any separate agreement relating to a JDA, including an HCC Agreement, including all subcontractors, subconsultants and suppliers of any tier; and

(f) the employees, personnel, officers, directors, agents, representatives, successors and assigns of any of the foregoing.

Joint Development Alternative or **JDA** means the design, construction, operation and/or maintenance of (i) an HCC; (ii) the Paratransit Facility or (iii) any other project or portion of the Facility for an SFMTA use, if and to the extent implemented.

Joint Technical Review has the meaning set forth in Section 8.5.4.1.

Joint Technical Review Plan has the meaning set forth in Section **Error! Reference source not found.**.

Joint Technical Review Report has the meaning set forth in Section **Error! Reference source not found.**.

Key Contract means any one of the following:

(a) all Prime Contracts for Construction Work and Design Work;

(b) all Prime Contracts for IFM Services;

(c) all Prime Contracts for project or program management services; and

(d) all other Prime Contracts with a single Contractor (or a single Contractor and its affiliates) that individually or in the aggregate total in excess of $25 million on a term (not annual) basis.

The term "Key Contracts" means all such Contracts in the aggregate or more than one of such Contracts.

Key Contractor means each Contractor under any Key Contract.

Key Personnel means, collectively, those individuals: (a) in Exhibit 20 (List of Key Personnel); and (b) appointed by Principal Project Company and approved by City from time to time to fill the "Key Personnel" positions identified in Section 1.1.4 of Division 1 of the Technical Requirements (each is a "**Key Person**").

Key Ratios means ratios contained in the Financing Documents that have financial covenants attached to them or ratios that are condition precedents to Financial Close under the Financing Agreements.

Known or Suspected Hazardous Materials means Hazardous Materials (i) that are known or reasonably suspected to exist as of the Setting Date based on information, data or analysis contained or referenced in the Reference Documents as of the Setting Date; (ii) excluding Hazardous Materials that are entirely subsurface, which should have been known or reasonably suspected pursuant to a Reasonable Investigation prior to the Setting Date, including those listed in the Technical Requirements; (iii) are identified or referenced in any of the information, data, analyses or reports undertaken by Principal Project Company pursuant to the Predevelopment Agreement; (iv) constituting asbestos, lead, PCBs, any byproducts of the foregoing and/or any other material or substance indicated as present or potentially present at, in, on or under the Project Site in that _______________ ***[PNC to list/identify the haz mat report(s) it has prepared during PDA Term]***; (v) anticipated or likely to be present in a building or structure that was constructed in 1915 and in continuous operation as a bus maintenance facility and heavy industrial use since that time; and/or (vi) excluding Hazardous Materials that are entirely subsurface, which should have been identified or referenced pursuant to a Reasonable Investigation undertaken pursuant to the Predevelopment Agreement. Known or Suspected Hazardous Materials include Hazardous Materials arising in or from any of the Hazardous Materials sites listed in the CEQA documents, the NEPA documents or in the Technical Requirements.

Late Payment Rate means the legal rate, as set forth in Section 685.010(a) of the California Code of Civil Procedure, as may be amended from time to time, up to a maximum amount equal to 10% per annum.

Law(s) means (a) any statute, law, code, regulation, ordinance, rule or common law, (b) any binding judgment (other than regarding a Claim), (c) any binding judicial or administrative writ, order, judgment, injunction, award or decree (other than regarding a Claim), (d) any written directive, guideline, policy requirement or other governmental restriction (including those resulting from the initiative or referendum process, but excluding those by City within the scope of its administration of the Contract Documents) or (e) any similar form of decision of or determination by, or any written interpretation or administration of any of the foregoing by, any Governmental Entity, in each case which is applicable to or has an impact on the Project or the Work, whether taking effect before or after the Effective Date. The term "Laws", however, excludes Regulatory Approvals.

Lead Developer means and Potrero Neighborhood Collective LLC, a limited liability company organized under the laws of the State of Delaware.

Lender(s) means each of the holders and beneficiaries of Security Documents, including any financial guarantor providing Project Debt or any guaranty or credit enhancement in respect thereof, and their respective successors, assigns, participating parties, trustees and agents, including the Collateral Agent.

Lenders' Liabilities means, at the relevant time, the aggregate of (without double counting) all principal, interest (including capitalized and default interest under the Financing Documents, but with respect to default interest, only to the extent that it arises as a result of City making any payment later than the date that it is due under this Agreement or any other default by City under this Agreement), Breakage Costs, banking fees, premiums or reimbursement obligations with respect to financial insurance policies, agent and trustee fees, costs and expenses properly incurred owing or outstanding to the Lenders by Principal Project Company under or pursuant to the Financing Documents on the Early Termination Date, including any prepayment premiums or penalties, make-whole payments or other prepayment amounts, including costs of early termination of interest rate and inflation rate hedging, swap, collar or cap arrangements, that Principal Project Company must pay, or that may be payable or credited to Principal Project Company, under any Financing Agreement or Security Document or otherwise as a result of the payment, redemption or acceleration of all or any portion of the principal amount of Project Debt prior to its scheduled payment date that were determined to be reasonable by City at the time City reviewed and approved the Financing Agreements in connection with Financial Close, as evidenced by City's approval of such Financing Agreements.

Lenders' Technical Advisor (LTA) means the Lenders' technical advisor, [___________], and any replacement technical advisor engaged by Principal Project Company and the Lenders with respect to the Project.

Long Stop Date means 12 calendar months after the Substantial Completion Deadline, as such date may be extended from time to time pursuant to Section 14.1.2 (Extension of Deadlines for General Delay Events).

Loss(es) means, whether asserted, suffered or incurred by a Party or a Third Party, any debt, assessment, claim, action, loss, proceeding, damage, injury, liability, obligation, cost, response

cost, expense (including attorneys', accountants' and expert witnesses' fees and expenses (including those incurred in connection with the enforcement of any indemnity or other provision of this Agreement), loss (whether direct or indirect), proceedings, demands and charges whether arising under statute, contract or at common law), compensation, charge or liability of any kind (including fees, judgments, or penalties), and whether or not arising under or for breach of contract, in tort (including negligence), restitution, under statute or otherwise at law. Losses include injury to or death of persons, damage or loss of property, and harm or damage to natural resources, utility facilities or Intellectual Property.

LTA Agreement means the technical advisory agreement dated as of the Financial Close Date between Principal Project Company, the Lenders (or the Collateral Agent) and Lenders' Technical Advisor.
Maintenance and Transit Spaces means the areas described as Maintenance and Transit Spaces and FF&E, as set forth in in Section A.2.1.2 of the IFM Specifications, and identified as Parking, Bays and Shops, Fare Box & Clipper Card Reader Repair Shop, Service & Clean, Parts, Maintenance, Operations, Transit Services (MRO) and enclosed circulation between in the Division 3 of the Technical Requirements.

Major Approval means the site permit issued by the City and County of San Francisco Department of Building Inspection, acting in its regulatory capacity.

Major Approval Conditions to Assistance has the meaning set forth in Section 6.3.8.2.

Major Approval Deadline means the following time period and deadline for Principal Project Company to secure each Major Approval:

[Note: PNC to propose time period applicable to the Major Approval for City review and approval, in its sole discretion]

Each such time period:

(a) begins on the date the first Major Approval request is submitted to the applicable Governmental Entity after the last to occur of (x) Principal Project Company has submitted a fully compliant and complete request and application to the applicable Governmental Entity in accordance with applicable Law and the policies and procedures of such Governmental Entity; (y) Principal Project Company has paid in full all fees and charges required for the review, consultation and issuance of the Major Approval by the applicable Governmental Entity; and (z) Principal Project Company has satisfied all other conditions to the commencement of review by the applicable Governmental Entity in accordance with applicable Law and the policies and procedures of such Governmental Entity; and ends on the date that Governmental Entity's approval is received; and

(b) includes any Governmental Entity comment requirements and Principal Project Company resubmissions.

Major Approval Delay means a delay to the Work resulting from the failure to obtain a Major Approval by the applicable Major Approval Deadline where that delay is not due, in whole or in part, to a change to the Principal Project Company's design between the Effective Date and Final Design Documents (unless such design change is as a direct and sole result of a City

Change, Compensable Delay Event or Unavoidable Delay Event (excluding Major Approval Delay)) or due to any act or omission of any PPC-Related Entity or any PPC Fault (including any failure to provide City with an updated Project Schedule or to perform the Work in accordance with the Project Schedule).

Major Utility Adjustment means the following Utility Adjustments:

[Note: PNC to propose limited list of Utility Adjustments that City would provide time / Financing Delay Costs for City review and approval, in its sole discretion.]

Major Utility Adjustment Deadline means the deadline to complete each Major Utility Adjustments specified below:

[Note: PNC to propose time period for the above limited list of Utility Adjustments for City review and approval, in its sole discretion. Time period is to commence after submittal of complete, compliant Utility Adjustment package, design, etc. to Utility. With respect to any Utility Adjustment proposed, if included, this needs to be based on schedule that PNC has worked out with the affected Utility plus a reasonable contingency/buffer]

Major Utility Adjustment Delay means a delay to the Utility Adjustment Work resulting from a failure by a Utility Owner to complete a Major Utility Adjustment by the applicable Major Utility Adjustment Deadline where that delay is not due, in whole or in part, to a change to the Principal Project Company's design between the Effective Date and Final Design Documents (unless such design change is as a direct and sole result of a City Change, Compensable Delay Event or Unavoidable Delay Event (excluding Major Utility Adjustment Delay)) or due to any act or omission by any PPC-Related Entity or any PPC Fault or failure of the Principle Project Company to act diligently in accordance with the requirements of the Contract Documents and Good Industry Practice (including any failure to provide City with an updated Project Schedule or to perform the Work in accordance with the Project Schedule).

Main or Trunkline Utility means an underground Utility, which is not a Service Line, and which relative to the particular system of which it is a part, (a) is a larger line serving as a main line to connecting tributary lines and (b) serves a larger area, all as determined by City, in its sole discretion. In determining whether a facility should be considered a Main or Trunkline Utility, City may refer to definitions in the relevant manual or code, if any, of the Utility Owner.

Maintained Elements means the Infrastructure Facility and the Project Site, including all equipment, component, finishes and any other elements required to satisfy the requirements of the Agreement, including all constructed maintained elements, building systems, cabling material, equipment, finishes, furniture and fixtures, excluding the SFMTA O&M Facilities.

Maintenance and Transit Spaces means the areas described as Maintenance and Transit Spaces and FF&E, as set forth in in Section A.2 of the IFM Specifications, and identified as Parking, Bays and Shops, Fare Box & Clipper Card Reader Repair Shop, Service & Clean, Parts, Maintenance, Operations, and Transit Services (MRO) in Division 3 of the Technical Requirements.

Maintenance of Traffic (MOT) means the comprehensive effort to maintain traffic.

Maintenance Plan means the plan to properly monitor and maintain the landscaped areas, prepared and submitted by Principal Project Company and approved by the City in accordance with Section C.4.3 of the IFM Specifications, as updated in accordance with this Agreement.

Maintenance Rectification Costs means, in respect of any termination of this Agreement that occurs after Substantial Completion, all Losses that City determines it is reasonably likely to incur as a direct result of the termination of this Agreement, including (without double counting):

(a) those costs (internal and external) that City is reasonably likely to incur as a direct result of carrying out any process to request tenders from any parties interested in entering into a contract with City to carry out the IFM Services, including all costs related to the preparation of tender documentation, evaluation of tenders and negotiation, and execution of relevant contracts; and

(b) those costs reasonably projected to be incurred by City in relation to:

(i) remediation or, if remediation is not possible or would cost more than renewal, renewal of any defective D&C Work or IFM Services;

(ii) rectification or cure of any breach of this Agreement by Principal Project Company; and

(iii) carrying out of all other matters necessary in order to ensure that within a reasonable period of the Early Termination Date, the Project complies with the requirements of the Contract Documents, and has a reasonable prospect of continuing to perform to the same standard and cost that it would have continued to perform at had this Agreement not been terminated and the Project been in compliance with all of the requirements of the Contract Documents,

including, for the avoidance of doubt, any amount which, but for the termination of this Agreement, either should have been deposited with or paid to City in accordance with the terms of this Agreement.

Maintenance Services means all Work during the IFM Period to maintain, repair, preserve, replace, refurbish, test, commission and modify the Project, including the supply of machinery, equipment, materials, hardware, software, systems or any other items related to such Work, and including Demand Maintenance, Scheduled Maintenance and Renewal Work, but excluding (a) D&C Work remaining to be performed following Substantial Completion, and (b) SFMTA O&M Services.

Major Service Failure means a Service Failure which has been designated in the Technical Requirements or Exhibit 4 (Payment Mechanism) as a Major Service Failure.

Manual or **Manuals** means policies, procedures, practices, guidelines, plans, checklists, deliverables, etc. that are developed, implemented and updated by Principal Project Company.

Maximum Availability Payment (MaxAP) means the maximum annual Availability Payment that Principal Project Company can earn in a given Contract Year during the IFM Period, as

calculated in accordance with Exhibit 4B (Availability Payment Mechanism), and as may be further adjusted in accordance with the Contract Documents.

Maximum Quarterly Availability Payment (MaxQAP) means the maximum Quarterly Availability Payment that Principal Project Company can earn in a given Contract Quarter during the IFM Period, as calculated in accordance with Exhibit 4B (Availability Payment Mechanism), and as may be further adjusted in accordance with the Contract Documents.

Medium Service Failure means a Service Failure which has been designated in the Technical Requirements or Exhibit 4 (Payment Mechanism) as a Medium Service Failure.

Meet and Greet means the Functional Components corresponding to Functional Unit references GL-025 as specified in Table B5 (Functional Components and Functional Units for Infrastructure Facility) of Appendix B (Functional Areas, Functional Units, Functional Unit Rankings and Deduction Amounts for Availability Failures and Service Failures) of Exhibit 4B (Availability Payment Mechanism).

Milestone Payment has the meaning set forth in Section 1(a) of Exhibit 4A (Milestone Payment Mechanism).

Minimum Agreed Availability Condition means all of the Accessibility Conditions, the Safety Conditions and the Use Conditions, as temporarily modified as permitted in accordance with Exhibit 4B (Availability Payment Mechanism) for the purposes of a Temporary Repair.

Minor Service Failure means a Service Failure which has been designated in the Technical Requirements or Exhibit 4 (Payment Mechanism) as a Minor Service Failure.

Model Update Event has the meaning set forth in Section 4.7.1.1.

Monthly Progress Meeting has the meaning set forth in Section 1.1.3.7 of Division 1 of the Technical Requirements.

Monthly Progress Status Report has the meaning set forth in Section 1.2.4.1 of Division 1 of the Technical Requirements.

Monthly Report means each of the reports described in Section 1.2.4.1 of Division 1 and Section B.11 of the IFM Specifications.

Move-In has the meaning set forth in Section 7.14 (Move-In).

Move-In Plan means the plan prepared and submitted by Principal Project Company and approved by the City in accordance with Section B.25 of the IFM Specifications, as updated in accordance with this Agreement.

Move-In Resource Candidate has the meaning set forth in Section 7.14.3.1.

Move-In Resource means the advisor selected in accordance with Section **Error! Reference source not found.**.

Move-In Subcommittee has the meaning set forth in Section 7.14.2.1.

NEPA Approval means the ___________________dated [________] and available at ___________________.

NEPA Event means:

(a) any new or modified NEPA Approval necessitated solely by a City Change, a Delay Event or Relief Event;

(b) legal action being taken in respect of the NEPA Approval that results in a temporary restraining order, preliminary injunction or other form of interlocutory relief by a court of competent jurisdiction that prohibits prosecution of, or by complying with such temporary restraining order, preliminary injunction or other form of interlocutory relief by a court of competent jurisdiction results in prohibiting the prosecution of, a material portion of the Work;

(c) review or revocation or material change to, the NEPA Approval;

(d) any review or revocation of, or change to, a NEPA Approval directly resulting from the circumstances specified in clauses (b) and (c); or

(e) any new or modified condition, mitigation or constraint set forth in the NEPA Approval that directly and adversely affects the D&C Work and is materially different from the conditions, mitigations or constraints set forth in Exhibit ___, ***[NOTE TO PNC: THIS CONDITION (e) WILL BE DELETED IF THE NEPA APPROVAL IS OBTAINED PRIOR TO COMMERCIAL CLOSE]***

except, in each case, to the extent resulting, in whole or in part, from Principal Project Company's design, Work or from any PPC Fault.

Noncompliance Database has the meaning set forth in Section 15.3.1.1.

Noncompliance Event means a D&C Noncompliance Event, Service Failure or Unavailability Failure.

Non-Core Hours means:

(a) for Maintenance and Transit Spaces, commencing at 10:01 pm until 3:59 am every day of every week; and

(b) for Office/Admin and Training Spaces, commencing at 5:01 pm until 7:59 am, Monday to Friday of every week.

Non-Dig Alert Utilities means Utilities that are not documented by or recorded with USA Dig Alert.

Noncompliance Points means the points that may be assessed in accordance with Section 15.4 (Assessment of Noncompliance Points).

Nonconforming Work means any D&C Work (including any product of the D&C Work) that does not conform to the requirements of the Contract Documents, the Regulatory Approvals,

applicable Law, the Design Documents or the Construction Documents, including any Work required to be repaired or replaced under Section 7.11 (Nonconforming Work) of this Agreement.

Non-Digalert Utility means a Utility owned or operated by a Utility Owner that is not a member of the California Digalert organization/notification process. "Non-Digalert Utilities" are not "Unidentified Utilities."

Non-Regulated Load means the metered provision of Energy other than Regulated Load. Non-Regulated Loads are to be aggregated in a logical fashion through a submetering system.

Non-Revenue Vehicle Parking Space means the Functional Components corresponding to Functional Unit references GL-025 as specified in Table B5 (Functional Components and Functional Units for Infrastructure Facility) of Appendix B (Functional Areas, Functional Units, Functional Unit Rankings and Deduction Amounts for Availability Failures and Service Failures) of Exhibit 4B (Availability Payment Mechanism).

Notice has the meaning given in Section 23.10 (Notices and Communications).

Notice(s) of Conditional Termination has the meaning set forth in Section 17.2.1 (Notice of Conditional Election to Terminate – Force Majeure Termination Events).

Notice of Determination has the meaning set forth in Section 15.3.3.2.

Notice of Potential Claim means a written Notice submitted by Principal Project Company in accordance with Section 18.2 (Notice of Potential Claim).

Notice of PPC Default means a written Notice provided by City concerning City's determination that a PPC Default has occurred, with respect to any default for which a cure period is allowed under Section 16.3.2 (Cure Periods).

NTP 1 means the written Notice issued by City to Principal Project Company in accordance with Section 7.4.3 (Commencement of Non-Construction Work) authorizing Principal Project Company to proceed with non-Construction Work.

NTP 2 means the written Notice issued by City to Principal Project Company in accordance with Section 7.4.4 (Commencement of Construction Work) authorizing Principal Project Company to proceed with Construction Work.

Office/Admin and Training Spaces FF&E means all FF&E to be included in Office/Admin and Training Spaces and all additional FF&E identified as "Office/Admin and Training Spaces FF&E" in the Equipment List or otherwise required to be included in the Office/ Admin and Training Spaces under Section 7.13.1 (Selection and Procurement of PPC-Furnished FF&E).

Office/ Admin and Training Spaces means administration and training facility spaces including Office/Admin and Training Spaces FF&E, as set forth in Section A.2 of the IFM Specifications and identified as "Office Modules", "Training" and "Operations" and enclosed circulation between in Division 3 of the Technical Requirements.

Open Book Basis means review by City of documentation showing Principal Project Company's underlying assumptions, documents, information and data associated with the issue in question, including assumptions as to the Financial Model and each updated Financial Model, pricing or compensation or adjustments thereto, costs of the Work, costs or compensation claimed with respect to Model Update Events, schedule, composition of equipment spreads, equipment rates (including rental rates), labor rates and benefits, productivity, estimating factors, design and productivity allowance, contingency and indirect costs, Extra Work Costs, risk pricing, discount rates, interest rates, inflation and deflation rates, swap and hedge rates, insurance rates, bonding rates, letter of credit fees, overhead, profit, traffic volumes and other items reasonably required by City to satisfy itself as to validity or reasonableness.

Ordinance has the meaning set forth in Recital D.

Original Equity IRR means [●]%, which is the Equity IRR listed in the Base Case Financial Model.

Other Adjustments (OA) means the aggregate of any other adjustments for a Contract Quarter to reflect previous over-payments and/or under-payments, any interest payable in respect of any amounts owed, and any other amount due and payable from Principal Project Company to the City or from the City to Principal Project Company under this Agreement, as set out in Section 11.9 (Other Adjustments; Full Compensation).

Other Amounts has the meaning given in Section 11.4.2.

Other Contractor means any contractor, tradesperson or other person engaged by City to do work other than Principal Project Company and its Subcontractors.

Oversight means monitoring, inspecting, sampling, measuring, spot-checking, reviewing, attending, observing, testing, investigating, auditing and conducting any other ongoing oversight respecting any part or aspect of the Project or the Work, by any Person so entitled, including all the activities described in Section 5.4.2.

Paratransit Facility means the paratransit component which will (a) include the spaces needed for paratransit operation and maintenance activities at the Paratransit Facility, (b) reside on the roof of the bus yard component with access and egress from vehicular ramps extending from the Bus Yard Component onto the Bus Yard Component podium roof, (c) must meet the paratransit criteria in the Technical Requirements, (c) delivered pursuant to a Change Order or by Principal Project Company or another entity under a separate agreement. Paratransit Facility would be developed as Joint Development Alternative 2 Paratransit Component, as described in the "Project Description" included in Division 1 of the Technical Requirements.

Partnering means the partnering process as set forth in Article 18 of this Agreement.

Party means Principal Project Company or City, as the context may require, and "Parties" means Principal Project Company and City, collectively.

Pass-Through Costs means the cost of diesel incurred by PPC directly and paid to utility owners with respect to PPC's performance of the IFM Services consistent with Section A. 2.1.1 of the IFM Specifications for operations and management of back-up power systems and Section 11.3.

Payment Bond means the payment bond(s) to secure payment for labor and materials, as required under this Agreement.

Payment Commencement Date means the date that is one day after the Substantial Completion Date.

PDA-Related Costs means the following costs incurred by or accruing to City under the PDA:

(a) The reasonably required costs of any assistance, action, activity or work undertaken by City which Principal Project Company is liable for or is obligated to reimburse City for under the terms of the PDA, including the charges of third party contractors and reasonably allocated wages, salaries, compensation and overhead of City staff and employees performing such action, activity or work; plus

(b) Reasonably required out-of-pocket costs City incurs to publicly procure any such third party contractors; plus

(c) Reasonable fees and costs of attorneys (including the reasonably allocable fees and costs of the Office of the City Attorney), financial advisors, engineers, architects, insurance brokers and advisors, investigators, traffic and revenue consultants, risk management consultants, other consultants, and expert witnesses, as well as court costs and other litigation costs, in connection with any such assistance, action, activity or work, including in connection with defending claims by and resolving disputes with third party contractors; plus

(d) Interest on all the foregoing sums at the Late Payment Rate, commencing on the date due under the applicable terms of the PDA and continuing until paid; plus

(e) An administrative fee of 10% of the actual aggregate costs incurred by City as described in clauses (a) through (d) of this definition.

PDA Term means the period commencing on November 2, 2022 and expiring on the Effective Date.

Performance Action Plan or **PAP** means the plan, at minimum, containing a summary of the issues raised by City, an analysis of the root causes of the issues, the steps and timeframes for such steps to be undertaken by Principal Project Company to address the issues, prepared and submitted by Principal Project Company in accordance with Section B.18.2 of the IFM Specifications, as updated and approved by the City in accordance with this Agreement.

Performance Bond means the performance bond(s) securing performance of the Work required under this Agreement.

Performance Cure Plan means the plan prepared and submitted by Principal Project Company and approved by the City in accordance with Section 15.5.2(a) of the Agreement, as updated in accordance with this Agreement.

Performance Measure has the meaning given in the Performance Measurements Table.

Performance Measurements Table means the table in Section G of the IFM Specifications.

Performance Monitoring means a detailed inspection and/or monitoring of the Project by Principal Project Company during the IFM Period in accordance with the Technical Requirements, including the IFM Specifications, to verify compliance with the Contract Documents.

Performance Monitoring Report means a report documenting all Failure Events, associated Noncompliance Points and Deductions, and showing space temperatures during period, including identification of rooms that have not met the requirements of the Technical Requirements, including the IFM Specifications.

Performance Notice means a written Notice provided by City, as set forth in Section 15.5.1.

Performance Notice Threshold means

(a) if Principal Project Company receives a total of 375 or more Noncompliance Points over the course of 3 consecutive calendar months (determined on a rolling basis); or

(b) A material Noncompliance Event occurs, as determined by the City

Permanent Repair means Rectification where a Temporary Repair has been permitted and carried out pursuant to Section 9 (Amendment of IFM Period Performance Measures Table) of Exhibit 4B (Availability Payment Mechanism).

Permanent Repair Deadline has the meaning given in Section 8(b) of Exhibit 4B (Availability Payment).

Persistent PPC Default means if:

During the D&C Phase;

(a) Principal Project Company receives a total of 500 or more Noncompliance Points over the course of 12 consecutive calendar months (determined on a rolling basis); or

(b) Principal Project Company receives a total of 875 or more Noncompliance Points over the course of 36 consecutive calendar months (determined on a rolling basis);

During the IFM Period;

(a) Principal Project Company receives a total of 3867 or more Noncompliance Points over the course of 12 consecutive calendar months (determined on a rolling basis); or

(b) Principal Project Company receives a total of 10,635 or more Noncompliance Points over the course of 36 consecutive calendar months (determined on a rolling basis); or

(c) 58,005 or more cumulative Noncompliance Points or have occurred over the course of the IFM Period.

Persistent PPC Default Cure Plan means the plan including specific actions (including timeframes) to be taken by Principal Project Company to improve performance, prepared and submitted by Principal Project Company in accordance with Section 15.8.1 of the Agreement, as updated and approved by the City in accordance with this Agreement.

Person means any individual, corporation, joint venture, limited liability company, company, voluntary association, partnership, trust, unincorporated organization or Governmental Entity.

Planning Department means the City's Planning Department.

Post-Refinancing Financial Model has the meaning set forth in Section 1.2 (Create a Post-Refinancing Financial Model) of Exhibit 5C (Calculation of Refinancing Gain).

Potential Contract Dispute has the meaning set forth in Section 18.2.1.

PNC has the meaning set forth in Recital E.

PPC Change Request has the meaning set forth in Section 3.1 of Exhibit 9 (Change Procedures).

PPC Default has the meaning set forth in Section 16.1.1 (PPC Default).

PPC Employee(s) means employee(s) of Principal Project Company or any other PPC-Related Entity at the Project Site.

PPC Employee and Contractor Breakage Costs means:

(a) the payment of all wages earned, accrued unused vacation time, and any other payments required to be made by Principal Project Company to its employees under law, or under the terms and conditions of Principal Project Company's employment agreements with its employees as a direct result of the termination of this Agreement;

(b) Losses that have been or will be reasonably and properly incurred by Principal Project Company under a Key Contract as a direct result of the termination of this Agreement (and which shall not include lost profit or lost opportunity), but only to the extent that:

(i) the Losses are incurred in connection with the Project and with respect to the Work required to be provided or carried out, including:

(1) any materials or goods ordered or subcontracts placed that cannot be cancelled without such Losses being incurred;

(2) any expenditure incurred in anticipation of the provision of services or the completion of Work in the future; and

(3) the cost of demobilization including the cost of any relocation of equipment used in connection with the Project; and

(ii) the Losses are reasonably and properly incurred under arrangements and/or agreements that are consistent with terms that have been entered into in the ordinary course of business and on an arm's length basis; and

(c) Principal Project Company and the relevant Key Contractor have each used their reasonable efforts to mitigate such Losses.

PPC Fault means:

(a) the breach by any PPC-Related Entity of any of its obligations or any representation, warranty or covenant under the Contract Documents;

(b) a breach of applicable Law or any Regulatory Approval by any PPC-Related Entity; and

(c) fraud, criminal conduct, intentional misconduct, recklessness, bad faith, gross negligence, negligence or other culpable act or omission of any PPC-Related Entity.

PPC Intellectual Property means Intellectual Property developed by Principal Project Company, Contractors, or any of their respective Affiliates either (a) prior to the Effective Date, (b) independently of the Contract Documents or (c) any adaptation, continuation or derivative work which requires the incorporation, exercise or practice of Intellectual Property that is the subject of either subsection (a) or (b).

PPC Release means, with respect to Hazardous Materials, (a) any Release of Hazardous Material, or the exacerbation of any such Release, attributable to any PPC Fault; (b) any Release of Hazardous Materials arranged to be brought onto the Project Site by any PPC-Related Entity; regardless of cause; (c) any migration of Hazardous Materials into, onto, under or from the Project Site where the source of such Hazardous Materials is a PPC-Related Entity; or (d) any use, containment, storage, management, handling, transport or disposal of any Hazardous Materials, by any PPC-Related Entity in violation of the requirements of the Contract Documents, Good Industry Practice or any applicable Law or Regulatory Approval.

PPC Resources means the employees of Principal Project Company or any Principal Project Company that are not at the Project Site.

PPC's Construction Quality Plan (PCQP) means the Principal Project Company deliverable described in Section 1.4.3 of Division 1 of the Technical Requirements, following approval thereof by City, as updated in accordance with this Agreement.

PPC's Design Quality Plan (PDQP) means the Principal Project Company deliverable described in Section 1.4.2 of Division 1 of the Technical Requirements, following approval by City, as updated in accordance with this Agreement.

PPC-Furnished FF&E means all FF&E required by the Technical Requirements or the Equipment List (including items marked CP) or otherwise required to be included on the

Equipment List under Section 7.13.1 (Selection and Procurement of PPC-Furnished FF&E) including the Office/Admin and Training Spaces FF&E and the IT/Comms Equipment, but excluding City-Furnished Equipment and Existing FF&E.

PPC's Interest means all right, title and interest of Principal Project Company in, to, under or derived from the Contract Documents, including the Infrastructure Facility, Project Management Plan, Subcontracts, Submittals, Claims and Intellectual Property.

PPC-Maintained FF&E means the PPC-Furnished FF&E, excluding the Office/Admin and Training Spaces FF&E and the IT/Comms Equipment.

PPC's Quality Program (PQP) means the program described in Section 1.4.1 of Division 1 of the Technical Requirements, including all sub-plans.

PPC's Quality Program Plan (PQPP) means Principal Project Company's plan describing its approach to undertake and achieve the requirements in Section 1.4.1 of Division 1 of the Technical Requirements, prepared and submitted by Principal Project Company in accordance with Section 1.4 of Division 1 of the Technical Requirements, as updated and approved by the City in accordance with this Agreement.

PPC-Related Entity(ies) means:

(a) Principal Project Company;

(b) Principal Project Company's Equity Members, including Lead Developer;

(c) Contractors;

(d) any other persons or entities performing any of the Work;

(e) any other persons or entities for whom Principal Project Company may be legally or contractually responsible;

(f) any Affiliate of the Principal Project Company, or any other PPC-Related Entity (excluding such Affiliates to the extent that they are participating in or responsible for any aspect of a Joint Development Alternative); and

(g) the employees, agents, officers, directors, representatives, consultants, successors and assigns of any of the foregoing.

PPC Spaces has the meaning given in Section 2.1.4 of the IFM Specifications.

Predevelopment Agreement has the meaning set forth in Recital F of this Agreement.

Pre-Existing Hazardous Materials means Hazardous Materials that:

(a) are located in, on or under, or are emanating from, any parcel within the boundaries of the Project Site as of the date access to such parcel is provided to Principal Project Company; or

(b) existed in another location as of the date access to such a parcel was provided and thereafter migrated to such parcel,

excluding any Hazardous Materials that are located in, on or under, or are emanating from any Additional Property or Temporary Areas or which arise as a result of any act or omission of any PPC-Related Entity in connection with any Additional Property or Temporary Areas.

Pre-Refinancing Financial Model has the meaning set forth in Section 1.1 (Create a Pre-Refinancing Financial Model) of Exhibit 5C (Calculation of Refinancing Gain).

Prevailing Rate of Wages has the meaning given in Section 6.22(e) and 21C of the San Francisco Administrative Code.

Prime Contract means a direct Contract between Principal Project Company and a Contractor.

Prime Contractor means any Contractor that has a direct contract with Principal Project Company.

Principal Project Company (PPC) means [____________], a [___________] organized under the laws of the State of [___________], and its permitted successors and assigns.

Principal Project Company IP means Intellectual Property that is (i) owned by any PPC-Related Entity prior to the Effective Date, (ii) developed or acquired by any PPC-Related Entity independently of this Agreement or not for the purposes of performing the Work (iii) any adaptation, continuation or derivative work which requires the incorporation, exercise or practice of Intellectual Property that is the subject of either subsection (i) or (ii).

Principal Project Document(s) means the Contract Documents, the Key Contracts and the escrow agreements relating to the escrow of the Financial Model and Cost and Pricing Data and the IP Escrows.

Priority 1 has the meaning given in Section B.18.1.1 of the IFM Specifications.

Priority 2 has the meaning given in Section B.18.1.1 of the IFM Specifications.

Priority 3 has the meaning given in Section B.18.1.1 of the IFM Specifications.

Private Placement means the issuance of debt securities that are exempt from registration under U.S. securities law and are sold directly in the private market.

Proceeds Account means a deposit account with the Collateral Agent, bearing **[*Insert name of bank*]** Account No. [***To be completed at Financial Close***].

Prohibited Person means any Person who is:

(a) debarred, suspended, proposed for debarment with a final determination still pending, declared ineligible or voluntarily excluded from participating in procurement or nonprocurement transaction or determined to be a non-responsible bidder or contractor (as such terms are defined or used in City's Contractor Responsibility Program);

(b) indicted or convicted of a crime, including misdemeanors, or had a civil suit or administrative judgment rendered against such Person involving the bidding, awarding, or performance of a government contract, a false claim or material misrepresentation to any private or governmental entity, or the crime of theft, fraud, embezzlement, perjury, or bribery (as such terms are defined or used in City's Contractor Responsibility Program);

(c) identified on the list entitled "Entities Prohibited from Contracting with Public Entities in California per the Iran Contracting Act of 2010" maintained by the Department of General Services;

(d) a financial institution against which, or a banking institution chartered or licensed in a jurisdiction against which, the United States Secretary of the Treasury has imposed special measures under Section 311 of the USA PATRIOT Act;

(e) located within or is operating from a jurisdiction that has been designated as a "high-risk and non-cooperative jurisdiction" by the Financial Action Task Force;

(f) a "senior foreign political figure" or a prohibited "foreign shell bank" within the meaning of 31 CFR Section 1010.605; or

(g) engaged in litigation with the City of San Francisco relating to performance of a contract or business practices (unless the City has first waived (in the City's sole discretion) by written Notice to the transferring equity holder, with a copy to Principal Project Company, the prohibition on a transfer to such Person during the continuance of the relevant litigation).

Project means the design, construction, financing, operation and maintenance of the Infrastructure Facility as described in the Contract Documents.

Project Debt means bona fide indebtedness (including subordinated indebtedness) for or with respect to funds borrowed or obligations incurred (including bona fide indebtedness with respect to any financial insurance issued for funds borrowed) or for the value of goods or services rendered or received, the repayment of which has specified payment dates and is secured by one or more Security Documents. Project Debt includes principal, capitalized interest, accrued interest, customary and reasonable lender, financial insurer, agent and trustee fees, costs, expenses and premiums with respect thereto, payment obligations under interest rate and inflation rate hedging agreements or other derivative facilities with respect thereto, reimbursement obligations with respect thereto and lease financing obligations. Project Debt excludes (a) any indebtedness of Principal Project Company or any Equity Member of Principal Project Company that is secured by anything less than the entire Principal Project Company's Interest, such as indebtedness secured only by an assignment of economic interest in Principal Project Company or of rights to cash flow or dividends from Principal Project Company, (b) debt that constitutes consideration paid for the sale of the economic rights in Principal Project Company or Principal Project Company's Equity Members, and (c) any increase in indebtedness to the extent resulting from an agreement or other arrangement Principal Project Company enters into after it was aware (or should have been aware, using reasonable due diligence) of the occurrence or prospective occurrence of an event of termination giving rise to an obligation of City to pay Termination Compensation, including Principal Project Company's receipt of a Notice of Termination for Convenience and occurrence of a City Default of the type

entitling Principal Project Company to terminate this Agreement. In addition, no debt shall constitute Project Debt unless and until the Collateral Agent provides City with Notice thereof and the related Financing Agreements and Security Documents in accordance with the relevant Direct Agreement.

Project Debt Competition has the meaning set forth in Section 3.4.2(d)(ii).

Project Financial Performance means the cashflows from Principal Project Company's operations, financing and investments, including: (a) cash revenues and expenses, (b) Project Debt drawdowns, fees, interest expense and repayments, (c) Committed Investment drawdowns and Distributions; and (d) funding and release of reserves.

Project IP means all PPC Intellectual Property, Third Party IP and City IP incorporated into the Project, Implementation Proposal or Work.

Project Management Plan (PMP) means the D&C Management Plan and the IFM Management Plan (or either as the context requires).

Project Manager means the Key Person described in Section ● of Exhibit 3 (Implementation Proposal).

Project Schedule means (i) during the period from the Effective date until NTP2, the Initial Schedule; and (ii) from NTP2 until Final Acceptance, the fully cost loaded CPM schedule for all D&C Work meeting the requirements of the Technical Requirements, including the requirements in Section 1.2.1 of Division 1 thereof, as approved and updated in accordance with this Agreement.

Project Site means the D&C Site and the IFM Project Site, or either, as applicable.

Proposed Change Order means a Change Order proposed by City in accordance with Section 1.2 of Exhibit 9 (Change Procedures).

Proprietary Design Review has the meaning set forth by Section 1.8.5 of Division 1 of the Technical Requirements.

Protection(s) in Place means any action taken to avoid damaging a utility facility which does not involve removing or relocating that facility, including staking the location of a facility, exposing the facility, locating construction equipment so as to avoid impacts to facilities, installing steel plating or concrete slabs, encasement in concrete, temporarily de-energizing power lines, and installing physical barriers. For example, temporarily lifting power lines without cutting them would be considered a Protection in Place; whereas temporarily moving power lines to another location after cutting them would be considered a phased Utility Adjustment and not a Protection in Place. The term "Protection in Place" includes both temporary measures and permanent installations meeting the foregoing definition.

Provision Document(s) has the meaning set forth in Section 1.8.5.2.4 of Division 1 of the Technical Requirements.

Public Outreach Plan has the meaning set forth in Section 1.15.2 of Division 1 of the Technical Requirements.

Public Records Act (PRA) means California Public Records Act, Cal. Gov't Code § 6250 et seq., as amended from time to time.

Punch List means an itemized list of D&C Work as agreed upon by Principal Project Company and City which remains to be completed after the Substantial Completion Date with respect to the Infrastructure Facility as a condition to Final Acceptance, and which is limited to minor incidental items of Work necessary to correct imperfections which have no adverse effect on the safety, use or operability of the Project.

Quality Assurance (QA) means all planned and systematic actions by Principal Project Company necessary to provide confidence that QC is performed in accordance with Principal Project Company's Design Quality Plan and Principal Project Company's Construction Quality Plan, that all Work complies with the Contract Documents and that all materials incorporated in the Work, and that all equipment and all elements of the Work will perform satisfactorily for the purpose intended. QA actions include: monitoring and verification of design through auditing, spot-checking and participation in the review of the Design Documents and work plans; and monitoring and verification of construction, manufacturing/process facilities and equipment, on-site equipment and QC documentation through auditing, spot inspections and reconciliation of material acceptance and rejection based on QC testing and Verification Sampling and Testing at production sites and the Project Site. Quality Assurance also includes documentation of all QA efforts.

Quality Audit means the audits performed by Principal Project Company in connection with its quality audit program, as described in further detail in Section 1.4.1 of Division 1 of the Technical Requirements.

Quality Control (QC) means the total of all activities performed by Principal Project Company to ensure that the Work meets the requirements of the Contract Documents. For design, this includes procedures for design quality, checking, and design review including reviews for constructability, and review and approval of work plans. For construction, this includes: procedures for materials handling and construction quality; inspection, sampling, testing and acceptance/rejection of materials, plants, production and construction; material certifications; calibration and maintenance of equipment; production process control; and monitoring of environmental compliance. Quality Control also includes documentation of all QC design and construction efforts.

Quality Management Plan means the plan to manage and measure the quality of IFM Services, prepared and submitted by Principal Project Company and approved by the City in accordance with Section B.16.2 of the IFM Specifications, as updated and approved by City in accordance with this Agreement.

Quality Program Manager has the meaning set forth in Section 1.1.4.9 of Division 1 of the Technical Requirements.

Quality Records means the documentation required to be produced and maintained by PPC-Related Entities in accordance with Principal Project Company's Quality Program.

Quarter means a time period comprised of three calendar consecutive calendar months.

Quarterly Availability Payment (QAP) means the sum in dollars payable by City to Principal Project Company in each Contract Quarter of the IFM Period in accordance with this Agreement, as calculated in Exhibit 4B (Availability Payment Mechanism).

Quarterly Deduction Cap has the meaning given in Section 5.1.1(a) of Exhibit 4B (Availability Payment Mechanism).

Rating Agency(ies) means any credit rating agency registered with the Securities and Exchange Commission as a nationally recognized statistical rating organization ("**NRSRO**").

Reasonable Accuracy means with respect to the description or identification of a Utility in the Utility Information:

(a) The Utility's actual centerline location is located at or less than five feet distant from the horizontal centerline location indicated therefor in the Utility Information (without regard to vertical location);

(b) The Utility Information shows an active and existent Utility as not abandoned;

(c) The Utility Information shows a non-existent or inactive Utility as abandoned; or

(d) The Utility has an actual nominal diameter (excluding casings and any other appurtenances) greater than 12 inches, and its actual nominal diameter is either greater than or less than the diameter shown in the Utility Information by 25% or less of the diameter shown in the Utility Information.

Any other inaccuracies in the Utility Information (e.g., as to type of material or encasement status) shall have no impact on "reasonable accuracy" of its identification and shall not result in a determination that the Utility was not identified with "reasonable accuracy." If there is any discrepancy between any of the components of the Utility Information, only the most accurate information shall be relevant for purposes of determination of "reasonable accuracy."

Reasonable Investigation means the following activities by appropriate, qualified professionals:

(a) Visit and inspection of the Project Site and adjacent locations, including inspection to identify the presence of other facilities, such as barriers, railing, structures, manholes or identifying markers;

(b) Undertaking the geotechnical, Utility, Hazardous Material and other intrusive site conditions investigations, sampling, testing, analyses and assessments as required to identify conditions at a specific point or to identify where conditions change between points, and otherwise contemplated by the Predevelopment Agreement;

(c) Review and analysis of all Reference Documents and online map tools;

(d) Review and analysis of the CEQA Approval, NEPA Approval and other Regulatory Approvals;

(e) Without limiting clause (b), reasonable inquiry with Utility Owners, including request for and review of Utility plans provided by Utility Owners;

(f) Review and analysis of material applicable Law applicable to the Project or the Work as of the Setting Date; and

(g) Other activities consistent with Good Industry Practice sufficient to familiarize Principal Project Company with surface and subsurface conditions, including the presence of Utilities, Hazardous Materials, archeological, paleontological and cultural resources, and Threatened or Endangered Species, affecting the Project Site or surrounding locations.

Reasonable Wear and Tear means wear and tear that is reasonable given the use and age of the Infrastructure Facility and consistent with wear and tear that could reasonably be expected to exist at a similar facility, operating in a similar environment and similar circumstances but not including any degradation in the functionality or operability of the IFM Facility that, subject to the exceptions specified in the Technical Requirements, will result in the Infrastructure Facility failing to meet the Technical Requirements or failing to comply with Applicable Law and Standards.

Record Documents means construction drawings, specifications and related documentation furnished by Principal Project Company to reflect the actual conditions and location in detail of Work as constructed and installed, which may be generated initially as marked-up Release for Construction Documents, revised subsequently as-finished revised drawings and documents, and updated thereafter as required by the Technical Requirements.

Recoverable Costs means:

(a) The reasonably required costs of any assistance, action, activity or work undertaken by City which Principal Project Company is liable for or is obligated to reimburse City for under the terms of the Contract Documents, including the charges of third party contractors and reasonably allocated wages, salaries, compensation and overhead of City staff and employees performing such action, activity or work; plus

(b) Reasonably required out-of-pocket costs City incurs to publicly procure any such third party contractors; plus

(c) Reasonable fees and costs of attorneys (including the reasonably allocable fees and costs of the Office of the City Attorney), financial advisors, engineers, architects, insurance brokers and advisors, investigators, traffic and revenue consultants, risk management consultants, other consultants, and expert witnesses, as well as court costs and other litigation costs, in connection with any such assistance, action, activity or work, including in connection with defending claims by and resolving disputes with third party contractors; plus

(d) Interest on all the foregoing sums at the Late Payment Rate, commencing on the date due under the applicable terms of the Contract Documents and continuing until paid; plus

(e) An administrative fee of 10% of the actual aggregate costs incurred by City as described in clauses (a) through (d) of this definition.

Recovery Schedule has the meaning set forth in Section 1.2.1.4 of Division 1 of the Technical Requirements.

Rectification means resolving and curing the Service Failure or Availability Failure (as applicable) in a way that Principal Project Company is in full compliance with this Agreement, with respect to that Service Failure or Availability Failure.

Rectification Time means, with respect to each Service Failure or Availability Failure (as applicable), the relevant period within which Principal Project Company shall Rectify such failure as specified in Appendix B (Response and Rectification Time) of Exhibit 4 (Payment Mechanism).

Reference Documents means the documents provided with and so designated by City in the RFP or in writing during the PDA Term, which are provided for disclosure purposes only and without any warranty as to their accuracy, completeness or fitness for any particular purpose.

Refinancing means:

(a) any amendment, variation, novation, extension, renewal, supplement, refunding, defeasance or replacement of any Project Debt, Financing Agreement or Security Document (other than any Equity Member Debt);

(b) any Project Debt incurred by Principal Project Company in addition to the Initial Project Debt, secured or unsecured;

(c) the disposition of any rights or interests in, or the creation of any rights of participation with respect to, Project Debt, Financing Agreements and Security Documents or the creation or granting by Principal Project Company or any Lender of any other form of benefit or interest in either Project Debt, Financing Agreements and Security Documents or Principal Project Company's Interest whether by way of security or otherwise; or

(d) any other arrangement put in place by Principal Project Company or another Person which has an effect similar to any of clauses (a) through (c) above.

Refinancing Data means the Pre-Refinancing Financial Model, the Post-Refinancing Financial Model, any interim Financial Models, and all assumptions, calculations and other information supporting the calculation of the Refinancing Gain, including any debt term sheets or other similar documentation relating to the proposed Refinancing.

Refinancing Gain means an amount equal to the greater of (a) zero and (b) (A – B), as such variables are calculated in accordance with Exhibit 5C (Calculation of Refinancing Gain).

Regulated Load means the metered provision of Energy for the following end-uses: (i) space heating; (ii) humidification; (iii) space cooling; (iv) dehumidification; (v) heat rejection; (vi) all fans; (vii) lighting; (viii) domestic hot water; and (ix) all pumps except for any domestic water booster pumps and any process-related pumps.

Regulatory Approvals means all permits, licenses, consents, concessions, grants, franchises, authorizations, waivers, variances or other approvals, guidance, protocol(s), mitigation agreement(s), or memoranda of agreement/understanding, and any amendment(s) or modification(s) of any of them, required or provided by Governmental Entities, including State, local, or federal regulatory agencies, agents, or employees, which authorize or pertain to the Project or the Work or take actions required to complete obligations in connection with this Agreement. Regulatory Approvals include encroachment permits and other access rights or right of entries for Work to be performed in areas under the jurisdiction of Governmental Entities, Major Approvals and Environmental Approvals.

Regulatory Approvals Plan means Principal Project Company's plan defining its approach to obtain all Regulatory Approvals, prepared and submitted by Principal Project Company in accordance with Section 1.1.6 of Division 1 of the Technical Requirements, as updated and approved by the City in accordance with this Agreement.

Related Project(s) has the meaning set forth in Section 1.14.2 of Division 1 of the Technical Requirements.

Release or **Release of Hazardous Materials** means, with respect to Hazardous Materials, any spill, leak, emission, release, discharge, injection, escape, leaching, dumping or disposal of Hazardous Materials into the soil, air, water, groundwater or environment, including any exacerbation of an existing release or condition of Hazardous Materials contamination.

Release for Construction Documents (RFCD) means Design Documents that have been authorized to be used as the basis for Construction Work or Renewal Work, in accordance with the design management portion of the approved Project Management Plan, and as set forth in Section 1.8.6 of Division 1 of the Technical Requirements.

Relevant Event has the meaning set forth in Section 13.3.1.

Relevant Change in Law means a discriminatory Change in Law which is principally borne by Principal Project Company (including PPC-Related Entities) and principally directed at, affects or relates only to the design, supply, construction (including installation), operation and maintenance of the Infrastructure Facility:

(a) Except where such change (i) is in response, in whole or in part, to any PPC Fault, or (ii) is otherwise expressly permitted under the Contract Documents;

(b) Where such Change in Law is a Change in Law for which compliance requires material capital expenditures by Principal Project Company; or

(c) Where such Change in Law is a Change in Law for which compliance requires specific and material adverse changes in Principal Project Company's normal and compliant operation or maintenance procedures.

As used in this definition of "Relevant Change in Law", material capital expenditures are capital expenditures in excess of $25,000 per event, such threshold to be index-linked and increased by the Escalation Factor calculated in accordance with Section 2 of Exhibit 4B (Availability Payment Mechanism).

Relief Event means any of the following events or circumstances to the extent, in each case, that the event interferes directly and adversely with, or causes a failure of, the performance of the IFM Services after the Substantial Completion Date:

(a) a Force Majeure Event; and

(b) any Compensable Relief Event.

Renewal Work means all work related to the capital replacement, reconstruction, overhaul, refurbishment and reinstatement of the Infrastructure Facility, including the supply of machinery, equipment, materials, hardware, software, systems or any other items related to such Work, carried by Principal Project Company during the Term to maintain compliance with the Contract Documents. Renewal Work excludes D&C Work and SFMTA O&M Services.

Renewal Work Plan means the plan which defines design life, specific replacement and/or refurbishment strategies, prepared and submitted by Principal Project Company in accordance with Section E of the IFM Specifications, as updated and approved by the City in accordance with this Agreement.

Repeat Failure Ratchet has the meaning given in Section 4.3 (Repeat Service Failures and Repeat Failure Ratchet) of Exhibit 4B (Availability Payment Mechanism).

Request for Change Proposal means a written Notice issued by City to Principal Project Company setting forth a proposed City Change and requesting Principal Project Company's assessment of cost and schedule impacts thereof, as described in Section 1.1 of Exhibit 9 (Change Procedures).

Request for Proposals (RFP) means the request for proposals to design, build, finance, and maintain the Infrastructure Facility and design, build, finance, operate and maintain the Housing and Commercial Component at the Project Site, issued by City on April 9, 2021, as amended.

Request for Qualifications (RFQ) means the request for qualifications to invite interested parties to submit a statement of qualifications to design, build, finance and maintain the Infrastructure Facility at the Project Site and design, build, finance, operate and maintain the Housing and Commercial Component at the Project Site, issued by City on August 21, 2020 as amended.

Required Minimum Insurance Policy(ies) means the Insurance Policies required in Exhibit 7 (Insurance Requirements) for performing the IFM Services, subject to Section 10.1.2.12 (Inadequacy of Required Coverage).

Rescue Refinancing means any Refinancing that:

(a) occurs due to the failure or imminent failure of Principal Project Company to comply with any material financial obligation under any Financing Document;

(b) results in the cure of such failure or imminent failure;

(c) does not result in an increase in the Equity IRR beyond the Original Equity IRR; and

(d) does not result, singly or in the aggregate, in an actual or potential increase of the Lenders' Liabilities (determined without including any Exempt Refinancings) by more than 10%.

Residual Life means, for an element of the Work, the period remaining until the element will next require reconstruction, rehabilitation, restoration, renewal or replacement. The Residual Life of an element would be equal to its originally calculated Useful Life less its age if (a) the element has performed in service in the manner and with the levels of Reasonable Wear and Tear, and (b) Principal Project Company has performed the type of routine maintenance of the element which is normally included as an annually recurring cost in transit facility maintenance and repair budgets, and as a result thereof the element complies throughout its originally calculated Useful Life with all applicable requirements of the Contract Documents. The Residual Life of an element would be different from its originally calculated Useful Life minus its age if any of the foregoing conditions is not true.

Response means:

(a) the surrounding area to a state or condition such that in the good faith opinion of City's Authorized Representative, the area is free of conditions which might otherwise create a condition that is hazardous or unsafe for maintenance and operating personnel; and

(b) sufficiently reducing the risk during the remainder of the Rectification Time that further damage, nonperformance, safety hazards or adverse consequences caused by the Service Failure or Availability Failure (as applicable), might occur.

Response Time means with respect to each Service Failure or Availability Failure (as applicable), the relevant period within which Principal Project Company shall Respond to such failure as specified in Appendix B (Response and Rectification Time) of Exhibit 4 (Payment Mechanism).

Retaining Wall means a wall structure which retains fill with a minimum exposed face height of 4 feet and a minimum overall height from top of footing to top of wall of 5 feet.

Revenue Vehicle Parking Space means the Functional Units corresponding to Functional Unit references AL-010 and AL-011, as specified in Table C2 (Functional Components and Functional Units for Infrastructure Facility) of Appendix C (Functional Areas, Functional Units, Functional Unit Rankings and Deduction Amounts for Availability Failures and Service Failures) of Exhibit 4B (Availability Payment Mechanism).

Review Date has the meaning set forth in Section 8.5.4.1.

Revised Project Schedule has the meaning set forth in Section 1.2.1.3 of Division 1 of the Technical Requirements.

Room Data Sheet means a sheet or document that summarizes the requirements for each room in the Infrastructure Facility. It should include the room name, number, location, and the relevant prescriptive criteria and performance criteria from the Technical Requirements including for finishes, fixtures and fittings such as furniture and storage, mechanical and

electrical requirements, acoustic and lighting performance, and IT Comms and audio-visual requirements.

Safety Compliance means any and all improvements, repair, reconstruction, rehabilitation, restoration, renewal, replacement, changes in configuration, or procedures implemented to correct a specific safety condition or risk that City has reasonably determined to exist by investigation or analysis (excluding a safety condition or risk that exists by reason of Principal Project Company's failure to comply with the requirements of the Contract Documents).

Safety Compliance Order means a written order or directive from City to Principal Project Company to implement Safety Compliance.

Safety Condition means a state or condition of the relevant Functional Part which allows those persons who it can reasonably be expected may from time to time require to enter, leave, occupy, and use such Functional Part to do so safely, including compliance with applicable Law, relevant policies of the City and the City's requirements related to fire safety or health or workplace safety.

Safety Orientation Program means Principal Project Company's detailed plan for the safety orientation of employees and visitors, as more particularly described in Section 01 35 45 of Division 10 of the Technical Requirements.

Safety Standards means those provisions of the Technical Requirements that relate to Project safety, including Section B.8.1.6 and Section 01 35 45 of Division 10 of the Technical Requirements. Safety Standards are considered to be important measures to protect public safety, worker safety or the safety of property.

Scheduled Financial Close Date has the meaning set forth in Section 3.1.2 (Date of Financial Close).

Scheduled Maintenance means regular, routine and planned maintenance scheduled and performed according to a usage, time or other factors to determine frequency and timing of the maintenance.

Scheduled Milestone Payment Date means ***[Note to PNC: Date to be inserted]***.

Security Document means any mortgage, deed of trust, pledge, lien, indenture, trust agreement, hypothecation, assignment, collateral assignment, account control agreement, financing statement under the enacted Uniform Commercial Code of any jurisdiction, security instrument or other charge or encumbrance of any kind, including any lease in the nature of a security instrument, given to any Lender as security for Project Debt or Principal Project Company's obligations pertaining to Project Debt and encumbering Principal Project Company's Interest.

Senior Debt Service Amount means the debt service payments that are senior to all other debt obligations in the cash flow waterfall.

Service Category(ies) means the discreet services as outlined in Section B and Section C of the IFM Specifications.

Service Failure means any failure by Principal Project Company to provide the IFM Services in accordance with Performance Measures designated Failure Type "SF" in the Performance Measurements Table and which, where a Response Time or Rectification Time applies, has not been Responded to or Rectified (as the case may be) within the relevant time. For the avoidance of doubt, where no Response Time and/or Rectification Time applies (for example, in respect of scheduled activities) there shall be a Service Failure at the point at which the IFM Failure Event occurred (for example, non-performance of the scheduled activity by the scheduled time).

Service Failure Deduction means a deduction from the Availability Payment as a result of a Service Failure.

Service Failure Performance Measure means a Performance Measure designated as SF in the Performance Measurements Table.

Service Line(s) means a utility line, the function of which is to connect directly the improvements on an individual property (e.g., a commercial building or an industrial warehouse) to another utility line located off such property, which other utility line connects more than one such individual line to a larger system, as well as any cable or conduit that supplies an active feed from a Utility Owner's facilities to activate or energize a Governmental Entity's local lighting and electrical systems, traffic control systems, street lights, communications systems and/or irrigation systems.

Service Requests means Demand Maintenance, Demand Requisitions, any request for service, report of a Service Failure, report of an Incident or IFM Failure Event or any other report, inquiry, complaint or comment, made by a Building Occupant or automatically generated, to the Help Desk or to Principal Project Company, whether by phone or electronically.

Setting Date means __________, 2025 ***[30 days prior to the proposal due date for submittal of proposals in connection with the D&C Contractor RFP]***.

SFMTA Board means the San Francisco Municipal Transportation Agency Board of Directors.

SFMTA O&M Facilities means the elements of the Project generally described in Section A.2.1.2 of the IFM Specifications for which SFMTA will provide SFMTA O&M Services.

SFMTA O&M Facilities Warranty Bond has the meaning set forth in Section 10.9 (SFMTA O&M Facilities Warranty Bond).

SFMTA O&M Services means the transit operations and maintenance services specified in Section A.2.1.2 of the IFM Specifications [and Retail Space maintenance services specified in Section A.2.1.2 of the IFM Specifications] that SFMTA will perform with respect to the SFMTA O&M Facilities. ***[Note: Further consideration required with respect to retail construction and services]***

Site Security Plan (SSP) Principal Project Company's plan defining its oversight management program, team organization, and operating strategy to provide and maintain work site security, prepared and submitted by Principal Project Company in accordance with Section 1.11.2.2 of Division 1 of the Technical Requirements, as updated and approved by the City in accordance with this Agreement.

SOFR with respect to any US banking day means a rate per annum equal to the secured overnight financing rate published for such US banking day by the Federal Reserve Bank of New York, on the Federal Reserve Bank of New York's Website. The calculation of SOFR with respect to a loan that bears interest at a rate based on SOFR shall be the rate for the one/three/six calendar months period on the date of determination published by the SOFR Administrator; provided, however, that if as of 5:00 p.m. (New York City time) on any date of determination the SOFR rate for the applicable tenor has not been published by the SOFR Administrator, then the SOFR rate will be the SOFR rate for such tenor as published by the SOFR Administrator on the first preceding day.

SOFR Administrator means the CME Group Benchmark Administration Limited (CBA) (or a successor administrator of the SOFR rate as determined by the City, in its reasonable discretion.

Software means individually each, and collectively all, of the computer programs developed or provided by Principal Project Company, and any PPC-Related Entity, under this Agreement (including Developed IP, Principal Project Company IP and/or Third-Party IP), including as to each such program, the processes, and routines used in the processing of data, the object code, interfaces to be provided hereunder by PPC-Related Entity, updates, upgrades, and any and all programs otherwise provided by PPC-Related Entity under this Agreement.

Source Code means the version of a Software computer program in which the programmer's original programming statements are expressed in any programming language.

Source Code Documentation means (a) software written in programming languages, such as C and Fortran, including all comments and procedural code, such as job control language statements, which shall be in a form intelligible to trained programmers and capable of being translated into object or machine readable code for operation on computer equipment through assembly or compiling, and (b) documentation, including flow charts, schematics, statements of principles of operations, architectural standards, and commentary, explanations and instructions for compiling, describing the data flows, data structures, and control logic of the software in sufficient detail to enable a trained programmer through study of such documentation to maintain and/or modify the software without undue experimentation. Source Code and Source Code Documentation also include all modifications, revisions, additions, substitutions, replacements, updates, upgrades and corrections made to the foregoing items.

Source of Supply Certificate of Compliance has the meaning set forth in Section 1.4.3.3 of Division 1 of the Technical Requirements.

Special Tools means (a) specialized tools necessary for maintenance or repair of Project elements or equipment (including vehicles), and (b) other tools obtained or developed by Principal Project Company or any Contractor for use in performance of the IFM Services. The term excludes tools used in performance of the Work that were not procured for the Project or developed for use on the Project and that were acquired by Principal Project Company or Contractor at its own expense for use on multiple projects. The term "tool" as used in the Contract Documents includes "special tools."

Standards and Specifications means the standards, specifications and other documents referenced in the Technical Requirements.

Starting Insurance Benchmarking Premiums has the meaning set forth in Section 10.1.3(a).

State means the State of California.

Statement of Qualification (SOQ) means Principal Project Company's Statement of Qualification, provided in response to the Request for Qualifications.

Step-in Party means (a) the Collateral Agent, a Lender or any entity that is wholly owned by a Lender or group of Lenders, or (b) any Person approved by City as a Substituted Entity; in each case where such Person is not a Prohibited Person.

Structure means, as the context may require, bridges, Culverts, catch basins, drop inlets, retaining walls, cribbing, manholes, end walls, buildings, sewers, service pipes, under drains, foundation drains, steps, fences and other features which may be encountered in the Work and not otherwise classified.

Subcontract means each Contract with a Subcontractor.

Subcontractor means each Contractor that is not a Prime Contractor.

Submittal(s) means, generally, any document, work product or other written or electronic end-product, report or item required to be delivered or submitted to City, Third Parties, or Governmental Entities in connection with this Agreement or the Project.

Submittal Schedule has the meaning set forth in Section 1.2.1.6 of Division 1 and Section B.6.1 of the IFM Specifications.

Substantial Completion means that all D&C Work is complete (except for Punch List items that do not affect normal and safe use and operation of the Infrastructure Facility and any D&C Work that, by its nature, is to be performed after the Substantial Completion Date), and all other prerequisites for Substantial Completion have been met. Substantial Completion is deemed to have occurred upon satisfaction of all the conditions for the Project in Exhibit 15C (Conditions to Substantial Completion), as confirmed by City's issuance of a Certificate of Substantial Completion in accordance with the procedures and within the time frame established in Section 7.8 (Substantial Completion).

Substantial Completion Date means the date City issues a Certificate of Substantial Completion for the Project.

Substantial Completion Deadline means **[April 30, 2029 *[IF D&C CONTRACTOR PROPOSES EARLIER, THIS DAY WILL BE THE EARLIER DATE]***, as such date may be extended from time to time pursuant to Section 14.1.2 (Extension of Deadlines for General Delay Events).

Substituted Entity means a Third Party proposed by the Collateral Agent and approved by City under a Direct Agreement to act in Principal Project Company's stead and not merely as a Step-in Party, in each case where such Person is (a) a Suitable Substitute and (b) not a Prohibited Person.

Suitable Substitute means a Person, approved in writing by City in accordance with the Direct

Agreement that:

(a) has the legal capacity, power and authority to become the party to and perform the obligations of Principal Project Company under this Agreement;

(b) is in compliance with City's rules and regulations, and has adopted written policies regarding organizational conflicts of interest consistent with City's conflicts of interest policy;

(c) has ensured that all of its subcontractors are in compliance with City's rules and regulations;

(d) has adopted written policies regarding organizational conflicts of interest consistent with City's conflicts of interest policy;

(e) employs individuals having the appropriate qualifications, experience and technical competence to timely perform Principal Project Company's obligations under the Contract Documents and the Principal Project Documents; and

(f) otherwise has available resources (including committed financial resources and subcontracts) sufficient to enable it to perform the obligations of Principal Project Company under the Contract Documents and the Principal Project Documents.

Superfund Site means a site listed on either the National Priorities List or the Proposed National Priorities List at https://www.epa.gov/superfund/superfund-national-priorities-list-npl.

Supplier means any Person not performing work at or on the Project Site that supplies machinery, equipment, materials, hardware, software, systems or any other appurtenance to the Project to Principal Project Company or to any Contractor in connection with the performance of the Work. Persons that merely transport, pick up, deliver or carry materials, personnel, parts or equipment or any other items or persons to or from the Project Site shall not be deemed to be performing Work at the Project Site.

Surety(ies) means each properly licensed surety company, insurance company or other Person approved by City, which has issued a Payment Bond or a Performance Bond.

Sustainability Management Plan means Principal Project Company's plan describing its approaches to ensure achievement of the sustainability requirements of the Contract Documents, prepared and submitted by Principal Project Company in accordance with Section 1.9.1 of Division 1 of the Technical Requirements, as updated and approved by the City in accordance with this Agreement.

System Condition Index or SCI means the total maintenance, repair and replacement deficiencies of the Infrastructure Facility divided by the current replacement value of the Infrastructure Facility.

Systems Manual has the meaning set forth in Section 6.6.4.1 (Systems Manual) of Division 6 of the Technical Requirements.

Taxes means federal, State, local or foreign income, margin, gross receipts, sales, use, excise, transfer, consumer, license, payroll, employment, severance, stamp, business, occupation, premium, windfall profits, environmental (including taxes under Section 59A of the Internal Revenue Code of 1986, as amended), customs, permit, capital stock, franchise, profits, withholding, social security (or similar), unemployment, disability, real property, personal property, registration, value added, alternative or add-on minimum, estimated or other taxes, levies, imposts, duties, fees or charges imposed, levied, collected, withheld or assessed at any time, whether direct or indirect, relating to, or incurred in connection with, the Project, the performance of the Work, revenues or act, business, status or transaction of Principal Project Company, including any interest, penalty or addition to such amounts, and including utility rates or rents, in all cases whether disputed or undisputed.

Technical Requirements means Exhibit 18 (Technical Requirements).

Technology Enhancements means modifications, additions, refinements, substitutions, revisions, replacements and upgrades made to Intellectual Property, equipment, mechanism, operational technology, or to any related documentation, that accomplish incidental, performance, structural, or functional improvements. Technology Enhancements specifically includes modifications, updates, or revisions made to software or any related documentation that correct errors or support new models of input-output devices with which the software is designed to operate.

Temporary Areas means areas outside of the Project Site where activities incidental to construction of the Project are being performed by Contractors, including field office sites, storage sites, staging areas dedicated to the Project, temporary work areas and parking areas, but excluding any permanent locations of Principal Project Company or any Contractor.

Temporary Relocation means any (a) interim relocation of any Utility (i.e., the installation, removal and disposal of an interim facility) pending installation of a permanent facility in the same or a new location, and (b) removal and reinstallation of the Utility in the same place without an interim relocation.

Temporary Repair means, in respect of the occurrence of an IFM Failure Event which results in an Availability Condition not being met in Functional Unit or Functional Component, works of a temporary nature that do not constitute Rectification but satisfy the Minimum Agreed Availability Conditions and substantially make good the relevant IFM Failure Event for the period until a Permanent Repair can be undertaken.

Temporary Work means any temporary works and structures necessary for the construction of permanent improvements. This includes falsework, formwork, scaffolding, shoring, temporary earthworks, sheeting, cofferdams, special erection equipment and the like.

Term means the period commencing on the Effective Date and ending on the date specified in Section 2.3 (Term).

Termination Compensation means the measure of compensation owing from City to Principal Project Company upon termination of this Agreement prior to the stated expiration of the Term, as determined in accordance with this Agreement.

Termination Date means (a) the date of expiration of the Term, or (b) if applicable, the Early Termination Date.

Termination Due to Court Ruling has the meaning set forth in Section 17.4.3 (Termination Due to Court Ruling).

Termination for Convenience has the meaning set forth in Section 17.1.1 (Termination for Convenience).

Test Procedures means a description of a test to be performed. Test Procedures shall describe the test configuration, the test equipment required, the personnel required to perform the test, all construction and testing pre-requisites that must be completed before the test can be performed, lists each individual step to be followed in the test, expected result of each step, and the pass/fail criteria for each step, and shall include a Test Report form on which the results of the test shall be recorded.

Test Report means a form that lists each step to be performed in a test. Each Test Report shall identify the expected results of each step, a location to enter the actual results of each step, a place for the person responsible for performing the test to sign and date the form, and a place for any witnesses of the test to sign and date the form.

Three-week Look-ahead Activity Reports has the meaning set forth in Section 1.2.1.7 of Division 1 of the Technical Requirements.

Third Party(ies) means any person or entity unrelated to City or Principal Project Company. Third Parties expressly excludes any PPC-Related Entities.

Third Party IP means Intellectual Property owned by any Person unrelated to the Principal Project Company, any Contractor, or any of their respective Affiliates.

Third Party and Utility Owner Coordination Work Plans has the meaning set forth in Section 1.13 of Division 1 of the Technical Requirements.

Threatened or Endangered Species means any species listed by the United States Fish and Wildlife Service as threatened or endangered under the Endangered Species Act, as amended, 16 U.S.C. § 1531 et seq., or any species listed as threatened or endangered under the California Endangered Species Act, Fish and Game Code § 2050 et seq.

Total Unavailability has the meaning set forth in Section 5.4 (Total Unavailability) of Exhibit 4B (Availability Payment Mechanism).

Traffic Control Plan(s) (TCP) means the site-specific design plan that provides necessary details to control traffic through and around the work area.

Trainee Plan means the plan prepared and submitted by Principal Project Company and approved by the City to implement the SFMTA Trainee Program.

Transaction has the meaning set forth in Section 20.2.1.

Transaction Survey(s) means surveys covering IFM Services and people making enquiries or Service Requests by telephone, in writing, electronically or otherwise to Principal Project Company.

Transportation Management Plan means Principal Project Company's plan describing how safe traffic operations will be managed and maintained during each phase of construction and in every work zone of the Project, prepared and submitted by Principal Project Company in accordance with Section 1.11.3.1 of Division 1 of the Technical Requirements, as updated and approved by the City in accordance with this Agreement.

Utility Easement means a permanent replacement easement and/or other interest in real property (excluding a franchise) located outside of the Project Site that is necessary for a Utility Adjustment.

Unavailable means, in relation to a Functional Unit or Functional Component, that such Functional Unit or Functional Component is in a state or condition which does not comply with any one or more of the Availability Conditions and "Unavailability" shall be construed accordingly.

Unavailable Component Threshold means, the number of Functional Components in a Functional Unit that if exceeded by Unavailable Components at any point triggers deemed Unavailability of all Functional Components in the relevant Functional Unit. Table 2 (Unavailable Component Thresholds) in Section 5.6 (Unavailable Component Thresholds) of Exhibit 4B (Availability Payment Mechanism) lists the threshold value for each affected Functional Unit.

Unavoidable Delay Event means any of the following events or circumstances that occurs prior to the Final Acceptance Date and directly impacts the D&C Work:

(a) a Force Majeure Event;

(b) a Major Approval Delay;

(c) a Utility Delay; or

(d) an Adverse Weather Event.

Unidentified Utility means a subsurface Main or Trunkline Utility, (i) where the Utility Information incorrectly indicates that the subject Main or Trunkline Utility does not exist anywhere within the boundary lines of the Project Site and which Main or Trunkline Utility could not have been reasonably inferred as of the Setting Date based on a Reasonable Investigation; (ii) where the Utility Information does not identify the subject Main or Trunkline Utility within the boundary lines of the Project Site with Reasonable Accuracy and such information could not have been reasonably inferred as of the Setting Date based on a Reasonable Investigation; (iii) where such Main or Trunkline Utility is not identified or referenced in any of the information, data, analyses or reports undertaken by Principal Project Company pursuant to the Predevelopment Agreement; and (iv) where such Main or Trunkline Utility should have been identified or referenced pursuant to a Reasonable Investigation undertaken pursuant to the Predevelopment Agreement. Unidentified Utilities specifically exclude any Utility that serves the Project Site as of the Setting Date and which is to be de-energized or de-activated and removed as part of the Project.

Unilateral Change Order has the meaning set forth in Section 2 (Unilateral Change Orders) of Exhibit 9 (Change Procedures).

Uninterruptible Power Supply (UPS) has the meaning set forth in Section 3.12.14 and Appendix G, Section 2.10.8 of Division 3 of the Technical Requirements.

Unsafe Condition means a condition that (a) gives rise to the imminent possibility of serious injury to workers or the public or of serious damage to property or the environment, or (b) affects safe movement.

Upgrades means alterations, improvements, modifications or changes, including Capacity Improvements, that Principal Project Company makes to any portion of the Project, as originally designed and constructed, at any time after the Substantial Completion Date, except as part of ordinary maintenance or Renewal Work. Upgrades may include alterations, improvements, modifications or changes that require an amendment or supplement to the final environmental impact documents for the Project or that are to be located outside the boundaries of the original Project Site. Upgrades exclude Technology Enhancements and any alterations, improvements, modifications or changes undertaken in the use or development of a Business Opportunity.

Use Condition means a state or condition of the relevant Functional Unit or Functional Component which satisfies the Use Parameters for that Functional Part.

Use Parameters means the range of functional requirements for the proper use and enjoyment of a Functional Unit or Functional Component, including the use of, in the case of the Infrastructure Facility, the ancillary equipment for its particular purpose as set out in the Technical Requirements.

Useful Life means, for an element, the period following its first installation, or following its last reconstruction, rehabilitation, restoration, renewal or replacement, until the element will next require reconstruction, rehabilitation, restoration, renewal or replacement.

Utility(ies) or utility(ies) means a privately, publicly or cooperatively owned facility (which term includes lines, systems and other facilities, and includes municipal and/or government facilities) for transmitting or distributing communications, cable television, power, electricity, gas, oil, crude products, water, steam, waste, or any other similar commodity, including any fire or police signal system as well as streetlights associated with roadways owned by local agencies. However, when used in the context of Utility Adjustments of facilities to accommodate the Project, the term "Utility" or "utility" excludes traffic signals, ramp metering systems, flashing beacon systems, and lighting systems for roads adjacent to the Project. Necessary appurtenances to each utility facility (including the utility source, guide poles, Service Lines, supports, etc.) shall be considered part of the facility. Without limitation, any service lateral connecting directly to a utility shall be considered an appurtenance to that utility, regardless of the ownership of such service lateral.

Utility Adjustment means each relocation (temporary or permanent), abandonment, Protection in Place, removal (of previously abandoned utility facilities as well as newly-abandoned facilities), replacement, reinstallation, and/or modification of existing Utilities necessary to accommodate the Project or the Work. For any utility crossing the Project Site or public right of way, the Utility Work for each crossing of the Project Site or public right of way, as applicable, by that utility shall be considered a separate Utility Adjustment. For any utility installed

longitudinally within the Project Site or the public right of way, the Utility Work for each continuous segment of that utility located within the Project Site or public right of way, as applicable, shall be considered a separate Utility Adjustment.

Utility Betterment means any upgrading of a Utility that is not attributable to the construction of the Project and is made during the course of a Utility Adjustment solely for the benefit of and at the election of the Utility Owner, including an increase in the capacity, capability, efficiency or function of the facility over that which was provided by the existing Utility. The following are not considered Utility Betterments:

(a) any upgrading required for accommodation of the Project;

(b) any upgrading required under the Contract Documents;

(c) replacement devices or materials that are of equivalent standards although not identical;

(d) replacement of devices or materials no longer regularly manufactured with an equivalent or next higher grade or size;

(e) any upgrading required by applicable Law;

(f) replacement devices or materials that are used for reasons of economy (e.g., non-stocked items may be uneconomical to purchase); and

(g) any upgrading required by the Utility Owner's applicable Utility Standards.

Utility Delay has the meaning set forth in Section 7.6.13.1

Utility Information means as-built drawings, existing facility drawings, or other documentation of existing underground Utilities within the Project Site available to Principal Project Company or generated by any PPC-Related Entity. Utility Information includes the Utility conflict matrix and subsurface utility engineering investigations undertaken by or on behalf of Principal Project Company during the PDA Term.

Utility Owner means the owner or operator of any Utility (including both privately held and publicly held entities, cooperative utilities, and municipalities and other governmental agencies), including City acting by and through the San Francisco Public Utilities Commission (it being understood that the San Francisco Public Utilities Commission is not the "City" for other purposes under this Agreement)).

Utility Standards means the standard specifications, standards of practice, and construction methods that a Utility Owner customarily applies to facilities (comparable to those being adjusted on account of the Project) constructed by the Utility Owner (or for the Utility Owner by its contractors), at its own expense. Except as may be specifically identified in the Technical Requirements, "Utility Standards" are not "Standards and Specifications."

Utility Work means the design and construction necessary for a Utility Adjustment. Any Utility Work furnished or performed by Principal Project Company is part of the D&C Work; and any

Utility Work furnished or performed by a Utility Owner is not part of the D&C Work. Utility Work expressly includes Utility Adjustments of PG&E's power lines and poles that impact the Project.

Vandalism means willful or malicious damage or defacement (including graffiti) that:

(a) was not the result of Principal Project Company's failure to comply with its obligations under the Contract Documents and its IFM Management Plan with respect to Vandalism; and

(b) does not arise from, or was not contributed to, directly or indirectly, by any act or omission of Principal Project Company or any PPC-Related Entity.

Verification Sampling and Testing means sampling and testing performed to validate the quality of the product. City, or its designee, will perform Verification Sampling and Testing as part of its QA Oversight efforts.

Warning Notice has the meaning set forth in Section 16.1.3.1.

Weather Data means a record of annual hourly data for dry and wet bulb temperature, dew point, relative humidity, total horizontal solar radiation, wind speed and direction and atmospheric pressure at the Weather Monitoring Station.

Weather Monitoring Station means the closest National Weather Service weather monitoring station to the Infrastructure Facility.

Work means all of the work, services and obligations required to be furnished, performed and provided by Principal Project Company under the Contract Documents, including activities to obtain financing as well as all administrative, design, engineering, construction, demolition, Utility Adjustments, payment to Third Parties, support services, financing services, operations, maintenance and other work of renewal, reconstruction, repair or reinstatement of Project improvements and equipment, and management services. The term does not include any efforts which the Contract Documents expressly specify will be performed by Persons other than PPC-Related Entities.

EXHIBIT 2

PROJECT MANAGEMENT PLAN

[NOTE TO PNC: FULL PRELIMINARY DRAFT TO BE INCLUDED AT COMMERCIAL CLOSE. FINAL APPROVED DRAFT TO BE INSERTED AND REPLACE PRELIMINARY AS A CONDITION TO NTP 2]

EXHIBIT 3

IMPLEMENTATION PROPOSAL

Exhibit 3A Financial Proposal

[NOTE TO PNC: This will include the Finance Plan, including the Base Case Financial Model, with its audited report, and respective commitment letters for Bank Debt, Equity Investments, Security Documents and Insurance Policies, among other documents, and including the Final Price as determined under the PDA, PPC's financing costs, along with a schedule including the proposed Milestone Payment amount and the proposed Availability Payments payable from Substantial Completion to the end of the PDA Term. To be included at Commercial Close.]

Exhibit 3B Technical Proposal Elements

[NOTE TO PNC: This will include the following elements developed pursuant to the PDA, as selected by City in its discretion:

- ***aspects PNC/PPC's design and other submittals***
- ***aspects of D&C Contractor's design-build proposal***
- ***aspects of IFM Contractor's proposal***

This may include listed subs, identified Key Personnel, designs, enhancements to the Technical Requirements, etc. that City chooses to include as contractual requirements. To be included at Commercial Close.]

EXHIBIT 4

PAYMENT MECHANISM[1]

PART A: DEFINITIONS

1 DEFINITIONS

Unless otherwise specified, capitalized terms used in this Exhibit 4 (Payment Mechanism) have the meanings given in Exhibit 1 (Abbreviations and Definitions) to the Agreement.

[1] This Exhibit remains subject to continued review in light of ongoing refinements to the IFM Specifications and Technical Requirements

EXHIBIT 4A

MILESTONE PAYMENT MECHANISM

1. MILESTONE PAYMENT

(a) Subject to the terms and conditions of this Section 1 (Milestone Payment) and the Contract Documents, Principal Project Company shall be entitled to receive a single milestone payment from the City as partial compensation for Principal Project Company's performance of the D&C Work and reaching Substantial Completion (the "Milestone Payment").

(b) The Milestone Payment shall be calculated using the following formula:

MP = MMP – D

Where:

MP = Milestone Payment;

MMP = the amount [$●];

D = D&C Deductions incurred for the period commencing on the Effective Date and ending on the Substantial Completion Date as set out in Section 2 (D&C Period Deductions) of Exhibit 4A (Milestone Payment Mechanism).

(c) For the Milestone Payment, Principal Project Company shall submit an invoice no later than the 10th day of the month immediately following issuance of a Certificate of Substantial Completion in accordance with the process in Section 11.3 (Invoice, Other Amounts and Payments) of the Agreement.

(d) The City will pay Principal Project Company the Milestone Payment accordance with the process in Section 11.3 (Invoice, Other Amounts and Payments) of the Agreement.

(e) The Milestone Payment shall not be used to pay the principal of any outstanding obligations, the interest on which is excludable from gross income for federal income tax purposes as set forth under the Internal Revenue Code of 1986, as amended.

2. D&C PERIOD DEDUCTIONS

2.1 Subject to the provisions of this Agreement, if at any time prior to the Substantial Completion Date, a D&C Failure Event occurs, the City may make a Deduction from the relevant Milestone Payment in respect of that D&C Failure Event.

2.2 Principal Project Company shall submit to City, 30 days before the anticipated date of Substantial Completion and Final Acceptance, a report providing a preliminary summary of all D&C Noncompliance Points and D&C Period Deductions calculated as of 30 days prior to the anticipated Substantial Completion Date and Final Acceptance Date (as applicable). Within 30 days following the Substantial Completion Date, Principal Project Company shall submit to City a final summary of all D&C Period Noncompliance Points and D&C Period Deductions calculated as of the Substantial Completion Date or Final Acceptance Date (as applicable).

2.3 Principal Project Company will accrue D&C Period Noncompliance Points for every D&C Failure Event in accordance with this Section 2, Section 15.4 of the Agreement and as set forth in Appendix A (D&C Noncompliance Points and Deductions) in this Exhibit 4A (Milestone Payment Mechanism) up until the Substantial Completion Date for the D&C Period.

2.4 Principal Project Company will include in its Performance Monitoring Report a summary of all D&C Period Noncompliance Points accrued in the month and cumulative number of points accrued up to the month being reported from the Effective Date.

[Note: D&C Thresholds under development/review]

APPENDIX A

D&C PERIOD NONCOMPLIANCE POINTS AND DEDUCTIONS

Table A1 – D&C Failure Event Table

ID	Main Heading	Subheading	Failure To	Rectification Time	D&C Noncompliance Points	D&C Noncompliance Event Deductions in $ (for New or Recurred Events)	Recurrence Period	Reference Section(s) of Contract Documents
1	**Division 01 - General**							
1. 1	Project Management	Project Management Plan	Prepare, submit and update Project Management Plan in accordance with the Contract Documents	5 days	5 per D&C Failure Event	-	2 days	Technical Requirements, Division 01, Section 1.1.1
1. 2	Project Management	Initiation Meetings	Conduct Initiation Meetings and submit meeting agendas and minutes in accordance with the Contract Documents	1 day	3 per D&C Failure Event	$150	1 day	Technical Requirements, Division 01, Section 1.1.3.1-5
1. 3	Project Management	Weekly Project Coordination Meetings	Conduct Weekly Project Coordination Meetings in accordance with the Contract Documents	1 day	3 per D&C Failure Event	$150	1 day	Technical Requirements, Division 01, Section 1.1.3.6
1. 4	Project Management	Monthly Progress Meetings	Conduct Monthly Progress Meetings and submission of meeting agenda and minutes in accordance with the Contract Documents	1 day	3 per D&C Failure Event	$150	1 day	Technical Requirements, Division 01, Section 1.1.3.7
1. 5	Project Management	Ongoing Coordination Meeting	Conduct Ongoing Coordination Meetings and submission of meeting agenda and minutes in	3 days	1 per D&C Failure Event	$50	1 day	Technical Requirements, Division 01, Section 1.1.3.8

ID	Main Heading	Subheading	Failure To	Rectification Time	D&C Noncompliance Points	D&C Noncompliance Event Deductions in $ (for New or Recurred Events)	Recurrence Period	Reference Section(s) of Contract Documents
			accordance with the Contract Documents					
1.6	Project Management	Special Meetings	Conduct Special Meetings and submission of meeting agenda and minutes in accordance with the Contract Documents	3 days	1 per D&C Failure Event	$50	1 day	Technical Requirements, Division 01, Section 1.1.3.9
1.7	Intentionally Omitted							
1.8	Project Management	Regulatory Approvals Plan	Prepare, submit and update a Regulatory Approvals Plan in accordance with the Contract Documents	5 days	3 per D&C Failure Event	$150	3 days	Technical Requirements, Division 01, Section 1.1.7
1.9	Project Management	Design and Construction Management Plans	Prepare, submit and update a complete Design Management Plan to achieve the requirements of Design Management in accordance with the Contract Documents	5 days	5 per D&C Failure Event	-	2 days	Technical Requirements, Division 01, Section 1.1.7.1
1.10	Project Management	Design and Construction Management Plans	Prepare, submit and update a complete Construction Management Plan to achieve the requirements of Construction Management in	5 days	5 per D&C Failure Event	-	2 days	Technical Requirements, Division 01, Section 1.1.7.2

ID	Main Heading	Subheading	Failure To	Rectification Time	D&C Noncompliance Points	D&C Noncompliance Event Deductions in $ (for New or Recurred Events)	Recurrence Period	Reference Section(s) of Contract Documents
			accordance with the Contract Documents					
1. 11	Project Management	IFM Management Plan	Prepare, submit and update a complete preliminary IFM Management Plan in accordance with the Contract Documents	5 days	5 per D&C Failure Event	$300	3 days	Technical Requirements, Division 01, Section 1.1.8
1. 12	Project Controls and Performance Management	Project Schedules	Prepare, submit and update Initial Schedule in accordance with the Contract Documents	5 days	5 per D&C Failure Event	$1,000	2 days	Technical Requirements, Division 01, Section 1.2.1.2
1. 13	Project Controls and Performance Management	Project Schedules	Prepare, submit and update Project Schedule (excluding the Initial Schedule) in accordance with the Contract Documents	3 days	5 per D&C Failure Event	$300	1 day	Technical Requirements, Division 01, Section 1.2.1.3 and Section 1.2.2
1. 14	Project Controls and Performance Management	Project Schedules	Prepare, submit and update Recovery Schedule in accordance with the Contract Documents	5 days	5 per D&C Failure Event	$300	2 days	Technical Requirements, Division 01, Section 1.2.1.4 and Section 1.2.2
1. 15	Project Controls and Performance Management	Project Schedules	Prepare, submit and update complete Project Schedule Monthly Updates in accordance with the Contract Documents	2 days	3 per D&C Failure Event	$150	1 day	Technical Requirements, Division 01, Section 1.2.1.5 and Section 1.2.2

ID	Main Heading	Subheading	Failure To	Rectification Time	D&C Noncompliance Points	D&C Noncompliance Event Deductions in $ (for New or Recurred Events)	Recurrence Period	Reference Section(s) of Contract Documents
1.16	Project Controls and Performance Management	Project Schedules	Prepare, submit and update complete preliminary and final Submittal Schedule for D&C Submittals in accordance with the Contract Documents	5 days	3 per D&C Failure Event	$150	2 days	Technical Requirements, Division 01, Section 1.2.1.6 and Section 1.2.2
1.17	Project Controls and Performance Management	Project Schedules	Prepare, submit and update complete Look-Ahead Activity Reports in accordance with the Contract Documents	1 day	1 per D&C Failure Event	$50	1 day	Technical Requirements, Division 01, Section 1.2.1.7 and Section 1.2.2
1.18	Project Controls and Performance Management	Schedule System	Comply with requirements of the Scheduling System	5 days	1 per D&C Failure Event	$50	1 day	Technical Requirements, Division 01, Section 1.2.3
1.19	Project Controls and Performance Management	Performance Reporting	Prepare, submit and update Monthly Progress Status Report in accordance with the Contract Documents, including City acceptance of format	5 days	3 per D&C Failure Event	$150	3 days	Technical Requirements, Division 01, Section 1.2.4.1
1.20	Project Controls and Performance Management	As-Built Schedules	Prepare, submit and update complete As-Built Schedule and Final Schedule Report in accordance with the Contract Documents	5 days	3 per D&C Failure Event	$150	3 days	Technical Requirements, Division 01, Section 1.2.5

ID	Main Heading	Subheading	Failure To	Rectification Time	D&C Noncompliance Points	D&C Noncompliance Event Deductions in $ (for New or Recurred Events)	Recurrence Period	Reference Section(s) of Contract Documents
1.21	Project Controls and Performance Management	Time Impact Analysis for Proposed Extensions of Time	Prepare, submit and update Time Impact Analysis for proposed extensions of time in accordance with the Contract Documents	2 days	3 per D&C Failure Event	$150	1 day	Technical Requirements, Division 01, Section 1.2.6
1.22	Submittal Management	Submittal Management	Prepare, submit and update Initial List of Submittals in accordance with the Contract Documents	5 days	1 per D&C Failure Event	$50	3 days	Technical Requirements, Division 01, Section 1.3
1.23	Submittal Management	Submittal Management	Meet requirements and standards of each Submittal provided to the City and other entities in accordance with the Contract Documents	5 days	1 per D&C Failure Event	$50	3 days	Technical Requirements, Division 01, Section 1.3
1.24	Quality Management	Principal Project Company Quality Program	Prepare, submit and update complete Initial PPC Quality Program Plan in accordance with the Contract Documents	5 days	5 per D&C Failure Event	-	3 days	Technical Requirements, Division 01, Section 1.4.1
1.25	Quality Management	Principal Project Company Quality Program	Prepare, submit and update complete subsequent updates to PPC Quality Program Plan in accordance with the Contract Documents	5 days	5 per D&C Failure Event	$300	3 days	Technical Requirements, Division 01, Section 1.4.1
1.26	Quality Management	Principal Project Company Quality Program	Establish Quality Management System and submit necessary documentation to the City	5 days	5 per D&C Failure Event	$300	3 days	Technical Requirements, Division 01, Section 1.4.1.2

ID	Main Heading	Subheading	Failure To	Rectification Time	D&C Noncompliance Points	D&C Noncompliance Event Deductions in $ (for New or Recurred Events)	Recurrence Period	Reference Section(s) of Contract Documents
1. 27	Quality Management	Principal Project Company Quality Program	Prepare, submit and update Design Control Procedures in accordance with the Contract Documents	10 days	1 per D&C Failure Event	$50	3 days	Technical Requirements, Division 01, Section 1.4.1.3
1. 28	Quality Management	Principal Project Company Quality Program	Prepare, submit and update Product Identification and Traceability Procedures in accordance with the Contract Documents	10 days	1 per D&C Failure Event	$50	3 days	Technical Requirements, Division 01, Section 1.4.1.4
1. 29	Quality Management	Principal Project Company Quality Program	Prepare, submit and update Process Control Procedures in accordance with the Contract Documents	10 days	1 per D&C Failure Event	$50	3 days	Technical Requirements, Division 01, Section 1.4.1.5
1. 30	Quality Management	Principal Project Company Quality Program	Prepare, submit and update Schedule of Testing Equipment in accordance with the Contract Documents	10 days	1 per D&C Failure Event	$50	3 days	Technical Requirements, Division 01, Section 1.4.1.7
1. 31	Quality Management	Principal Project Company Quality Program	Prepare, submit and update Control of Nonconforming Work Procedures in accordance with the Contract Documents	10 days	5 per D&C Failure Event	$300	3 days	Technical Requirements, Division 01, Section 1.4.1.9
1. 32	Quality Management	Principal Project Company Quality Program	Prepare, submit and update Nonconforming Work Report in accordance with the Contract Documents	24 hours	1 per D&C Failure Event	$50	24 hours	Technical Requirements, Division 01, Section 1.4.1.9

ID	Main Heading	Subheading	Failure To	Rectification Time	D&C Noncompliance Points	D&C Noncompliance Event Deductions in $ (for New or Recurred Events)	Recurrence Period	Reference Section(s) of Contract Documents
1. 33	Quality Management	Principal Project Company Quality Program	Prepare, submit and update Corrective and Preventive Action Procedures in accordance with the Contract Documents	5 days	5 per D&C Failure Event	$300	3 days	Technical Requirements, Division 01, Section 1.4.1.10
1. 34	Quality Management	Principal Project Company Quality Program	Prepare, submit and update Control of Quality Records Procedures in accordance with the Contract Documents	5 days	1 per D&C Failure Event	$50	3 days	Technical Requirements, Division 01, Section 1.4.1.11
1. 35	Quality Management	Principal Project Company Quality Program	Prepare, submit and update Quality Audit Procedures in accordance with the Contract Documents	5 days	1 per D&C Failure Event	$50	3 days	Technical Requirements, Division 01, Section 1.4.1.12
1. 36	Quality Management	Principal Project Company Quality Program	Prepare, submit and update Quality Audit Reports in accordance with the Contract Documents	3 days	1 per D&C Failure Event	$50	1 day	Technical Requirements, Division 01, Section 1.4.1.12
1. 37	Quality Management	Principal Project Company Quality Program	Prepare, submit and update Training Procedures in accordance with the Contract Documents	5 days	1 per D&C Failure Event	$50	3 days	Technical Requirements, Division 01, Section 1.4.1.13
1. 38	Quality Management	Principal Project Company Quality Program	Prepare, submit and update Training Records and Certifications in accordance with the Contract Documents	3 days	1 per D&C Failure Event	$50	1 day	Technical Requirements, Division 01, Section 1.4.1.13
1. 39	Quality Management	Principal Project Company Design Quality	Prepare, submit and update complete Initial Principal Project Company Design Quality Plan	5 days	5 per D&C Failure Event	$300	3 days	Technical Requirements, Division 01, Section 1.4.2

ID	Main Heading	Subheading	Failure To	Rectification Time	D&C Noncompliance Points	D&C Noncompliance Event Deductions in $ (for New or Recurred Events)	Recurrence Period	Reference Section(s) of Contract Documents
			in accordance with the Contract Documents					
1.40	Quality Management	Principal Project Company Design Quality	Prepare, submit and update updates to Principal Project Company Design Quality Plan in accordance with the Contract Documents	5 days	5 per D&C Failure Event	$300	3 days	Technical Requirements, Division 01, Section 1.4.2
1.41	Quality Management	Principal Project Company Design Quality	Prepare, submit and update Design Progress Tracking Report in accordance with the Contract Documents	1 day	1 per D&C Failure Event	$50	1 day	Technical Requirements, Division 01, Section 1.4.2.1.A
1.42	Quality Management	Principal Project Company Design Quality	Prepare, submit and update Monthly PDQP Report in accordance with the Contract Documents	1 day	1 per D&C Failure Event	$50	1 day	Technical Requirements, Division 01, Section 1.4.2.1.B
1.43	Quality Management	Principal Project Company Design Quality	Prepare, submit and update Final Design Report in accordance with the Contract Documents	3 days	1 per D&C Failure Event	$50	2 days	Technical Requirements, Division 01, Section 1.4.2.1.C
1.44	Quality Management	Principal Project Company Design Quality	Prepare, submit and update Quantity Estimates in accordance with the Contract Documents	3 days	1 per D&C Failure Event	$50	2 days	Technical Requirements, Division 01, Section 1.4.2.1.D
1.45	Quality Management	Principal Project Company Design Quality	Prepare, submit and update Quality Surveillance and Mitigation Monitoring Reports in accordance with the Contract Documents	3 days	1 per D&C Failure Event	$50	2 days	Technical Requirements, Division 01, Section 1.4.2.2.A

ID	Main Heading	Subheading	Failure To	Rectification Time	D&C Noncompliance Points	D&C Noncompliance Event Deductions in $ (for New or Recurred Events)	Recurrence Period	Reference Section(s) of Contract Documents
1. 46	Quality Management	Principal Project Company Design Quality	Prepare, submit and update Log of Nonconforming Design Work Reports in accordance with the Contract Documents	1 day	1 per D&C Failure Event	$50	1 day	Technical Requirements, Division 01, Section 1.4.2.2.C
1. 47	Quality Management	Principal Project Company Design Quality	Assign a Design Quality Assurance Manager (DQAM) to assess and evaluate the efficacy and effectiveness of Principal Project Company's quality in design activities.	5 days	5 per D&C Failure Event	$500	3 days	Technical Requirements, Division 01, Section 1.4.2.3
1. 48	Quality Management	Principal Project Company Construction Quality	Prepare, submit and update Principal Project Company Construction Quality Plan (PCQP) in accordance with the Contract Documents	5 days	3 per D&C Failure Event	$150	3 days	Technical Requirements, Division 01, Section 1.4.3
1. 49	Quality Management	Principal Project Company Construction Quality	Prepare, submit and update Candidate Independent Testing Laboratory Credentials in accordance with the Contract Documents	5 days	3 per D&C Failure Event	$150	3 days	Technical Requirements, Division 01, Section 1.4.3.1
1. 50	Quality Management	Principal Project Company Construction Quality	Prepare, submit and update ITL Portable and Satellite Policies and Procedures in accordance with the Contract Documents	2 days	3 per D&C Failure Event	$150	0.5 day	Technical Requirements, Division 01, Section 1.4.3.1

ID	Main Heading	Subheading	Failure To	Rectification Time	D&C Noncompliance Points	D&C Noncompliance Event Deductions in $ (for New or Recurred Events)	Recurrence Period	Reference Section(s) of Contract Documents
1. 51	Quality Management	Principal Project Company Construction Quality	Prepare, submit and update Material and Equipment Conformance Certifications in accordance with the Contract Documents	2 days	1 per D&C Failure Event	$50	0.5 day	Technical Requirements, Division 01, Section 1.4.3.3
1. 52	Quality Management	Principal Project Company Construction Quality	Prepare, submit and update Source of Supply Compliance Certifications in accordance with the Contract Documents	2 days	1 per D&C Failure Event	$50	0.5 day	Technical Requirements, Division 01, Section 1.4.3.3
1. 53	Quality Management	Principal Project Company Construction Quality	Prepare, submit and update Construction Quality Work Plans in accordance with the Contract Documents	3 days	1 per D&C Failure Event	$50	1 day	Technical Requirements, Division 01, Section 1.4.3.4
1. 54	Quality Management	The City Quality Oversight	Prepare, submit and update Software Quality Assurance Plan in accordance with the Contract Documents	10 days	3 per D&C Failure Event	$150	3 days	Technical Requirements, Division 01, Section 1.4.5
1. 55	Existing Conditions	Pre-Construction Information, Pre- and Post-Construction Surveys	Prepare, submit and update Pre-construction Survey Reports in accordance with the Contract Documents	5 days	1 per D&C Failure Event	$50	3 days	Technical Requirements, Division 01, Section 1.5.1
1. 56	Existing Conditions	Pre-Construction Information, Pre- and Post-Construction Surveys	Prepare, submit and update Post-construction Survey Reports in accordance with the Contract Documents	10 days	1 per D&C Failure Event	$50	3 days	Technical Requirements, Division 01, Section 1.5.1

ID	Main Heading	Subheading	Failure To	Rectification Time	D&C Noncompliance Points	D&C Noncompliance Event Deductions in $ (for New or Recurred Events)	Recurrence Period	Reference Section(s) of Contract Documents
1. 57	Information Management	Information Management	Prepare, submit and update Information Management Plan (IMP) in accordance with the Contract Documents	10 days	5 per D&C Failure Event	$300	3 days	Technical Requirements, Division 01, Section 1.6
1. 58	Information Management	Information Management	Prepare, submit and update Document Control Procedures in accordance with the Contract Documents	5 days	1 per D&C Failure Event	$50	2 days	Technical Requirements, Division 01, Section 1.6.1.A
1. 59	Information Management	As-Built Documents	Prepare, submit and update complete As-Built Documents for individual items in accordance with the Contract Documents	10 days	1 per D&C Failure Event	$50	3 days	Technical Requirements, Division 01, Section 1.6.3.A
1. 60	Information Management	As-Built Documents	Prepare, submit and update complete aggregated As-Built Documentation prior to Final Acceptance in accordance with the Contract Documents	10 days	5 per D&C Failure Event	$300	3 days	Technical Requirements, Division 01, Section 1.6.3.A
1. 61	Training	Training	Prepare, submit and update Training Procedures, Materials and Records in accordance with the Contract Documents	10 days	3 per D&C Failure Event	$150	3 days	Technical Requirements, Division 01, Section 1.7
1. 62	Design Management	Proprietary Design Reviews	Prepare, submit and update Proprietary Design Reviews in accordance with the Contract Documents	5 days	5 per D&C Failure Event	$300	3 days	Technical Requirements, Division 01, Section 1.8.5

ID	Main Heading	Subheading	Failure To	Rectification Time	D&C Noncompliance Points	D&C Noncompliance Event Deductions in $ (for New or Recurred Events)	Recurrence Period	Reference Section(s) of Contract Documents
1. 63	Design Management	Proprietary Design Reviews	Prepare, submit and update to the City, and maintain a comprehensive Basis of Design Report (BODR) for the Project in accordance with the Contract Documents	5 days	5 per D&C Failure Event	$300	3 days	Technical Requirements, Division 01, Section 1.8.5.2.3
1. 64	Design Management	Release for Construction Documents	Prepare, submit and update RFCDs for approval by City in accordance with the Contract Documents	None	5 per D&C Failure Event	-	1 day	Technical Requirements, Division 01, Section 1.8.6
1. 65	Design Management	Release for Construction Documents	Prepare, submit and update Design Review Report in accordance with the Contract Documents	5 days	1 per D&C Failure Event	$50	3 days	Technical Requirements, Division 01, Section 1.8.6.1
1. 66	Sustainability	Sustainability	Prepare, submit and update Sustainability Management Plan in accordance with the Contract Documents	10 days	3 per D&C Failure Event	$150	3 days	Technical Requirements, Division 01, Section 1.9.1
1. 67	Building Information Modelling	Building Information Modelling	Prepare, submit and update BIM Project Execution Plan in accordance with the Contract Documents	10 days	3 per D&C Failure Event	$150	3 days	Technical Requirements, Division 01, Section 1.10.1.1
1. 68	Building Information Modelling	Building Information Modelling	Appoint a full-time, project-dedicated BIM Manager in accordance with the Contract Documents	5 days	3 per D&C Failure Event	$500	3 days	Technical Requirements, Division 01, Section 1.10.1.3
1. 69	Construction Management	Construction Security	Prepare, submit and update Project Site Security Plan in	10 days	3 per D&C Failure Event	$150	3 days	Technical Requirements, Division 01, Section 1.11.2

ID	Main Heading	Subheading	Failure To	Rectification Time	D&C Noncompliance Points	D&C Noncompliance Event Deductions in $ (for New or Recurred Events)	Recurrence Period	Reference Section(s) of Contract Documents
			accordance with the Contract Documents					
1.70	Construction Management	Maintenance of Traffic and Work Restrictions	Comply with requirements for maintenance of traffic and work restrictions in accordance with the Contract Documents	5 days	3 per D&C Failure Event	$150	3 days	Technical Requirements, Division 01, Section 1.11.3
1.71	Construction Management	Temporary Facilities and Utilities	Prepare, submit and update City Temporary Utility Designs and Engineered Drawings in accordance with the Contract Documents	5 days	1 per D&C Failure Event	$50	3 days	Technical Requirements, Division 01, Section 1.11.4.1
1.72	Construction Management	Temporary Facilities and Utilities	Provide temporary Construction Management Office in accordance with the Contract Documents	5 days	5 per D&C Failure Event	$300	3 days	Technical Requirements, Division 01, Section 1.11.4.3
1.73	Coordination with Third Parties	Third Party Coordination	Engage a Third Party and Utility Coordination Manager in accordance with the Contract Documents	5 days	3 per D&C Failure Event	$500	3 days	Technical Requirements, Division 01, Section 1.12.1
1.74	Coordination with Utility Owners	Utility Coordination Work Plan	Prepare, submit and update Coordination Work Plan (UCWP) in accordance with the Contract Documents	5 days	1 per D&C Failure Event	$50	3 days	Technical Requirements, Division 01, Section 1.13.1

ID	Main Heading	Subheading	Failure To	Rectification Time	D&C Noncompliance Points	D&C Noncompliance Event Deductions in $ (for New or Recurred Events)	Recurrence Period	Reference Section(s) of Contract Documents
1.75	Coordination with Utility Owners	Utility Project Execution Plan	Prepare, submit and update Utility Project Execution Plan in accordance with the Contract Documents	5 days	3 per D&C Failure Event	$150	3 days	Technical Requirements, Division 01, Section 1.13.2,
1.76	Coordination with Utility Owners	Utility Tracking Report	Prepare, submit and update Utility Tracking Report in accordance with the Contract Documents	5 days	3 per D&C Failure Event	$150	3 days	Technical Requirements, Division 01, Section 1.13.3
1.77	Communication and Public Information	Public Outreach and Engagement	Meet requirements to support City Public Outreach and Engagement Program	3 days	1 per D&C Failure Event	$50	3 days	Technical Requirements, Division 01, Section 1.15.2.I1-2
1.78	Communication and Public Information	Public Outreach and Engagement	Prepare, submit and update Public Outreach and Engagement Plan in accordance with Contract Documents	5 days	5 per D&C Failure Event	$300	3 days	Technical Requirements, Division 01, Section 1.15.2.3
2	**Division 04 - Supplemental Design Criteria**							
2.1	Supplemental Noise and Vibration Requirements	Proprietary Design Review Deliverables	Comply with submittal requirements for Supplemental Noise and Vibration for Proprietary Design Review Deliverables in accordance with the Contract Documents	5 days	5 per D&C Failure Event	$300	2 days	Technical Requirements, Division 04, Section 1.5
2.2	Supplemental Noise and	Proprietary Design Review Deliverables	Prepare, submit and update Testing Report in	5 days	5 per D&C Failure Event	$300	2 days	Technical Requirements, Division 04, Section 1.5

ID	Main Heading	Subheading	Failure To	Rectification Time	D&C Noncompliance Points	D&C Noncompliance Event Deductions in $ (for New or Recurred Events)	Recurrence Period	Reference Section(s) of Contract Documents
	Vibration Requirements		accordance with the Contract Documents					
2.3	Seismic Resilience Performance Requirements	Deliverables	Comply with submittal requirements for seismic resilience performance for Proprietary Design Review Deliverables in accordance with the Contract Documents	5 days	5 per D&C Failure Event	$300	2 days	Technical Requirements, Division 04, Section 2
3	**Division 07 - Infrastructure Facility Management (IFM) Specifications**							
3.1	IFM Service Procedures	Submission Process	Prepare, submit and update a Schedule of Submittals required under the IFM Specifications before Substantial Completion	10 days	3 per D&C Failure Event	$150	5 days	Technical Requirements, Division 07, Section B.6.1 (1)
3.2	IFM Service Procedures	IFM Service Procedures	Prepare, submit and update IFM Service Procedures prior to Substantial Completion as required in accordance with the Contract Documents	10 days	1 per D&C Failure Event	$50	5 days	Technical Requirements, Division 07, Section B.6.1 (1)

ID	Main Heading	Subheading	Failure To	Rectification Time	D&C Noncompliance Points	D&C Noncompliance Event Deductions in $ (for New or Recurred Events)	Recurrence Period	Reference Section(s) of Contract Documents
3.3	Move-In Services	Move-In Services	Prepare, submit and update a Move- In Plan no later than six months prior to Substantial Completion	10 days	3 per D&C Failure Event	$150	5 days	Technical Requirements, Division 07, Section B.25
3.4	Renewal Work Services	Renewal Work Plans and Reports	Prepare, submit and update Initial 30-Year Renewal Work Plan prior to Substantial Completion	10 days	5 per D&C Failure Event	$150	5 days	Technical Requirements, Division 07, Section E.2
4	**Division 10 - SFPW Div 01 General Requirements for Construction**							
4.1	Existing Utility Facilities	Governmental Facilities	Comply with requirements related to Governmental Facilities within excavations in accordance with Contract Documents	3 days	5 per D&C Failure Event	$300	3 days	Technical Requirements, Division 10, Section 00 73 20 (1.2)
4.2	Existing Utility Facilities	Non-governmental Facilities	Comply with requirements related to Non-governmental Facilities in accordance with Contract Documents	3 days	5 per D&C Failure Event	$300	3 days	Technical Requirements, Division 10, Section 00 73 20 (1.3)
4.3	Utility Crossings	Existing Utility Company	Comply with requirements for supporting working and protecting existing utility company facilities in	3 days	5 per D&C Failure Event	$300	3 days	Technical Requirements, Division 10, Section 00 73 21

ID	Main Heading	Subheading	Failure To	Rectification Time	D&C Noncompliance Points	D&C Noncompliance Event Deductions in $ (for New or Recurred Events)	Recurrence Period	Reference Section(s) of Contract Documents
			accordance with Contract Documents					
4.4	Special Instructions	General	Comply with requirements associated with Special Instruction in accordance with Contract Documents	3 days	5 per D&C Failure Event	$300	3 days	Technical Requirements, Division 10, Section 01 12 00
4.5	Overhead Contact System (OS) Isolation Support	General	Comply with requirements associated with overhead contract system isolation support	3 days	5 per D&C Failure Event	$300	3 days	Technical Requirements, Division 10, Section 01 13 00
4.6	Artwork Coordination	Artwork Coordination	Comply with requirements for schedules for Pre-Art Installation Conference, Artwork installation and Artwork acceptance in accordance with the Contract Documents	5 days	5 per D&C Failure Event	$300	3 days	Technical Requirements, Division 10, Section 01 14 00 (1.3, 1.4)
4.7	Artwork Coordination	Artwork Coordination	Comply with requirements by the City and artwork acceptance by Principal Project Company in accordance with the Contract Documents	5 days	1 per D&C Failure Event	$50	3 days	Technical Requirements, Division 10, Section 01 14 00 (1.5, 1.11)

ID	Main Heading	Subheading	Failure To	Rectification Time	D&C Noncompliance Points	D&C Noncompliance Event Deductions in $ (for New or Recurred Events)	Recurrence Period	Reference Section(s) of Contract Documents
4.8	Partnering Procedures	Partnering Training	Attend, complete, and comply with City Partnering Fundamentals Training in accordance with Training Documents	10 days	1 per D&C Failure Event	$50	3 days	Technical Requirements, Division 10, Section 01 31 33 (1.6)
4.9	Partnering Procedures	Partnering Elements	Comply with requirements for partnering in accordance with the Contract Documents	10 days	1 per D&C Failure Event	$50	3 days	Technical Requirements, Division 10, Section 01 31 33 (3.2)
4.10	Photographic Documentation	Photographic Documentation	Comply with requirements for administrative and procedural requirements for construction photographs in accordance with the Contract Documents	3 days	3 per D&C Failure Event	$150	1 day	Technical Requirements, Division 10, Section 01 32 33 (3.1A)
4.11	Environmental Procedures	Submittals	Prepare, submit and update all Submittals to City's Authorized Representative prior to mobilization in accordance with the Contract Documents except those specifically listed in this Table A1 – D&C Failure Event Table with separate Deductions and Noncompliance Points	3 days	3 per D&C Failure Event	-	2 days	Technical Requirements, Division 10, Section 01 35 43 (1.4.A.1)

ID	Main Heading	Subheading	Failure To	Rectification Time	D&C Noncompliance Points	D&C Noncompliance Event Deductions in $ (for New or Recurred Events)	Recurrence Period	Reference Section(s) of Contract Documents
4. 12	Environmental Procedures	Qualifications	Comply with various qualified personnel	3 days	3 per D&C Failure Event	$1,000	2 days	Technical Requirements, Division 10, Section 01 35 43 (1.4.A.2)
4. 13	Environmental Procedures	Submittals	Prepare, submit and update all Submittals to City's Authorized Representative during construction in accordance with the Contract Documents except those specifically listed in this Table A1 – D&C Failure Event Table with separate Deductions and noncompliance Points	3 days	3 per D&C Failure Event	$1,000	2 days	Technical Requirements, Division 10, Section 01 35 43 (1.4.B)
4. 14	Environmental Procedures	Submittals	Prepare, submit and update all submittals to ERO prior to receiving a final certificate of occupancy	3 days	3 per D&C Failure Event	$1,000	2 days	Technical Requirements, Division 10, Section 01 35 43 (1.4.B)
4. 15	Environmental Procedures	Inspection and Monitoring	Cooperate with inspection and monitoring activities, including providing access and making facilities/ records available	3 days	3 per D&C Failure Event	$300	2 days	Technical Requirements, Division 10, Section 01 35 43 (1.5.C)
4. 16	Environmental Procedures	Off-road equipment and engines	Comply with requirements associated with Administrative Code Section 6.25 and	None	3 per D&C Failure Event	$100	1 day	Technical Requirements, Division 10, Section 01 35 43 (1.5.D)

ID	Main Heading	Subheading	Failure To	Rectification Time	D&C Noncompliance Points	D&C Noncompliance Event Deductions in $ (for New or Recurred Events)	Recurrence Period	Reference Section(s) of Contract Documents
			Chapter 25 of the Environment Code					
4. 17	Environmental Procedures	Tree Protection	Provide adequate protection or selective pruning to trees	None	3 per D&C Failure Event	$250	1 day	Technical Requirements, Division 10, Section 01 35 43 (1.5.E.1)
4. 18	Environmental Procedures	Tree Protection	Appropriate presence of Specialty Environmental Monitor - Archaeologist	None	3 per D&C Failure Event	$1,000	1 day	Technical Requirements, Division 10, Section 01 35 43 (1.5.F)
4. 19	Environmental Procedures	General Construction	Maintain the Project Site and Construction Work areas in a clean and safe condition	None	3 per D&C Failure Event	$1,000	1 day	Technical Requirements, Division 10, Section 01 35 43 (3.1.A)
4. 20	Environmental Procedures	Stockpile Management	Implement stockpile management best practices	1 day	3 per D&C Failure Event	$1,000	1 day	Technical Requirements, Division 10, Section 01 35 43 (3.2)
4. 21	Environmental Procedures	Dust Control	Ensure dust mitigation measures are in place during construction	None	3 per D&C Failure Event	$1,000	1 day	Technical Requirements, Division 10, Section 01 35 43 (3.3)
4. 22	Environmental Procedures	Dust Control	Comply with grading/ excavation including complying with Site-Specific Dust Control Plan (DCP)	None	3 per D&C Failure Event	$1,000	1 day	Technical Requirements, Division 10, Section 01 35 43 (3.3)
4. 23	Environmental Procedures	Stormwater Management	Maintain effective project-specific sediments controls	None	3 per D&C Failure Event	$1,000	1 day	Technical Requirements, Division 10, Section 01 35 43 (3.4)

ID	Main Heading	Subheading	Failure To	Rectification Time	D&C Noncompliance Points	D&C Noncompliance Event Deductions in $ (for New or Recurred Events)	Recurrence Period	Reference Section(s) of Contract Documents
4. 24	Environmenta l Procedures	Spills and Leaks	Comply with spills and leaks best management practices	None	3 per D&C Failure Event	$1,000	1 day	Technical Requirements, Division 10, Section 01 35 43 (3.5)
4. 25	Environmenta l Procedures	Emissions- Control	Comply with Emissions- Control best management practices	None	3 per D&C Failure Event	$1,000	1 day	Technical Requirements, Division 10, Section 01 35 43 (3.5)
4. 26	Environmenta l Procedures	Noise Control	Comply with Noise Control best management practices including preparation of Noise- Control Plan	None	3 per D&C Failure Event	$1,000	1 day	Technical Requirements, Division 10, Section 01 35 43 (3.6)
4. 27	Environmenta l Procedures	Asbestos	Comply with regulations for construction impacted by Naturally Occurring Asbestos	None	5 per D&C Failure Event	$1,000	1 day	Technical Requirements, Division 10, Section 01 35 43 (3.8)
4. 28	Environmenta l Procedures	Night Work	Comply with requirements for Night Works in accordance with Contract Documents	None	3 per D&C Failure Event	$1,000	1 day	Technical Requirements, Division 10, Section 01 35 43 (3.10)
4. 29	Environmenta l Procedures	Bird Protection	Comply with environmental regulations for bird protection	None	3 per D&C Failure Event	$1,000	1 day	Technical Requirements, Division 10, Section 01 35 43 (3.12)
4. 30	Environmenta l Procedures	Tree Protection	Arrange meeting with City, General Contractor and others prior to commencement of work	5 days	1 per D&C Failure Event	$1,000	3 days	Technical Requirements, Division 10, Section 01 35 43 (3.14.A)

ID	Main Heading	Subheading	Failure To	Rectification Time	D&C Noncompliance Points	D&C Noncompliance Event Deductions in $ (for New or Recurred Events)	Recurrence Period	Reference Section(s) of Contract Documents
4.31	Environmental Procedures	Tree Protection	Comply with environmental requirements associated with tree management and protection	None	3 per D&C Failure Event	$1,000	1 day	Technical Requirements, Division 10, Section 01 35 43 (3.14)
4.32	Environmental Procedures	Site Restoration	Comply with environmental requirements associated with site restoration	5 days	3 per D&C Failure Event	$1,000	1 day	Technical Requirements, Division 10, Section 01 35 43 (3.15)
4.33	Environmental Procedures	Paleontological Resources	Comply with environmental requirements associated with unanticipated paleontological resources	None	5 per D&C Failure Event	$1,000	1 day	Technical Requirements, Division 10, Section 01 35 43 (3.16)
4.34	Environmental Procedures	Human Remains	Comply with environmental requirements associated encounter of human remains	None	5 per D&C Failure Event	$1,000	1 day	Technical Requirements, Division 10, Section 01 35 43 (3.17)
4.35	Environmental Procedures	Archaeological Resource Protection	Comply with environmental requirements associated with archaeology protection	None	3 per D&C Failure Event	$1,000	1 day	Technical Requirements, Division 10, Section 01 35 43 (3.18)
4.36	Environmental Procedures	Historical Cultural Resource Protection	Comply with environmental requirements associated with historical cultural resource protection	None	3 per D&C Failure Event	$1,000	1 day	Technical Requirements, Division 10, Section 01 35 43 (3.19)

ID	Main Heading	Subheading	Failure To	Rectification Time	D&C Noncompliance Points	D&C Noncompliance Event Deductions in $ (for New or Recurred Events)	Recurrence Period	Reference Section(s) of Contract Documents
4. 37	Environmental Procedures	Vibration Control Plan	Prepare, submit and update Vibration Control Plan in accordance with contract documents	5 days	3 per D&C Failure Event	$1,000	3 days	Technical Requirements, Division 10, Section 01 35 43 (3.19)
4. 38	Environmental Procedures	Work in Air Pollutant Exposure Zone	Comply with environmental requirements associated with SF Environment Code Chapter 25	None	3 per D&C Failure Event	$1,000	1 day	Technical Requirements, Division 10, Section 01 35 43 (3.20)
4. 39	Environmental Procedures	Construction Site Runoff Control Permit	Prepare, submit and update Construction Site Runoff Control Permit in accordance with the Contract Documents	5 days	3 per D&C Failure Event	$1,000	3 days	Technical Requirements, Division 10, Section 01 35 43 (3.21)
4. 40	Environmental Procedures	Construction Site Runoff Control Permit	Comply with requirements and conditions associated with the Construction Site Run off Control Permit	None	3 per D&C Failure Event	$1,000	1 day	Technical Requirements, Division 10, Section 01 35 43 (3.21)
4. 41	Environmental Procedures	City Water-Quality Permitting	Comply with requirements associated with geotechnical well or soil boring	None	3 per D&C Failure Event	$1,000	1 day	Technical Requirements, Division 10, Section 01 35 43 (3.23)
4. 42	Hazardous Building Materials - Scope of Work	Hazardous Building Materials - Scope of Work	Prepare, submit and update to City certifications or proof of the environmental trainings in accordance with the Contract Documents	5 days	3 per D&C Failure Event	-	3 days	Technical Requirements, Division 10, Section 01 35 44 (1.1-E)

ID	Main Heading	Subheading	Failure To	Rectification Time	D&C Noncompliance Points	D&C Noncompliance Event Deductions in $ (for New or Recurred Events)	Recurrence Period	Reference Section(s) of Contract Documents
4. 43	Hazardous Building Materials - Scope of Work	Abatement Contractor's Qualifications	Prepare, submit and update Hazardous Materials Management Plan (HMMP) in accordance with the Contract Documents	5 days	3 per D&C Failure Event	-	3 days	Technical Requirements, Division 10, Section 01 35 44 (1.4-D)
4. 44	Hazardous Building Materials - Scope of Work	Waste Handling and Characterization	Prepare, submit and update Waste Management Plan (WMP) as specified under Section 02 80 13 Building Related Hazardous Materials Remediation	5 days	3 per D&C Failure Event	-	3 days	Technical Requirements, Division 10, Section 01 35 44 (1.8-A)
4. 45	Hazardous Building Materials - Scope of Work	Waste Handling and Characterization	Use a bill of lading or non-hazardous waste form in accordance with the Contract Documents when shipping fluorescent lamps to a recycler	5 days	3 per D&C Failure Event	-	3 days	Technical Requirements, Division 10, Section 01 35 44 (1.8-O)
4. 46	Hazardous Building Materials - Scope of Work	Waste Handling and Characterization	Provide, Prepare, submit and update Uniform Hazardous Waste Manifest Form for asbestos hazardous waste shipments in accordance with the Contract Documents	5 days	3 per D&C Failure Event	-	3 days	Technical Requirements, Division 10, Section 01 35 44 (1.8-Q)

ID	Main Heading	Subheading	Failure To	Rectification Time	D&C Noncompliance Points	D&C Noncompliance Event Deductions in $ (for New or Recurred Events)	Recurrence Period	Reference Section(s) of Contract Documents
4. 47	Hazardous Building Materials - Scope of Work	Use of Non-Hazardous Waste Manifest for Class II Material or Lesser	Prepare, submit and update the Non-Hazardous Waste Manifest form for the Generator's signature at least 72 hours in advance in accordance with the Contract Documents	1 day	5 per D&C Failure Event	$300	0.5 day	Technical Requirements, Division 10, Section 01 35 44 (1.9)
4. 48	Health and Safety Criteria	Health and Safety Plan	Prepare, submit and update a complete Health and Safety Plan (HASP) in accordance with the Contract Documents	3 days	5 per D&C Failure Event	-	1 day	Technical Requirements, Division 10, Section 01 35 45 (1.5)
4. 49	Health and Safety Criteria	Injury and Illness Prevention Programs (IIPP) and Code of Safe Practices (CSP)	Prepare, submit and update Injury and Illness Prevention Programs (IIPP) and Code of Safe Practices (CSP) in accordance with the Contract Documents	3 days	3 per D&C Failure Event	$150	1 day	Technical Requirements, Division 10, Section 01 35 45 (1.6)
4. 50	Health and Safety Criteria	Submittals	Prepare, submit and update all other health and safety Submittals apart from HASP, IIPP, and CSP in accordance with the Contract Documents	3 days	3 per D&C Failure Event	$150	1 day	Technical Requirements, Division 10, Section 01 35 45 (1.3A)

ID	Main Heading	Subheading	Failure To	Rectification Time	D&C Noncompliance Points	D&C Noncompliance Event Deductions in $ (for New or Recurred Events)	Recurrence Period	Reference Section(s) of Contract Documents
4. 51	Health and Safety Criteria	Submittals	Prepare, submit and update sufficient information, to demonstrate the qualifications and experience of the it's Project Safety Representative (PSR) in accordance with the Contract Documents	2 days	3 per D&C Failure Event	$150	1 day	Technical Requirements, Division 10, Section 01 35 45 (1.3B)
4. 52	Health and Safety Criteria	Submittals	Make submissions as required throughout the course of construction - daily inspection reports and records of toolbox meetings in accordance with the Contract Documents	2 days	3 per D&C Failure Event	$150	1 day	Technical Requirements, Division 10, Section 01 35 45 (1.3C)
4. 53	Health and Safety Criteria	Submittals	Make submissions as required throughout the course of construction - initial and final incident or Near-miss investigation reports in accordance with the Contract Documents	1 day	3 per D&C Failure Event	$150	0.5 day	Technical Requirements, Division 10, Section 01 35 45 (1.3C)
4. 54	Health and Safety Criteria	Submittals	Make submissions as required throughout the course of construction - HASP modification	2 days	3 per D&C Failure Event	$150	1 day	Technical Requirements, Division 10, Section 01 35 45 (1.3C)

ID	Main Heading	Subheading	Failure To	Rectification Time	D&C Noncompliance Points	D&C Noncompliance Event Deductions in $ (for New or Recurred Events)	Recurrence Period	Reference Section(s) of Contract Documents
			requests, and others in accordance with the Contract Documents					
4.55	Health and Safety Criteria	Project Safety Representative (PSR)	Comply with Project Safety Representative (PSR)	10 days	3 per D&C Failure Event	$150	5 days	Technical Requirements, Division 10, Section 01 35 45 (1.7, 1.21)
4.56	Health and Safety Criteria	Contractor's Asbestos Competent Person	Comply with Asbestos Competent Person (ACP)	5 days	3 per D&C Failure Event	$150	2 days	Technical Requirements, Division 10, Section 01 35 45 (1.8)
4.57	Health and Safety Criteria	Accident Documentation and Reporting	Comply with accident documentation and reporting in accordance with the Contract Documents	1 day	3 per D&C Failure Event	$150	0.5 days	Technical Requirements, Division 10, Section 01 35 45 (1.22)
4.58	Health and Safety Criteria	San Francisco Municipal Transportation Agency (SFMTA) Health and Safety Requirements	Comply with San Francisco Municipal Transportation Agency (SFMTA) Health and Safety Requirements	5 days	3 per D&C Failure Event	$150	2 days	Technical Requirements, Division 10, Section 01 35 45 (1.24)
4.59	Additional Environmental Procedures	Submittals	Prepare, submit and update all submittals in accordance with the Contract Documents	5 days	3 per D&C Failure Event	-	3 days	Technical Requirements, Division 10, Section 01 35 50 (Part 2)
4.60	Additional Environmental Procedures	Execution	Comply with requirements associated with the execution of the additional environmental procedures	None	3 per D&C Failure Event	-	1 day	Technical Requirements, Division 10, Section 01 35 50 (Part 3)

ID	Main Heading	Subheading	Failure To	Rectification Time	D&C Noncompliance Points	D&C Noncompliance Event Deductions in $ (for New or Recurred Events)	Recurrence Period	Reference Section(s) of Contract Documents
4. 61	Temporary Facilities and Controls	Temporary Project Sign	Comply with Temporary Project Sign in accordance with the Contract Documents	10 days	1 per D&C Failure Event	$50	5 days	Technical Requirements, Division 10, Section 01 50 00
4. 62	Material Reduction and Recovery Plan	Material Reduction and Recovery Plan	Prepare, submit and update a Demolition Debris Recovery Plan (DDRP) in accordance with the Contract Documents	10 days	5 per D&C Failure Event	$300	5 days	Technical Requirements, Division 10, Section 01 74 50 (1.4)
4. 63	Material Reduction and Recovery Plan	Material Reduction and Recovery Plan	Comply with all provisions for Material Reduction and Recovery Plan including monthly updates and Final Recovery Report	5 days	3 per D&C Failure Event	$150	2 days	Technical Requirements, Division 10, Section 01 74 50, (1.5-1.7)
4. 64	Closeout Procedures	Substantial Completion	Prepare, submit and update all Closeout Procedures in accordance with the Contract Documents	5 days	5 per D&C Failure Event	-	3 days	Technical Requirements, Division 10, Section 01 77 00, (1.3)
4. 65	Closeout Procedures	Project Record Documents	Prepare, submit and update the final approved Project Record Drawings to the City Representative prior to Final Acceptance. Refer to Section 01 78 39 - Project Record Documents	5 days	5 per D&C Failure Event	$300	3 days	Technical Requirements, Division 10, Section 01 77 00, (1.6)
4. 66	Operation and Maintenance Data	Operation and Maintenance Data Requirements	Comply with submittal and scheduling requirements for	5 days	5 per D&C Failure Event	-	3 days	Technical Requirements, Division 10, Section 01 78 23, 1.4

ID	Main Heading	Subheading	Failure To	Rectification Time	D&C Noncompliance Points	D&C Noncompliance Event Deductions in $ (for New or Recurred Events)	Recurrence Period	Reference Section(s) of Contract Documents
			Operations and Maintenance Data					
4. 67	Operation and Maintenance Data	Electronic and Hard Copy Formats for O&M Manual	Comply with requirements for submittals of Electronic and Hard Copy Formats for O&M Manual	5 days	5 per D&C Failure Event	-	2 days	Technical Requirements, Division 10, Section 01 78 23, 1.5, 1.6
4. 68	Operation and Maintenance Data	Instruction of City Personnel	Comply with requirements with respect to training schedules and procedures	5 days	3 per D&C Failure Event	-	3 days	Technical Requirements, Division 10, Section 01 78 23, Section 1.8
4. 69	Warranties	Warranties	Comply with all warranty requirements in accordance with the Contract Documents	5 days	5 per D&C Failure Event	-	3 days	Technical Requirements, Division 10, Section 01 78 36, (1.2, 1.3, 1.4)
4. 70	Structure Demolitions	Submittals	Prepare, submit and update all submittals in accordance with the Contract Documents	3 days	1 per D&C Failure Event	-	2 days	Technical Requirements, Division 10, Section 02 41 16 (1.06)
4. 71	Structure Demolitions	Execution	Comply with requirements associated with the execution of structure demolition	None	3 per D&C Failure Event	-	1 day	Technical Requirements, Division 10, Section 02 41 16 (Part 3)
4. 72	Hazardous Building Materials Remediation	Submittals	Perform all Hazardous Materials remediation work as per this specification	5 days	3 per D&C Failure Event	-	2 days	Technical Requirements, Division 10, Section 02 80 13

ID	Main Heading	Subheading	Failure To	Rectification Time	D&C Noncompliance Points	D&C Noncompliance Event Deductions in $ (for New or Recurred Events)	Recurrence Period	Reference Section(s) of Contract Documents
4.73	Environmental Management of Excavated Materials	Environmental Management of Excavated Materials	Comply with requirements for Environmental Management of Excavated Materials	5 days	3 per D&C Failure Event	-	2 days	Technical Requirements, Division 10, Section 02 81 10
5	**Contracting and Labor Practices**	Note that DBE Requirements are still being developed						
5.1	Contracting and Labor Practices	Labor Standards	Comply and require all Contractors to comply, with all applicable federal and State labor, occupational safety and health Laws and orders, including payment of prevailing wages	N/A	3 per D&C Failure Event	-	N/A	DBFOM Agreement, Section 9.8 & Exhibit 16B
5.2	Contracting and Labor Practices	Labor Standards	Submit to City certified payroll records for all employees of Principal Project Company and Contractors at all tiers for the preceding calendar month	5 days	5 per D&C Failure Event	-	N/A	DBFOM Agreement, Section 9.8
5.3	Contracting and Labor Practices	Labor Standards	Require that individuals performing the Work be qualified, experienced, competent, and skilled in the performance of the	N/A	5 per D&C Failure Event	-	N/A	DBFOM Agreement, Section 9.8

ID	Main Heading	Subheading	Failure To	Rectification Time	D&C Noncompliance Points	D&C Noncompliance Event Deductions in $ (for New or Recurred Events)	Recurrence Period	Reference Section(s) of Contract Documents
			Work and related obligations as per requirement					
5.4	Contracting and Labor Practices	Local Hiring Requirements for Construction Work and Renewal Work	Comply with local hiring requirements for Construction Work and Renewal Work as per requirements	5 days	5 per D&C Failure Event	-	N/A	DBFOM Agreement, Section 9.9
5.5	Contracting and Labor Practices	First Source Hiring Program	Comply with all applicable provisions of the First Source Hiring Program as per requirement	5 days	5 per D&C Failure Event	-	N/A	DBFOM Agreement, Section 9.10
5.6	Contracting and Labor Practices	SFMTA Employment Training Program	Comply with all applicable provisions of the SFMTA Employment Training Program	5 days	5 per D&C Failure Event	-	N/A	DBFOM Agreement, Section 9.11
6	**Commissioning and Testing Requirements**							
6.1	Commissioning Provider (CxP)	Commissioning Provider (CxP) appointment	Prepare, submit and update details on the appointment of the CxP entity for review and acceptance by City	10 days	3 per D&C Failure Event	$150	5 days	Technical Requirements, Division 6, Section6.5
6.2	Pre-Construction Requirements	Commissioning Plan	Prepare, submit and update Final Commissioning Plan in accordance with the Contract Documents	5 days	3 per D&C Failure Event	$150	3 days	Technical Requirements, Division 6, Section 6.6.2.1

ID	Main Heading	Subheading	Failure To	Rectification Time	D&C Noncompliance Points	D&C Noncompliance Event Deductions in $ (for New or Recurred Events)	Recurrence Period	Reference Section(s) of Contract Documents
6.3	Pre-Construction Requirements	Commissioning Issues and Resolution Log	Maintain Commissioning Issues and Resolution Log in accordance with the Contract Documents	5 days	1 per D&C Failure Event	$50	3 days	Technical Requirements, Division 6, Section 6.6.2.3 and 6.6.3.2
6.4	Construction Requirements	Functional Performance Testing (FPT)	Provide notice and results of Functional Performance Testing in accordance with the Contract Documents	5 days	3 per D&C Failure Event	$150	3 days	Technical Requirements, Division 6, Section 6.6.3.6
6.5	Construction Requirements	Commissioning Report	Prepare, submit and update Commissioning Report in accordance with the Contract Documents	5 days	1 per D&C Failure Event	$50	3 days	Technical Requirements, Division 6, Section 6.6.3.7
6.6	Post Substantial Completion Requirements	Deliver Systems Manual	Prepare, submit and update the necessary operating documents and reports to City in accordance with the Contract Documents	10 days	1 per D&C Failure Event	$50	10 days	Technical Requirements, Division 6, Section 6.6.4.1
6.7	Post Substantial Completion Requirements	Post Occupancy Review of Building Operations	Meet requirements associated with the Post Occupancy Review of Building Operations in accordance with Contract Documents	10 days	3 per D&C Failure Event	$150	3 days	Technical Requirements, Division 6, Section 6.6.4.2
6.8	Post Substantial Completion Requirements	Near Warranty End Post Occupancy Review	Meet requirements associated with the Warranty End Post Occupancy Review in accordance with Contract Documents	10 days	3 per D&C Failure Event	$150	3 days	Technical Requirements, Division 6, Section 6.6.4.3

ID	Main Heading	Subheading	Failure To	Rectification Time	D&C Noncompliance Points	D&C Noncompliance Event Deductions in $ (for New or Recurred Events)	Recurrence Period	Reference Section(s) of Contract Documents
6.9	Post Substantial Completion Requirements	On-going Commissioning Plan	Prepare, submit and update the Ongoing Commissioning Plan in accordance with the Contract Documents	5 days	1 per D&C Failure Event	$50	3 days	Technical Requirements, Division 6, Section 6.6.4.4
6.10	Operational Readiness	Operational Readiness	Prepare, submit and update an integrated Operational Readiness Plan in accordance with the Contract Documents	5 days	5 per D&C Failure Event	$300	3 days	Technical Requirements, Division 6, Section 6.8.

EXHIBIT 4B

AVAILABILITY PAYMENT MECHANISM

3 Availability Payments

3.1 Maximum Availability Payment

The Maximum Availability Payment for each Contract Year (y) ("MaxAPy") shall be calculated for any period commencing on or after the Payment Commencement Date as follows:

$$MaxAP_y = MaxAPC_y + (MAPIFM_y \times ESC_y)$$

Where:

$MaxAPC_y$ means the capital portion of the MaxAP for Contract Year y as set out in Appendix D (Payment Schedule) to this Exhibit 4B (Availability Payment Mechanism)

$MaxAPIFM_y$ means the IFM Payment MaxAP for Contract Year y, as set out in Appendix D (Payment Schedule) to this Exhibit 4B (Availability Payment Mechanism)

ESC_y is the escalation factor calculated in accordance with Section 4 (Escalation Factor) of this Exhibit 4B (Availability Payment Mechanism)

3.2 Maximum Quarterly Availability Payment

Subject to any limitations and exceptions expressly provided in the Agreement, Availability Payments shall be paid to the Principal Project Company through Quarterly Availability Payments. The Maximum Quarterly Availability Payment ("MaxQAP") shall be calculated as the quarterly amount of the MaxAP in accordance with the following formula.

$$MaxQAP_{q,y} = \frac{1}{4} \times MaxAP_y$$

Where:

$MaxAP_y$ is the Maximum Availability Payment for Contract Year **y**

$MaxQAP_{q,y}$ is the MaxQAP for Contract Quarter q in Contract Year **y**

3.3 Availability Payments

3.3.1 The Maximum Availability Payment ("MaxAP") shall be subject to Deductions, if any, with respect to the availability and performance of the Infrastructure Facility. Each Quarterly Availability Payment paid to the Principal Project Company in Contract Year **y** shall be calculated as follows:

$$QAP_{q,y} = MaxQAP_{q,y} - \sum D_{q,y} + ENC_{q,y} + \sum OA_{q,y}$$

where:

$QAP_{q,y}$ is the Quarterly Availability Payment for Contract Quarter ***q*** in Contract Year ***y***;

$MaxQAP_{q,y}$ is the Maximum Quarterly Availability Payment for Contract Quarter ***q*** in Contract Year ***y***;

$\sum D_{q,y}$ is the aggregate sum of all Deductions for Contract Quarter ***q*** in Contract Year ***y*** in relation to D&C Failure Events (to the extent not deducted from the Milestone Payment), Service Failures and Availability Failures calculated in accordance with the provisions set out in Section 5 (Deductions from Availability Payments) of this Exhibit 4B (Availability Payment Mechanism);

$ENC_{q,y}$ is Energy Net Compensation (determined pursuant to the Energy Pain Share/Gain Share Mechanism) for Contract Quarter ***q*** in Contract Year ***y;***

$\sum OA_{q,y}$ is the aggregate of any other adjustments for Contract Quarter ***q*** in Contract Year ***y*** to reflect previous over-payments and/or under-payments, any interest payable in respect of any amounts owed, and, except as set out in Section 11.3.2(ii) of the Agreement any Other Amounts due and payable from Principal Project Company to the City or from the City to Principal Project Company under the Agreement.

3.3.2 If in the Contract Quarter in which the Payment Commencement Date falls or in the last Contract Quarter of the Term, a pro rata adjustment shall be made to reflect the actual number of days in the Contract Quarter from and including the Payment Commencement Date (for the first Contract Quarter) and up to and including the last day of the IFM Period (for the last Contract Quarter) for purposes of calculating the Quarterly Availability Payments and Deductions.

3.4 Invoicing and Payment of Quarterly Availability Payments

For each Quarterly Availability Payment, Principal Project Company shall submit an invoice no later than the 10th day of the month immediately following the relevant Contract Quarter in accordance with the process in Section 11.3 (Invoice, Other Amounts and Payment) of the Agreement. The City will pay Principal Project Company the Quarterly Availability Payment accordance with the process in Section 11.3 (Invoice, Other Amounts and Payments) of the Agreement.

4 ESCALATION FACTOR

4.1 The Escalation Factor shall be calculated in accordance with the following formula:

$$ESC_y = {CPI_y}/{CPI_0}$$

where:

ESC_y is the escalation factor applicable to the relevant Contract Year y;

CPI_y Consumer Price Index as of the reference month that is available in the year that is immediately prior to the commencement of Contract Year y, as published by US Bureau of Labor Statistics, for Urban Consumers, for the San Francisco-Oakland-Hayward, CA areas (All Items). ESC_y shall apply to all calculations relating to Contract Year y; and

CPI_0 is the prevailing value of Consumer Price Index as of the Effective Date, published by US Bureau of Labor Statistics, for Urban Consumers for the San Francisco-Oakland-Hayward, CA areas (All Items).

5 DEDUCTIONS FROM AVAILABILITY PAYMENTS

5.1 Entitlement to Make Deductions

5.1.1 Subject to the provisions of this Agreement, if at any time during the Term, a D&C Failure Event (to the extent not deducted from the Milestone Payment), Service Failure or Availability Failure occurs, the City may make a Deduction from the relevant Maximum Availability Payment in respect of that Failure Event, except that:

(a) the maximum aggregate Deduction amount that the City can make from a Quarterly Availability Payment shall not exceed 35% of the Maximum Quarterly Availability Payment ("**MaxQAPIFMq**") for that Contract Quarter ("**Quarterly Deduction Cap**"); and

(b) if the aggregate Deduction accrued for a Contract Quarter exceed the Quarterly Deduction Cap, the Deduction amount in excess of the Quarterly Deduction Cap shall be applied to the next Quarterly Availability Payment where the Quarterly Deduction Cap has not been exceeded.

5.2 Classification of IFM Failure Events

5.2.1 The classification of an IFM Failure Event as a potential Availability Failure or a Service Failure, shall be made at the time at which the occurrence of the IFM Failure Event is reported to the Help Desk. For clarity, this classification is for the identification of applicable Response Time and Rectification Time, however the IFM Failure Event shall not be considered (a) an Availability Failure unless it causes a Functional Unit or Functional Component (as the case may be) to be Unavailable and the IFM Failure Event is not Rectified within the Rectification Time; or (b) a Service Failure, if the IFM Failure Event is not Responded to within the Response Time or Rectified within the Rectification Time (in the case of IFM Failure Events requiring Rectification which do not constitute a breach of the Availability Conditions). If, in accordance with Performance Measurements Table, no Rectification Time or Response Time applies, the IFM Failure Event shall be a

Service Failure An IFM Failure Event which is incorrectly classified may be re-classified with the approval of Authorized Representatives, acting reasonably, in which case the applicable Performance Monitoring Report will be revised accordingly.

5.2.2 For the purposes of calculating Deductions and Noncompliance Points, and noting that classification of IFM Failure Events shall proceed in accordance with Section 5.2.1,

(a) the identification of Availability Failures will be made in accordance with the Functional Units and Components Table included in Appendix B (Functional Areas, Functional Units, Functional Unit Rankings and Deduction Amounts for Availability Failures and Services Failures) to this Exhibit 4B (Availability Payment Mechanism); and

(b) the identification of Service Failures shall be made in accordance with the Performance Measurements included in the Performance Measurements Table and with reference to Appendix A (Space Tolerances) of Division 7 (IFM Specifications) of Exhibit 18 (Technical Requirements).

5.3 Bedding-In Period and Seasonal Bedding-In Period

5.3.1 During the Bedding-In Period, the number of Noncompliance Points and the amount of any Deductions in respect of Service Failures occurring in the provision of any IFM Service shall be reduced by 25%.

5.3.2 For the avoidance of doubt, there shall be no relief from Noncompliance Points or Deductions relating to Availability Failures during the Bedding-In Period.

6 SERVICE FAILURE DEDUCTIONS

6.1 Service Failure Deductions

6.1.1 Service Failure Deductions shall be applied in accordance with Section 15.2 of the Agreement and this Exhibit 4B.

6.1.2 Subject to this Section 6 (Deductions for Service Failures), the amount of the Service Failure Deduction shall be as specified below.

(a) in the case of a Minor Service Failure, the sum of $75 per Service Failure, index-linked using the Escalation Factor calculated in accordance with Section 4 (Escalation Factor) of this Exhibit 4B (Availability Payment Mechanism);

(b) in the case of a Medium Service Failure, the sum of $300 per Service Failure, index-linked using the Escalation Factor calculated in accordance with Section 4 (Escalation Factor) of this Exhibit 4B (Availability Payment Mechanism); and

(c) in the case of a Major Service Failure, the sum of $650 per Service Failure, index-linked using the Escalation Factor calculated in accordance with Section 4 (Escalation Factor) of this Exhibit 4B (Availability Payment Mechanism).

6.2 Performance Action Plans and Energy Performance Action Plans

6.2.1 Missed submittals of Performance Action Plans or failure to implement particular actions within the Performance Action Plan are to be considered separate and distinct Service Failure Deductions as described below;

(a) where a complete Performance Action Plan is not submitted within the due date as identified in [Section B.16.2 of Division 7 (IFM Specifications) of Exhibit 18 (Technical Requirements)], a Performance Action Plan deduction of $300 as of the first missed due date, index-linked using the Escalation Factor calculated in accordance with Section 4 (Escalation Factor) of this Exhibit 4B (Availability Payment Mechanism);

(b) for every 7 calendar days following the first due date where that Performance Action Plan is not submitted, a further Deduction of $300 applies, index-linked using the Escalation Factor calculated in accordance with Section 4 (Escalation Factor) of this Exhibit 4B (Availability Payment Mechanism); and

(c) where each key activity listed in the Performance Action Plan is not implemented according to the milestone date included in the Performance Action Plan, a Deduction of $300 applies. A further $300 Deduction applies for each key activity milestone still not implemented every 14 calendar days following the first milestone date, index-linked using the Escalation Factor calculated in accordance with Section 4 (Escalation Factor) of this Exhibit 4B (Availability Payment Mechanism).

6.2.2 Missed submittals of Energy Performance Action Plans or failure to implement particular actions within the Energy Performance Action Plan are to be considered separate and distinct Service Failure Deductions as described below;

(a) where a complete Energy Performance Action Plan is not submitted within the due date as identified in Section 4.1.1 of Exhibit 12 Energy Management], an Energy Performance Action Plan deduction of $500 applies as of the first missed due date, index-linked using the Escalation Factor calculated in accordance with Section 4 (Escalation Factor) of this Exhibit 4B (Availability Payment Mechanism);

(b) for every 7 days following the first due date where that Energy Performance Action Plan is not submitted, a further Deduction of $500 applies, index-linked using the Escalation Factor calculated in accordance with Section 4 (Escalation Factor) of this Exhibit 4B (Availability Payment Mechanism); and

(c) where each key activity listed in the Energy Performance Action Plan is not implemented according to the milestone date included in the Energy Performance Action Plan, a Deduction of $2,000 applies. A further $2,000 Deduction applies for each key activity milestone still not implemented every 14 days following the first milestone date, index-linked using the Escalation Factor calculated in accordance with Section 4 (Escalation Factor) of this Exhibit 4B (Availability Payment Mechanism).

6.3 Repeat Service Failures and Repeat Failure Ratchet

6.3.1 Following the occurrence of a Service Failure Deduction, Principal Project Company shall be allowed an additional Rectification Time equivalent to the original Rectification Time, provided that:

(a) there shall be no Rectification Time (where applicable) for a second Service Failure of the same Performance Measurement which occurs within the same Day; and

(b) where three or more Service Failures occur with respect to the same Performance Measurement in any rolling period of 10 days, then a repeat failure ratchet of 150% of the applicable Deduction ("Repeat Failure Rachet") shall be applied to the third and every subsequent Service Failure Deduction for each Service Failure related to the same Performance Measure in such 10-day period.

6.3.2 The provisions of this Section 4.3 (Repeat Service Failures and Repeat Failure Ratchet) of Exhibit 4B (Availability Payment Mechanism) shall not apply to Service Failures in cases where, if the Response or Rectification is not carried out within the Response Time or the Rectification Time, as applicable, the City's Authorized Representative notifies Principal Project Company's Authorized Representative that the City no longer requires the relevant IFM Services, in which cases no Deduction shall be applied.

6.3.3 Where a Service Failure has no Response Time or Rectification Time, a Service Failure shall occur upon the occurrence of the IFM Failure Event in question.

6.3.4 Following the occurrence of a Service Failure Deduction, Principal Project Company shall be allowed additional Rectification Time and a Service Failure Deduction shall apply in accordance with this Section 6 (Service Failure Deductions) of Exhibit 4B (Availability Payment Mechanism) and shall repeat as follows:

(a) every 24 hours until rectified for Major Service Failures;

(b) every 72 hours for Medium Service Failures; or

(c) every 7 calendar days for Minor Service Failures.

7 DEDUCTIONS FOR AVAILABILITY FAILURES

7.1 Unavailability Deductions

7.1.1 Unavailability Deductions shall be applied in accordance with Section 15.2 of the Agreement and this Exhibit 4B.

7.1.2 Subject to this Exhibit 4B (Availability Payment Mechanism), the amount to be deducted from the Maximum Availability Payment in respect of any Availability Failure shall be the aggregate of the Availability Failure Deduction amounts for all Functional Components

made Unavailable as a result of the Availability Failure, calculated based on the duration the Functional Component is Unavailable.

7.1.3 Availability Failure Deductions will be calculated in accordance with the conditions and deduction thresholds included in Section 7 (Deductions for Availability Failures) of Exhibit 4B (Availability Payment Mechanisms) and Appendix A (Response and Rectification Times) to this Exhibit 4B (Availability Payment Mechanism) and will be indexed using the Escalation Factor calculated in accordance with Section 4 (Escalation Factor) of this Exhibit 4B (Availability Payment Mechanism).

7.1.4 If any of the Functional Unit are rendered Unavailable but the City continues to use it (or any part thereof), the Availability Failure Deduction for that Functional Unit will be reduced by 50% and the IFM Noncompliance Points will be reduced by 50%. Principal Project Company shall be obliged to continue to provide IFM Services in respect of that Functional Part such that Performance Requirements are normally provided as part of day to day functioning, acting reasonably, and any failure to provide the same may, subject to the provisions of this Exhibit 4B (Availability Payment Mechanism), give rise to a Service Failure.

7.2 Service Failure Becoming an Availability Failure

A Service Failure may become or lead to an Availability Failure if circumstances change, or the Service Failure continues. In such a circumstance, if a Functional Part becomes Unavailable, the Service Failure will have ended (without prejudice to the Service Failure Deductions that have accrued to that point) and an Availability Failure will have occurred.

7.3 Effect of Availability Failures on Service Failures

7.3.1 Until an Availability Failure has been Rectified, the Deduction in respect of the Availability Failure shall be the only Deduction available to be made in respect of any Functional Part in which the Availability Failure has occurred. No Service Failure Deduction shall be made for any Service Failure that occurs subsequent to the Availability Failure which may occur in the relevant Functional Part during the period until Rectification has been completed.

7.4 Total Unavailability

7.4.1 Total Unavailability means, that all of the following events have occurred at any given time:

(a) 40% or greater of all Revenue Vehicle Parking Spaces are Unavailable;

(b) 100% of the Functional Components associated with the Dispatch Function are Unavailable: and

(c) the Meet and Greet is Unavailable.

7.4.2 In the event of Total Unavailability, all Functional Units in the Infrastructure Facility shall be deemed to be Unavailable for purposes of calculating deductions associated with Availability Failures.

7.5 Repeat Availability Failures and Repeat Failure Rachet

7.5.1 Following the occurrence of an Availability Failure and the relevant Deduction has been applied, Principal Project Company shall be allowed an additional Rectification Time equivalent to the initial Rectification Time, provided that;

(a) there shall be no Rectification Time for a second Availability Failure which occurs within the same Day, of the same type of Availability Failure and which relates to the same Functional Component or to a different Functional Component within the same Functional Unit and there is reason to believe that the root cause of each Availability Failure is the same; and

(b) where three or more Availability Failures occur with respect to the same type of Availability Failure related to the same Functional Part in any rolling period of 20 days, then a Repeat Failure Ratchet of 150% of the applicable Availability Failure shall be applied to the third and every subsequent Availability Failure Deduction for each Availability Failure related to the same Availability Failures and Functional Part in such 20-day period.

7.6 Unavailable Component Tiers and Thresholds

7.6.1 For Revenue Vehicle Parking Spaces and Non-Revenue Vehicle Parking Spaces, City shall be entitled to make Deductions with respect to the number of Unavailable Functional Components as a percentage of the Functional Unit, in a tiering system as per Table 2 (Unavailable Tiers for Revenue / Non-Revenue Parking) below.

Table 2 – Unavailable Tiers for Revenue/ Non-Revenue Vehicle Parking Spaces

Unavailable % of Functional Unit	Deductions
0-9% of Functional Unit	Deductions to be applied based on number of Unavailable Functional Components
10- 19% of Functional Unit	20% of Functional Unit
20 – 29% of Functional Unit	40% of Functional Unit
30 – 39% of Functional Unit	60% of Functional Unit
40 – 49% of Functional Unit	80% of Functional Unit
50- 100% of Functional Unit	100% of Functional Unit

7.6.2 For the Functional Units included in Table 3 (Unavailable Component Thresholds) below, if any combination of Availability Failures occur that render a number of Functional Components Unavailable that exceeds the Unavailable Component Threshold for that Functional Unit, all of the Functional Components in that Functional Unit will be deemed Unavailable until the number of Unavailable Functional Components falls below the Unavailable Component Threshold.

Table 3– Unavailable Component Thresholds

Item	Functional Unit Reference	Unavailable Unit Threshold
Elevators at grid A7-B8 (Levels B1, Ground, Mezzanine)	AL-016A	1
60' Bus Repair Bays	GL-011	4
60' Preventative Maintenance Bays	GL-012	2

7.7 Rectification

7.7.1 No Availability Failure shall occur if Principal Project Company successfully carries out the Rectification within the specified Rectification Time and in such circumstances no Deduction shall be made and no Noncompliance Points shall be assigned.

7.7.2 When carrying out a Rectification, or a Temporary Repair pursuant to Section 9 (Temporary Repairs) of this Exhibit 4B (Availability Payment Mechanism), Principal Project Company shall act in accordance with Applicable Law and Standards and Good Industry Practice. Failure to do so shall be deemed to be a new Minor Service Failure, unless the failure constitutes a breach of applicable Law, in which case a Major Service Failure will be deemed to have occurred.

8 IFM NONCOMPLIANCE POINTS SYSTEM

8.1 IFM Noncompliance Points Application

8.1.1 The provisions included in Sections 6 (Deductions for Availability Failures) of this Exhibit 4B (Availability Payment Mechanism) notwithstanding, IFM Noncompliance Points shall accrue to relevant IFM Failure Event in accordance with this Section 8.1, Section 15.4 of the Agreement and Appendix C (IFM Noncompliance Points) to this Exhibit 4B (Payment Mechanism).

8.1.2 In the case of failure in more than one Functional Component, the number of IFM Noncompliance Points to be awarded in respect of that the IFM Failure Event shall be determined by the number of Functional Components affected in accordance with conditions and thresholds included in Appendix C (IFM Noncompliance Points) to this Exhibit 4B (Payment Mechanism).

8.1.3 The maximum aggregate IFM Noncompliance Points that the City can award in any one Response Time or Rectification Time shall be 250 IFM Noncompliance Points, regardless of the number of Functional Components impacted by such IFM Failure Event.

8.1.4 Principal Project Company will report on all accumulated IFM Noncompliance Points in the Performance Monitoring Report, including a report on the accumulated IFM Noncompliance Points per Functional Part, an explanation of the reasons for the accumulation, total IFM Noncompliance Points for the previous quarters and Contract Year and the total cumulative IFM Noncompliance Points for the period since the commencement of the Payment Commencement Date.

8.1.5 The cumulative points record over the IFM Period will be used for purposes of tracking thresholds leading to Performance Notices, Increased Oversight, cure plans and assessing Persistent PPC Default and other related actions as defined in Article 15 (Deductions and Noncompliance Points) of the Agreement.

9 TEMPORARY REPAIRS

9.1 If Principal Project Company informs the City that it is unable to Rectify an IFM Failure Event within the specified Rectification Time due to the need for specialized materials or personnel that are not, and cannot reasonably be expected to be, immediately available at the Infrastructure Facility but that a Temporary Repair can be effected:

(a) the City shall permit Principal Project Company to carry out the Temporary Repair proposed by Principal Project Company unless the City, acting reasonably, considers that, if the Temporary Repair proposed by Principal Project Company is carried out, the use of the relevant Functional Part will not be in accordance with Good Industry Practice or applicable Laws; and

(b) where a Temporary Repair is permitted pursuant to Section 8.1(a) , a deadline by which a Permanent Repair must be made shall be agreed to by the Parties, each acting reasonably, giving Principal Project Company a reasonable period within which to carry out the Permanent Repair (the "**Permanent Repair Deadline**").

9.2 During any period beginning at the time when a Temporary Repair is permitted and ending at the earlier of:

(a) the time at which a Permanent Repair is successfully completed; and

(b) the Permanent Repair Deadline,

the Availability Conditions shall be replaced by the Minimum Agreed Availability Conditions, to be agreed between the City's Authorized Representative and the Principal Project Company's Authorized Representative, each acting reasonably, for the purposes of assessing if the relevant Functional Part is Unavailable.

9.3 If the Response Time (where applicable) is met, and Temporary Repair is effected within the specified Rectification Time and the Permanent Repair is effected by no later than the Permanent Repair Deadline, no Availability Failure or Service Failure occur, and no Deduction may be made, in respect of the IFM Failure Event.

9.4 If the Temporary Repair is not effected within the specified Rectification Time, a Service Failure or, as the case may be, Availability Failure, shall be deemed to occur and the following provisions shall apply:

(a) there shall be a further period in which to effect the Temporary Repair beginning at the expiry of the Rectification Time and of a duration equal to that of the original Rectification Time;

(b) Principal Project Company shall ensure that the Temporary Repair is successfully carried out prior to the expiry of the additional period referred to in Section 9.4(a);

(c) if the Temporary Repair is not successfully carried out prior to the expiry of the additional period referred to in Section 8.4(a), a further Service Failure or, as the case may be, Availability Failure shall occur and a further additional period shall commence; and

(d) if the Temporary Repair is not successfully carried out prior to the Permanent Repair Deadline, and no Permanent Repair has been successfully carried out, the right for Principal Project Company to carry out a Temporary Repair pursuant to this Section 9 (Temporary Repairs) of Exhibit 4B (Availability Payment Mechanism) shall cease and Sections 6 (Deductions for Service Failures) and 7 (Deductions for Availability Failures) of this Exhibit 4B (Availability Payment Mechanism) shall apply.

10 AMENDMENT OF IFM PERIOD PERFORMANCE MEASURES TABLE

Section 15.9 (Amendment of IFM Period Performance Measurement Table) of the Agreement shall apply to any amendment of the Performance Measures Table.

11 FAILURE BY PRINCIPAL PROJECT COMPANY TO MONITOR OR REPORT

11.1 The Performance Monitoring Reports produced by Principal Project Company for any month shall be the source of factual information regarding the performance of the IFM Services for the relevant Contract Quarter for the purposes of reporting the occurrence of all Availability Failures and Service Failures, and the calculation of resulting Deductions and Noncompliance Points in accordance with the provisions of this Exhibit 4B (Availability Payment Mechanism).

11.2 Principal Project Company shall also report the aggregate Deductions arising as a result of Availability Failures and Service Failures in accordance with the categories and rolling Contract Quarter periods identified for the purposes of measuring the performance of the IFM Services in terms of the amount of Deductions incurred. If there is any error or omission in the Performance Monitoring Report for any Contract Month, Principal Project Company and the City shall agree to an amendment to the Performance Monitoring Report or, failing agreement within 10 days of notification of the error or omission, which shall be made not more than 2 calendar months following the submission of the applicable Performance Monitoring Report to the City, except in the "relevant circumstances" referred to in this Section 10 (Failure by Principal Project Company to Monitor or Report) either Party may refer the matter to the Contract Dispute Procedures.

11.3 If Principal Project Company fails to monitor or accurately report an IFM Failure Event (Service Failure or Availability Failure) then, without prejudice to the Deduction to be made in respect of the relevant Service Failure or Availability Failure (if any), the failure to monitor or report the IFM Failure Event shall be deemed to be a new Minor Service Failure, unless the "relevant circumstances" set out below apply, in which case it shall be deemed to be a new Major Service Failure.

11.4 In the event that any inspection or investigation by the City of records made available pursuant to the Agreement reveals any further matters of the type referred to in this Section 10 (Failure by Principal Project Company to Monitor or Report), those matters

shall be dealt with in accordance with Section 9 (Amendment of IFM Period Performance Measures Table) of this Exhibit 4B (Availability Payment Mechanism), as appropriate, and the City shall, in addition, be entitled to make Deductions in respect of any Service Failures or Availability Failures in the manner prescribed in Sections 6 (Service Failure Deductions), 7 (Deductions for Availability Failures) and 8 (IFM Noncompliance Points System) of this Exhibit 4B (Availability Payment Mechanism). Any such Deductions shall be made from the Maximum Quarterly Availability Payment payable in respect of the Contract Quarter in which the relevant matters were revealed by the City's investigations.

11.5 For the purposes of this Section 11 (Failure by Principal Project Company to Monitor or Report) of Exhibit 4B (Availability Payment Mechanism), the "relevant circumstances" are:

(a) fraudulent action or inaction;

(b) deliberate misrepresentation; or

(c) gross misconduct or incompetence in each case on the part of PPC-Related Entities

11.6 The provisions of this Section 11 (Failure by Principal Project Company to Monitor or Report) of Exhibit 4B (Availability Payment Mechanism)shall be without prejudice to any rights of the City pursuant to the relevant sections of the Agreement.

12 EXTENSION OF RESPONSE TIME OR RECTIFICATION TIME

12.1 Principal Project Company will be entitled to an extension of the duration of the Response Time or Rectification Time (as applicable) if Principal Project Company is unable to Respond to or Rectify a Service Failure or Availability Failure due to:

(a) a direction of the City's Authorized Representative to delay or reschedule the Response, or Rectification;

(b) Principal Project Company performing Scheduled Maintenance and Renewal Work;

(c) Principal Project Company not being able to access the applicable portion of the Project Site due to work performed by City or Other Contractors, but only to the extent and for the period that Principal Project Company's ability to Respond or Rectify the Noncompliance Event was directly and adversely affected; or

(d) a Relief Event, but only to the extent and for the period that Principal Project Company's ability to Respond to or Rectify the Service Failure or Availability Failure was directly and adversely affected, as determined by the City's Authorized Representative, acting in good faith.

APPENDIX A
RESPONSE AND RECTIFICATION TIMES

Service Failures and/or Availability Failures (unless specifically identified otherwise), will only occur upon the expiry of the following Response and Rectification Times in accordance with this Appendix A (Response and Rectification Times) of this Exhibit 4B (Availability Payment Mechanism) and the Performance Measurement Table.

RESPONSE AND RECTIFICATION TIMES

Table A1 – Service Failure Response and Rectification Times by Event Category

Category	Definition	Response Time	Rectification Time
Priority 1	Situations requiring immediate action to return the Infrastructure Facility to normal operations, stop accelerated deterioration, or correct a safety hazard that imminently threatens life or serious injury to public and/or City employees.	15 minutes	4 hours (for all Functional Component Rank categories)
Priority 2	Situations that will imminently become critical, if not corrected expeditiously, includes intermittent interruptions and/or potential safety hazards.	The longer of 30 minutes or prior to the resumption of core work hours	The longer of 8 hours or prior to the resumption of core work hours (for all FunctionalComponent Rank categories)
Priority 3	Conditions requiring appropriate attention to preclude deterioration or potential downtime and associated damage or higher costs if deferred further. Items representing a practical improvement to existing conditions. These items are not required for the most basic functions of the Infrastructure Facility but will improve the overall usability and accessibility and/or reduce long-term maintenance.	The longer of 2 hours or prior to the resumption of core work hours	7 calendar days

Table A2 – Availability Failure Response and Rectification Times per Functional Unit Rank Category

Functional Component Rank Category	Response Time	Rectification Time
5	15 minutes	4 hours
4	15 minutes	8 hours
3	The longer of 30 minutes or prior to the resumption of core work hours	12 hours
2	The longer of 30 minutes or prior to the resumption of core work hours	24 hours
1	The longer of 60 minutes or prior to the resumption of core work hours	48 hours

APPENDIX B

FUNCTIONAL AREAS, FUNCTIONAL UNITS, FUNCTIONAL UNIT RANKINGS, CORE HOURS, AND DEDUCTION AMOUNTS FOR AVAILABILITY FAILURES

Table B1: Deduction Amounts for Availability Failures – Facility

Functional Unit Rank Category	Deduction Amount (per Rectification Time period)
5	$2,500, index-linked using the Escalation Factor calculated in accordance with Section 2 (Escalation Factor) of this Exhibit 4B (Availability Payment Mechanism)
4	$1,000, index-linked using the Escalation Factor calculated in accordance with Section 2 (Escalation Factor)of this Exhibit 4B (Availability Payment Mechanism)
3	$550, index-linked using the Escalation Factor calculated in accordance with Section 2 (Escalation Factor) of this Exhibit 4B (Availability Payment Mechanism)
2	$200, index-linked using the Escalation Factor calculated in accordance with Section 2 (Escalation Factor) of this Exhibit 4B (Availability Payment Mechanism)
1	$90, index-linked using the Escalation Factor calculated in accordance with Section 2 (Escalation Factor) of this Exhibit 4B (Availability Payment Mechanism)

Table B2: Space Types and Core Hours

Space Type	Core Hours
Maintenance and Transit Spaces (“Transit/ Maintenance”)	4am – 10pm, Monday to Sunday
Office/ Admin and Training Spaces (“Training/ Administration”)	8am – 5pm, Monday to Friday

Functional Units in Facility

The following tables presented in this Appendix B identify the Functional Components and Functional Units in the Infrastructure Facility, and Functional Component Rank Category. The Functional Components and Functional Units have been identified by floor level in the Infrastructure Facility and the functions carried out in that part of the Infrastructure Facility.

Table B3: Functional Components and Functional Units for facilities on multiple levels

Level	Space	Space Type	Functional Unit	FU Reference	Functional Components	No. of Functional Components	Component Ref.	Rank
All Levels (Basement, Ground, Levels 2-4)	Parking	Transit/ Maintenance	Bus Parking (40' Buses)	AL-010	40' Bus Parking Bays	53	AL-010-1	4
			Bus Parking (60' Buses)	AL-011	60' Bus Parking Bays	160	AL-011-1	4
			Parking for Standard Non-Revenue Vehicles (staff)	AL-012	Std N-Rev Parking Bays	151	AL-012-1	2
			Parking for Large Non-Revenue Vehicles	AL-013	Large N-Rev Parking Bays	12	AL-013-1	2
	Bus Washing	Transit/ Maintenance	Bus Washer Function	AL-014	Bus Washer (Levels 3 & 4)	2	AL-014-1	4
	Building Spaces	Transit/ Maintenance	Stairs	AL-015	Stairs at grid A7-B8 (B1, Ground, Level 1)	1	AL-015-1	5
					Stair at grid A11-B12 (Ground and Level 1)	12	AL-015-2	5
					Stairs at grid D12-E13 (Ground, L1-4) - common stairs	1	AL-015-3	5
					Stairs at grid B1-B2 (L1)	1	AL-015-4	5

					Stairs at grid H11-J12 (Ground, L1-4)	1	AL-015-5	5
					Stairs at grid G1-H2 (Ground, L1)	1	AL-015-6	5
			Elevators at grid A7-B8 (Levels B1, Ground, Mezzanine)	AL-016	Elevators	3	AL-016-1	4
			Other Elevators for BYC	AL-017	Elevator at grid C12-D13 (Ground, Mezzanine)	1	AL-017-1	4
					Elevator at grid H11 (Ground, Mezzanine, L2 and 3)	1	AL-017-2	4
			Distribution Chases, Shafts, or Raceways, vertical or horizontal.	AL-018	Distribution Chases, Shafts, or Raceways, vertical or horizontal.	1	AL-018-1	3
			Common-Use/Exterior Spaces	AL-019	All public spaces such as sidewalks, landscaping, etc.	1	AL-019-1	1

Table B4: Functional Components and Functional Units for Basement Level

Level	Space	Space Type	Functional Unit	FU Reference	Functional Components	No. of Functional Components	Component Ref.	Rank
BYC Basement	Parking	Transit/ Maintenance	Basement Parking Spaces	B1-010	Parking for Car Share	5	B1-010-1	2
					FMO Parking	3	B1-010-2	2
					Bicycle parking	10	B1-010-3	2
	Service & Clean	Transit/ Maintenance	Water Reclamation	B1-011	Water Reclamation	2	B1-011-1	2
	FMO		Office spaces	B1-012	Site Manager	1	B1-012-1	2

		Transit/ Maintenance			Admin Open Office Area	1	B1-012-2	2
			Janitor	B1-013	Janitor Closet 1	1	B1-013-1	2
					Janitor Closet 2	1	B1-013-2	2
			IT & Storage	B1-014	IT Room	1	B1-014-1	3
					Tech Shop	1	B1-014-2	2
					Office Storage	1	B1-014-3	3
					Spare Parts Storage	1	B1-014-4	3
			Shared Staff spaces	B1-015	Lunch and Break Room	1	B1-015-1	3
					Male Washroom and Showers	1	B1-015-2	3
					Female Washroom and Showers	1	B1-015-3	3
					FM Locker Room	1	B1-015-4	3
					Unisex Washroom	1	B1-015-5	3
	Shared Facilities	Transit/ Maintenance	Electrical-mechanical Facilities	B1-016	Main Point of Entry (MPOE)	1	B1-016-1	3
					BYC Fire Pump	1	B1-016-2	3
					Electrical Room	1	B1-016-3	3
					Mechanical Room	1	B1-016-4	3
			Waste Facilities	B1-017	Trash/Recycling/Compost Compactor	1	B1-017-1	3
					Hazardous Waste	1	B1-017-2	2
			Storage	B1-018	Diesel Storage Room	1	B1-018-1	1
	HCC/BYC MEP	Transit/ Maintenance	HCC/BYC MEP Facilities	B1-019	HCC Thermal Storage Pump Room	1	B1-019-1	3
					AFF Electrical Room	1	B1-019-2	3

					AFF Emergency Electrical Room	1	B1-019-3	5
					WRK Electrical Room	1	B1-019-4	3
					WRK Emergency Electrical Room	1	B1-019-5	5
					DCW Booster Room	1	B1-019-6	3
					Grey Water Tank	1	B1-019-7	3
					Rain Water Tank	1	B1-019-8	3
					Processing Plant	1	B1-019-9	5
	Unassigned	Training/ Administration	Unassigned Spaces	B1-020	Storage	3	B1-020-1	3

Table B5: Functional Components and Units for Ground Level

Level	Space	Space Type	Functional Unit	FU Reference	Functional Components	No. of Functional Components	Component Ref.	Rank (1-5)
BYC Level Ground	Bays & Shops	Transit/ Maintenance	Office Space	GL-010	Running Repair Supervisor	3	LG-010-1	2
					Control Room Clerk	2	LG-010-2	2
					Floor Supervisor	2	LG-010-3	2
					Preventative Maintenance Supervisor	2	LG-010-4	2
					Electronic Supervisor	1	LG-010-5	2
			Repair Bays	GL-011	60' Bus Repair Bays	10	LG-011-1	4

			Preventive Maintenance	GL-012	60' Preventative Maintenance Bays	5	LG-012-1	4
			Lube and Compressor Rooms	GL-013	Lube Room	1	LG-013-1	4
					Compressor Room	1	LG-013-2	4
			Tire Bay, Shop and Storage	GL-014	60' Bus Tire Bay	1	LG-014-1	4
					Tire Shop	1	LG-014-2	4
					Tire Storage	1	LG-014-3	4
			Body Repair	GL-015	60' Bus Minor Body Repair	1	LG-015-1	4
					60' Bus Chassis Wash	1	LG-015-2	4
					Minor Body Shop	1	LG-015-3	4
			Electronics Shop	GL-016	Electronic Shop Workstations	1	LG-016-1	4
					Electronic Bench Shop	1	LG-016-2	4
					Data/Comm Room	1	LG-016-3	5
			Common Work Area & Tools Storage	GL-017	Common Work Area	2	LG-017-1	3
					Portable Equipment Storage	2	LG-017-2	3
					Tool Box Storage	3	LG-017-3	3
					Tool Storage	1	LG-017-4	3
	Service & Clean	Transit/ Maintenance	Service & Clean	GL-018	Cleaning Equipment Storage	1	LG-018-1	1
	Ground Level Parts Spaces	Transit/ Maintenance	Staff Spaces	GL-019	Parts Supervisor	1	LG-019-1	2
					Parts Lockers	1	LG-019-2	3
					Break Room	1	LG-019-3	3
					Gender Neutral Restroom	1	LG-019-4	3

			Parts Shop and Storage	GL-020	Parts Storage	1	LG-020-1	3
					Parts Shopkeeper	5	LG-020-2	2
					Parts Window	1	LG-020-3	3
					Receiving Office	1	LG-020-4	3
	Maintenance	Transit/ Maintenance	Staff Work Spaces	GL-021	Superintendent	1	LG-021-1	2
					Assistant Superintendent	1	LG-021-2	2
					Senior Controller	1	LG-021-3	2
					Administrative Assistant	2	LG-021-4	2
					Hoteling - Workstation	4	LG-021-5	1
			Shop, Records and Resources	GL-022	Support Shop	1	LG-022-1	2
					Copy/Supply	1	LG-022-2	2
					Records Storage	1	LG-022-3	2
					Archive Record Storage	1	LG-022-4	2
					Library/Online Resources	1	LG-022-5	2
					Data/Comm Room	1	LG-022-6	5
			Staff Common Spaces	GL-023	Kitchenette/Vending	1	LG-023-1	3
					Break Room	1	LG-023-2	3
					Training Room	1	LG-023-3	3
					Uniform Alcove	1	LG-023-4	3
					Men's Restroom/Shower	1	LG-023-5	3
					Men's Locker	1	LG-023-6	3
					Women's Restroom/Shower	1	LG-023-7	3

					Women's Locker	1	LG-023-8	3
					Gender Neutral Accessible Locker/Shower/Restroom	1	LG-023-9	3
					Custodial	1	LG-023-10	3
	Operations	Transit/ Maintenance	Yard Starter Office	GL-024	Yard Starter Office	1	LG-024-1	5
	Shared Offices	Transit/ Maintenance	Shared Offices	GL-025	Revenue Office	1	LG-025-1	5
					Meet and Greet	1	LG-025-2	5
	Transit Services (MRO)	Transit/ Maintenance	Transit Operations/ Equipment Storage/ Component Rebuilding Assembly	GL-026	Transit Operations/ Equipment Storage/ Component Rebuilding Assembly	1	LG-026-1	3
	Training	Training/ Administration	Training	GL-027	Data/Comm Room	1	LG-027-1	5
	HCC/BYC MEP	Transit/ Maintenance	HCC/BYC MEP Facilities	GL-028	Mechanical Room	1	LG-028-1	3
					Main Electrical Room	1	LG-028-2	3
					Electrical Room for Chargers	1	LG-028-3	3
	Unassigned	Training/ Administration	Unassigned Spaces	GL-029	General Shop Processing Equipment	1	LG-029-1	2
					Storage	2	LG-029-2	2

Table B6: Functional Components and Functional Units for Level 2

Level	Space	Space Type	Functional Unit	FU Reference	Functional Components	No. of Functional Components	Component Ref.	Rank

BYC Level 2	Operations	Transit/ Maintenance	Staff Work Spaces	L2-010	Superintendent	1	L2-010-1	2
					Assistant Superintendent	2	L2-010-2	2
					Operations Supervisor	1	L2-010-3	2
					Trainer	1	L2-010-4	2
					Administrative Assistant	2	L2-010-5	2
					Hoteling - Workstation	4	L2-010-6	1
					Union Office	1	L2-010-7	2
		Transit/ Maintenance	Dispatch Function	L2-011	Receiver	1	L2-011-1	5
					Dispatch	2	L2-011-2	5
					Operator Check-in/Dispatch/Receiver	1	L2-011-3	5
		Transit/ Maintenance	Records and Comms	L2-012	Copy/Supply	1	L2-012-1	2
					Records Storage	1	L2-012-2	2
					Data/Comm Room	1	L2-012-3	5
			Staff Common Spaces	L2-013	Uniform Storage	1	L2-013-1	3
					Kitchenette/Vending	1	L2-013-2	3
					Break Room	1	L2-013-3	3
					Lockers	1	L2-013-4	3
					Lockers Changing Area	2	L2-013-5	3
					Recreation Area	1	L2-013-6	3
					TV Room	1	L2-013-7	3
					Quiet Room	1	L2-013-8	2

					Men's Restroom/Shower	1	L2-013-9	3
					Women's Restroom/Shower	1	L2-013-10	3
					Gender Neutral Accessible Locker/Shower/Restroom	1	L2-013-11	3
					Custodial	2	L2-013-12	2
					SFMTA Open Space	1	L2-013-13	2
	Transit Services (MRO)	Transit/ Maintenance	Staff Work Spaces	L2-014	Operations Manager	2	L2-014-1	2
					Transit Manager II	1	L2-014-2	2
					Operations Specialist	1	L2-014-3	2
					MRO, Street Operations	10	L2-014-4	2
					Junior Management Assistant	4	L2-014-5	2
		Training/ Administration	Conference, Training, Comms	L2-015	Conference Room	1	L2-015-1	4
					Training Room	1	L2-015-2	4
					Data/Comm Room	1	L2-015-3	5
			Staff Common Spaces	L2-016	Break Room	1	L2-016-1	3
					Lockers	1	L2-016-2	3
					Locker Changing Area	5	L2-016-3	3
					Men's Restroom/Shower	1	L2-016-4	3
					Women's Restroom/Shower	1	L2-016-5	3
					Gender Neutral Accessible Locker/Shower/Restroom	1	L2-016-6	3
					Custodial	1	L2-016-7	2

	Shared Facilities	Training/ Administration	Lobby, Conference, Comms	L2-017	Lobby	2	L2-017-1	3
					Medium Conference Room	2	L2-017-2	3
					Large Conference/Small Training	2	L2-017-3	3
		Transit/ Maintenance	Staff Work Spaces, Storage	L2-018	Facilities Stationary Engineer	2	L2-018-1	2
					Transit Maintenance Engineer	2	L2-018-2	2
					Security Office	1	L2-018-3	2
		Transit/ Maintenance	Storage, Comm, MEP	L2-019	Building Maintenance Storage	1	L2-019-1	2
					Data/Comm Room	1	L2-019-2	5
					Main Telecommunication Room	1	L2-019-3	3
					Mechanical Room Allowance	4	L2-019-4	2
					Chiller Room	1	L2-019-5	4
					Boiler Room	1	L2-019-6	4
					HVAC Room	1	L2-019-7	4
			Common Rest/Leisure Spaces	L2-020	Fitness	1	L2-020-1	3
					Gender Neutral Accessible Restroom	1	L2-020-2	3
					Community Room	1	L2-020-3	3
					Lactation Room	1	L2-020-4	3
	Training	Training/ Administration	Staff Work Spaces	L2-021	Reception	1	L2-021-1	2
					Manager	1	L2-021-2	2
					Superintendent	1	L2-021-3	2
					Assistant Superintendent	4	L2-021-4	2

					Supervisors	2	L2-021-5	2
					Clerical Staff	3	L2-021-6	2
					Team Leader	6	L2-021-7	2
					CAT Training	2	L2-021-8	2
					Instructors	15	L2-021-9	2
			Training Spaces	L2-022	IT Office	1	L2-022-1	3
					Classrooms (A-B)	2	L2-022-2	3
					Classrooms (C-D)	2	L2-022-3	3
					Conference Rooms (A&B)	2	L2-022-4	3
					Simulator Rooms	3	L2-022-5	3
					Computer Lab	1	L2-022-6	3
					Handouts Storage	1	L2-022-7	3
					Training Aid Storage	1	L2-022-8	3
			Storage	L2-023	Records Storage	1	L2-023-1	2
					Records Archive Storage	1	L2-023-2	2
					Copy/Supply	1	L2-023-3	2
					Uniform Storage	1	L2-023-4	2
			Staff Common Spaces	L2-024	Kitchenette/Vending	1	L2-024-1	2
					Break Room	1	L2-024-2	3
					Operator Locker	1	L2-024-3	3
					Instructor Locker	1	L2-024-4	3
					Lactation Room	1	L2-024-5	3

					Functional Components	No. of Functional Components	Component Ref.	Rank
					Men's Restroom/Shower	1	L2-024-6	3
					Women's Restroom/Shower	1	L2-024-7	3
					Gender Neutral Accessible Locker/Shower/Restroom	1	L2-024-8	3
					Custodial	2	L2-024-9	2
	HCC/BYC MEP	Transit/ Maintenance	Electrical Room for Chargers	L2-025	Electrical Room for Chargers	2	L2-025-1	3
	Unassigned	Training/ Administration	Storage	L2-026	Storage	1	L2-025-2	3

Table B7: Functional Components and Functional Units for Levels 3 and 4

Level	Space	Space Type	Functional Unit	FU Reference	Functional Components	No. of Functional Components	Component Ref.	Rank
BYC Level 3	Service & Clean Function	Transit/ Maintenance	Service & Clean	L3-010	Service Supervisor Office	1	L3-010-1	3
					Service Position	2	L3-010-2	3
					Cleaning Equipment Storage	3	L3-010-3	3
	Maintenance	Transit/ Maintenance	Maintenance	L3-011	CTRL RM	1	L3-011-1	3
	Shared	Training/ Administration	Restrooms	L3-012	Gender Neutral Accessible Restroom	2	L3-012-1	1
	Unassigned	Training/ Administration	Storage, Janitor	L3-013	Wash Equipment Room	1	L3-013-1	1
					Janitor Closet	1	L3-013-2	1
BYC Level 4	Service & Clean Function	Transit/ Maintenance	Service & Clean	L4-010	Service Supervisor Office	1	L4-010-1	3
					Service Position	1	L4-010-2	3
					Cleaning Equipment Storage	3	L4-010-3	3

	Shared	Training/ Administration	Restrooms	L4-011	Gender Neutral Accessible Restroom	2	L4-011-1	1
	Unassigned	Training/ Administration	Storage, Janitor	L4-012	Wash Equipment Room	1	L4-012-1	1
					Janitor Closet	1	L4-012-2	1

APPENDIX C

IFM NONCOMPLIANCE POINTS

IFM Noncompliance Points will be assessed based on the following categorization for IFM Failure Events in accordance with this Exhibit 4 and the Performance Measurement Table.

Table C1: IFM Noncompliance Points Table for Service Failures

Service Failure Level	Noncompliance Points	Recurrence Period
MAJOR	10	As per 'FREQ' column in Performance Measurement Table in accordance with relevant Performance Measure
MED	5	As per 'FREQ' column in Performance Measurement Table in accordance with relevant Performance Measure
MINOR	1	As per 'FREQ' column in Performance Measurement Table in accordance with relevant Performance Measure

Table C2: IFM Noncompliance Points Table for Availability Failures

Functional Component Rank Category	Noncompliance Points	Recurrence Period
5	10	4 hours
4	10	8 hours
3	5	12 hours
2	5	24 hours
1	1	48 hours

APPENDIX D

PAYMENT SCHEDULE

[To be inserted based on Financial Proosal]

EXHIBIT 5

FINANCE DOCUMENTS

Exhibit 5A: List of Initial Financing Documents

Exhibit 5B: Form of Direct Agreement

Exhibit 5C: Calculation of Refinancing Gain

Exhibit 5D: Form of Opinion from City's Legal Counsel

Exhibit 5E: Form of Opinion from Principal Project Company's Legal Counsel

Exhibit 5F: Base Capital MaxAP Adjustment for Base Interest Rate Fluctuation and Credit Spread Risk Mitigation

Exhibit 5G: Financing Document Terms

EXHIBIT 5A

LIST OF INITIAL FINANCING DOCUMENTS

PART A: INITIAL FINANCING AGREEMENTS

PART B: INITIAL SECURITY DOCUMENTS

EXHIBIT 5B

FORM OF DIRECT AGREEMENT

THIS DIRECT AGREEMENT dated as of [_____], 2025 ("**Direct Agreement**") among the City and County of San Francisco ("**City**"), a municipal corporation, acting by and through the San Francisco Municipal Transportation Agency ("**SFMTA**"), [________________________] ("**Principal Project Company** or **PPC**"), a [_______________________] and [__________], as trustee or collateral agent (in such capacity, together with its successors in such capacity, the "**Collateral Agent**") for the Lenders (as defined in the IF DBFOM Agreement).

WHEREAS

(A) On November 2, 2022, City and Potrero Neighborhood Collective LLC, a limited liability company organized under the laws of the State of Delaware, entered into a Predevelopment Agreement for the Potrero Yard Modernization Project (the "**Predevelopment Agreement**"), which is comprised of a transit operations component ("**Bus Yard Component**"), a mixed-income housing and commercial component ("**Housing and Commercial Component**"), and the common infrastructure shared by the two components ("**Common Infrastructure**"),

(B) Following the processes described in the Predevelopment Agreement, City and Principal Project Company entered into an Infrastructure Facility Design-Build-Finance-Operate-Maintain Agreement dated as of [__________], 2025 (the "**IF DBFOM Agreement**") for the Bus Yard Component and Common Infrastructure (collectively, the "**Infrastructure Facility**"), and the integration of the Infrastructure Facility, and its interface with, the Housing and Commercial Component (together, the "**Project**"). The IF DBFOM Agreement contemplates Principal Project Company obtaining financing or Refinancing for the Project from third parties. The Housing and Commercial Component will be delivered by [__________], under separate agreements,

(C) In order to enable Principal Project Company to finance certain activities and certain obligations with respect to the Project, the Lenders have agreed to make available debt facilities, on the terms set out in the Financing Agreements and Security Documents, for the purpose of financing the Project, subject to provision of certain assurances from City regarding Lender's and Collateral Agent's rights in the event of an Event of Default or PPC Default,

(D) In reliance on such assurances, and on this Direct Agreement, Lenders have agreed to make available such financing or Refinancing facilities for the purpose of financing or Refinancing all or part of the Project, and

(E) The execution of this Direct Agreement by City in favor of the Collateral Agent is a condition precedent to such financing or Refinancing facilities being made available to Principal Project Company by Lender.

NOW, THEREFORE, in consideration of the foregoing and the mutual terms and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties, each of City, Principal Project Company and Collateral Agent hereby agree as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

Capitalized terms used but not otherwise defined in this Direct Agreement and references used but not construed in this Direct Agreement have the respective meanings and constructions assigned to such terms in the IF DBFOM Agreement. In addition, the following terms have the meanings specified below:

City has the meaning given to it in the Preamble.

City Notice has the meaning given to it in Section 5.1.

Collateral Agent has the meaning given to it in the Preamble.

Control Agreement means the Control Agreement, dated as of the date hereof, by and among Principal Project Company, City and Custodian, with respect to the Handback Requirements Reserve Account.

Cure Period means the period starting on the date of the receipt of the City Notice and ending on the earlier of:

(a) the Step-in Date; and

(b) 90 days after the expiration of any cure periods provided to Principal Project Company under the IF DBFOM Agreement, provided that:

(i) if the Collateral Agent provides a Notice of Intent to City within 30 days of the date of the receipt of the City Notice indicating that the Lenders' intend to proceed to cure the PPC Default(s) or to exercise step-in rights, then the Cure Period will end on the earlier of the Step-in Date and 120 days after the expiration of any cure periods provided to Principal Project Company under the IF DBFOM Agreement; and

(ii) if the Collateral Agent is prohibited from curing any non-monetary default or from substituting Principal Project Company with the Substituted Entity by any process, stay or injunction issued by any Governmental Entity or pursuant to any bankruptcy or insolvency proceeding or other similar proceeding involving Principal Project Company, then the time period specified herein for curing a default shall be extended for the period of such prohibition.

Custodian means [______], as custodian under the Control Agreement.

Default means an Event of Default as defined in any Financing Agreement or any event or circumstance specified in any Financing Agreement which would (with the expiration of a grace period, the giving of notice, the lapse of time, the making of any determination under the Financing Documents or any combination of any of the foregoing) be an Event of Default.

Direct Agreement has the meaning given to it in the Preamble.

Discharge Date means the date on which all of the obligations of Principal Project Company under the Financing Documents have been irrevocably discharged in full to the satisfaction of the Collateral Agent.

Event of Default means an Event of Default as defined in any Financing Agreement.

IF DBFOM Agreement has the meaning given to it in the Recitals.

Lender Notice has the meaning given to it in Section 7.1.

Notice of Intent has the meaning given to it in Section 5.4.

Predevelopment Agreement has the meaning given to it in the Recitals.

Principal Project Company or **PPC** has the meaning given to it in the Preamble.

Project has the meaning given to it in the Recitals.

Property means any right or interest in or to property of any kind whatsoever, whether real, personal or mixed and whether tangible or intangible.

Revival Date has the meaning given to it in Section 14.1.

Step-in Date has the meaning given to it in Section 10.1.

Step-in Notice has the meaning given to it in Section 9.1.

Step-in Party has the meaning given to it in Section 9.2.

Step-in Period means the period from and including the Step-in Date until the earliest of:

(a) the Substitution Effective Date;

(b) the Step-out Date;

(c) the date of termination of the IF DBFOM Agreement by City in accordance with this Direct Agreement and the IF DBFOM Agreement;

(d) the date of the expiration or early termination of the Term under the IF DBFOM Agreement;

(e) 12 calendar months after the Step-in Date; and

(f) the Long Stop Date,

provided, however, that if the Collateral Agent is prohibited from curing any nonmonetary default after the Step-in Date or from substituting Principal Project Company with the Substituted Entity by any process, stay or injunction issued by any Governmental Entity or pursuant to any bankruptcy or insolvency proceeding or other similar proceeding involving Principal Project Company, then the time periods specified herein for curing a default shall be extended for the period of such prohibition.

Step-out Date means the date upon which the notice period set forth in any Step-out Notice expires.

Step-out Notice has the meaning given to it in Section 11 (Step-out).

Substitute Accession Agreement means the agreement to be entered into by a Substituted Entity pursuant to Section 13.1.

Substituted Entity means any Person selected by Lenders and approved by City in accordance with Section 12 (Substitution Entities and Substitution Proposals) to perform all or a portion of Principal Project Company's obligations and succeed to all or a portion of Principal Project Company's rights under the Contract Documents.

Substitution Effective Date has the meaning given to it in Section 13.1.

Substitution Notice has the meaning given to it in Section 12.2.

1.2 Interpretation

Unless the context otherwise clearly requires:

(a) The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined;

(b) Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms;

(c) The words "include", "includes" and "including" shall be deemed to be followed by the phrase "without limitation";

(d) The word "will" shall be construed to have the same meaning and effect as the word "shall";

(e) Any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein);

(f) Any reference herein to any Person, or to any Person in a specified capacity, shall be construed to include such Person's successors and assigns or such Person's successors in such capacity, as the case may be;

(g) The words "herein", "hereof" and "hereunder", and words of similar import, shall be construed to refer to this Direct Agreement in its entirety and not to any particular provision hereof;

(h) All references herein to Sections and Schedules shall be construed to refer to Sections of and Schedules to this Direct Agreement. Any Schedules to this Direct Agreement are an integral part hereof. The provisions of this Direct Agreement

shall prevail over the provisions of any Schedules to the extent of any inconsistency;

(i) The headings used in this Direct Agreement are for convenience of reference only and are not to affect the construction of or to be taken into consideration in interpreting this Direct Agreement; and

(j) "Winding-up", "liquidation", "dissolution", "insolvency", "adjustment" or "reorganization" of a Person and references to the "liquidator", "assignee", "administrator", "receiver", "custodian", "conservator", "sequestrator" or "trustee" of a Person shall be construed so as to include any equivalent or analogous proceedings or, as the case may be, insolvency representatives or officers under the law of the jurisdiction in which such Person is incorporated, organized or constituted or any jurisdiction in which such Person or, as the case may be, insolvency representative or officer carries on business including the seeking of winding up, liquidation, dissolution, reorganization, administration, arrangement, adjustment or relief of debtors.

2. REPRESENTATIONS AND WARRANTIES

2.1 City represents and warrants that:

(a) ***Organization; Power and Authority***. City is a charter city and municipal corporation duly organized and validly existing under the Constitution of the State of California. City has full power, right and authority to execute and deliver this Direct Agreement and the IF DBFOM Agreement; and City has full power, right and authority to perform its obligations under the provisions hereof and thereof.

(b) ***Authorizations, Enforceability***. This Direct Agreement and the IF DBFOM Agreement have been duly authorized by City, and this Direct Agreement and the IF DBFOM Agreement constitute legal, valid and binding obligations of City, enforceable against City in accordance with their terms, except as such enforceability may be limited by (i) applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally and (ii) general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

(c) ***No Default***. As of the date of the execution of this Direct Agreement, there is no City Default. City is not aware of any PPC Default, and there exists no event or condition of which City has Actual Knowledge that would, with the giving of notice or passage of time or both, constitute such a PPC Default or City Default.

2.2 Principal Project Company represents and warrants that:

(a) ***Organization; Power and Authority***. Principal Project Company is a [__________], duly organized and validly existing under the laws of [__________] and has the requisite power and all required licenses to carry on its present and proposed activities, and has full power, right and authority to execute and deliver this Direct Agreement and the IF DBFOM Agreement; and

Principal Project Company has the power and authority to perform the provisions hereof and thereof.

(b) ***Authorizations, Enforceability***. This Direct Agreement and the IF DBFOM Agreement have been duly authorized by Principal Project Company, and this Direct Agreement and the IF DBFOM Agreement constitute legal, valid, and binding obligations of Principal Project Company, enforceable against Principal Project Company in accordance with their terms, except as such enforceability may be limited by (i) applicable bankruptcy, insolvency, reorganization, moratorium, or other similar laws affecting the enforcement of creditors' rights generally; and (ii) general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

2.3 The Collateral Agent represents and warrants that:

(a) ***Organization; Power and Authority***. The Collateral Agent is a [__________], duly organized and validly existing under the laws of [__________] and has the requisite power and all required licenses to carry on its present and proposed activities, and has full power, right and authority to execute and deliver this Direct Agreement and to perform each and all of the obligations of the Collateral Agent provided for under this Direct Agreement.

(b) ***Authorizations, Enforceability***. This Direct Agreement has been duly authorized by the Collateral Agent, and this Direct Agreement constitutes a legal, valid and binding obligation of the Collateral Agent, enforceable against the Collateral Agent in accordance with its terms, except as such enforceability may be limited by (i) applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally and (ii) general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law). The Collateral Agent is duly authorized by the Lenders to enter into this Direct Agreement on behalf of the Lenders and to validly bind the Lenders to the terms and conditions hereof.

3. CONDITIONS AND LIMITATIONS RESPECTING LENDERS' RIGHTS

3.1 No Lender shall be entitled to the rights, benefits and protections of this Direct Agreement unless and until City has received a copy (certified as true and correct by the Collateral Agent) of the Financing Agreements and Security Documents bearing, if applicable, the date and instrument number or book and page of recordation or filing thereof, including a copy of a specimen bond, note or other obligation (certified as true and correct by the Collateral Agent) secured by such Security Document, together with written notice of the address of the Collateral Agent to which notices may be sent. In the event of an assignment of any such Financing Agreement (excluding any instrument described under subsection (b) of the definition of Financing Agreement) or Security Document, such assignment shall not be subject to the terms of this Direct Agreement unless and until City has received prior written notice and a certified copy thereof, which copy shall, if required to be recorded, bear the date and instrument number or book and page of recordation thereof, together with written notice of the assignee thereof to which notices may be sent. In the event of any change in the identity of the Collateral Agent, such change shall not be binding upon City unless and until City has received a written

notice thereof signed by the replaced and substitute Collateral Agent and setting forth the address of the substitute Collateral Agent to which notices may be sent.

3.2 Neither the Collateral Agent nor the Lenders shall exercise any right it may have pursuant to any Financing Documents to assign, transfer or otherwise dispose of any right, title or interest it may have in, or obligations it may have pursuant to, the Financing Documents to the extent the exercise of such rights would constitute a Refinancing and Principal Project Company has failed to comply with the requirements of Section 4.4 (Refinancing) of the IF DBFOM Agreement.

3.3 No Security Document or other instrument purporting to mortgage, pledge, encumber, or create a lien, charge or security interest on or against PPC's Interest shall extend to or affect the fee simple interest of City in the Project or the Site or improvements thereto or City's rights or interests under the Contract Documents.

3.4 City shall not have any obligation to any Lender pursuant to the IF DBFOM Agreement, except for the express obligations to Lenders set forth in this Direct Agreement or any other instrument or agreement signed by City in favor of such Lender or Collateral Agent, provided that the Collateral Agent has notified City of the existence of its Security Documents.

3.5 Each Financing Agreement and Security Document shall require that the Collateral Agent deliver to City, concurrently with delivery to Principal Project Company or any other Person, any notice of default or notice of election or enforcement of remedies, including an election to sell or foreclose, notice of sale or foreclosure or other notice required by Law or by the Security Document in connection with the exercise of remedies under the Financing Agreement or Security Document.

3.6 No Financing Documents shall grant to the Lender any right to apply funds in the Handback Requirements Reserve Account or to apply proceeds from any Handback Requirements Letter of Credit to the repayment of Project Debt, to any other obligation owing the Lender or to any other use except the uses set forth in Section 8.7.3 (Use of Handback Requirements Reserve Account) of the IF DBFOM Agreement, and any provision purporting to grant such right shall be null and void; provided, however, that the foregoing shall not preclude any Lender or Substituted Entity from, following foreclosure or transfer in lieu of foreclosure, automatically succeeding to all rights, claims and interests of Principal Project Company in and to the Handback Requirements Reserve Account.

4. AGREEMENTS, CONSENT TO SECURITY AND SUBORDINATION OF SECURITY

4.1 City acknowledges notice and receipt of copies of the Initial Financing Documents and Initial Security Documents. Notwithstanding anything in the IF DBFOM Agreement to the contrary, but subject to Section 3 (Conditions and Limitations Respecting Lenders' Rights), City:

(a) consents to (i) the assignment by Principal Project Company to the Collateral Agent of all of PPC's Interest, and (ii) the granting by each Equity Member to the Collateral Agent of a security interest in such Equity Member's equity interest in Principal Project Company, in each case pursuant to the terms and provisions of the applicable Initial Security Documents; and

(b) agrees that such collateral assignment and grant of security interests in and first lien over all of the PPC's Interest pursuant to the Initial Security Documents and the grant of the security interest by each Equity Member in its equity interests in Principal Project Company pursuant to such Security Documents, and the execution by Principal Project Company and City of this Direct Agreement and the performance of their respective obligations hereunder, in each case, does not (i) constitute a PPC Default or any other breach by Principal Project Company of the Contract Documents, (ii) with the giving of notice or lapse of time, or both, constitute a PPC Default or any other breach by Principal Project Company of the IF DBFOM Agreement, or (iii) require the consent of City except as provided herein.

4.2 Except as expressly contemplated in the IF DBFOM Agreement as of the Effective Date thereof, while any Security Document is in effect, no agreement between City and Principal Project Company for the modification or amendment of the IF DBFOM Agreement that in any way could reasonably be expected to have a material adverse effect on the rights or interests of the Lender(s) shall be binding on the Lender(s) under such Security Document without the Collateral Agent's consent.

4.3 As long as any Project Debt secured by any Security Document shall remain outstanding, City shall promptly provide the Collateral Agent with a copy of any notice it sends to Principal Project Company concerning an actual or potential PPC Default.

4.4 Except as set forth in this Direct Agreement, City shall not be precluded from or delayed in exercising any remedies, including termination of the IF DBFOM Agreement due to the accumulation of Noncompliance Points during the Step-in Period and City's rights to cure PPC Default at Principal Project Company's expense; provided, however, City shall not be entitled to exercise its right of termination due to Noncompliance Points accumulated prior to such step in.

4.5 Neither City nor any officer, employee, agent or representative of City shall have any liability whatsoever for payment of the principal sum of any Project Debt, any other obligations issued or incurred by Principal Project Company or a PPC-Related Entity in connection with the IF DBFOM Agreement or the Project, or any interest accrued thereon or any other sum secured by or accruing under any Financing Document. Except for a violation by City of its express obligations to Lenders under this Direct Agreement, no Lender is entitled to seek any damages or other amounts from City, whether for Project Debt or any other amount. City's review of any Financing Documents or other Project financing documents is not a guarantee or endorsement of the Project Debt, any other obligations issued or incurred by Principal Project Company or a PPC-Related Entity in connection with the IF DBFOM Agreement or the Project, and is not a representation, warranty or other assurance as to the ability of Principal Project Company or a PPC-Related Entity to perform its obligations with respect to the Project Debt or any other obligations issued or incurred by Principal Project Company or a PPC-Related Entity in connection with the IF DBFOM Agreement or the Project, or as to the adequacy of the Payments to provide for payment of the Project Debt or any other obligations issued or incurred by Principal Project Company in connection with the IF DBFOM Agreement or the Project. The foregoing does not affect City's liability to Principal Project Company under Article 17 (Termination) of the IF DBFOM Agreement for Termination Compensation that is measured in whole or in part by outstanding Project Debt.

4.6 The Collateral Agent consents to the grant of security by Principal Project Company to City of a first priority security interest in the Handback Requirements Reserve Account (or in any Handback Requirements Letter of Credit delivered by Principal Project Company in accordance with Section 8.7.5 (Handback Requirements Letters of Credit) of the IF DBFOM Agreement in lieu of establishing a Handback Requirements Reserve Account).

5. CITY NOTICE OF TERMINATION AND EXERCISE OF REMEDIES; LENDER NOTICE OF INTENT

5.1 City shall give the Collateral Agent written notice (a "**City Notice**"):

(a) promptly upon obtaining Actual Knowledge of the occurrence of any event giving rise to a PPC Default, City's right to terminate or give notice terminating the IF DBFOM Agreement pursuant to Section 17.3.1 (PPC Defaults Triggering City Termination Rights) of the IF DBFOM Agreement, or exercise any rights under Sections 16.2.4 (Remedies for Failure to Meet Safety Standards or Perform Safety Compliance), 16.2.5 (City Step-in Rights) or 16.2.7.1 of the IF DBFOM Agreement; or

(b) promptly upon obtaining Actual Knowledge of the occurrence of any event giving rise to City's right to suspend its performance (including in connection with any insolvency or bankruptcy proceeding in relation to Principal Project Company) under the IF DBFOM Agreement.

5.2 A City Notice shall specify:

(a) the unperformed obligations of Principal Project Company under the IF DBFOM Agreement and grounds for termination of, or suspension of performance or the other rights all as referred to in Sections 17.3.1 (PPC Defaults Triggering City Termination Rights), 16.2.4 (Remedies for Failure to Meet Safety Standards or Perform Safety Compliance), 16.2.5 (City Step-in Rights) or 16.2.7.1 under the IF DBFOM Agreement, in detail sufficient to enable the Collateral Agent to assess the scope and amount of any liability of Principal Project Company resulting therefrom;

(b) any other unperformed obligations of Principal Project Company of which City obtains Actual Knowledge as of the date of such City Notice;

(c) all amounts due and payable by Principal Project Company to City under the IF DBFOM Agreement on or before the date of such City Notice and which remain unpaid at such date and the nature of Principal Project Company's obligation to pay such amounts; and

(d) the amount of Principal Project Company's payment obligation to City that City reasonably foresees will arise during the applicable Cure Period.

5.3 City shall update its City Notice to reflect unperformed obligations of Principal Project Company under the IF DBFOM Agreement that have been identified or that have arisen and amounts payable by Principal Project Company to City that become due, in each case, after the date of the City Notice but prior to the proposed Step-in Date.

5.4 Within 30 days of the date of receipt of the City Notice, the Collateral Agent shall provide City with notice, via written correspondence and email, of the intent of the Lenders' and shall indicate in such notice whether the Lenders' intend to proceed to cure the PPC Default(s) or to exercise step-in rights (a "**Notice of Intent**"). The hardcopy Notice of Intent shall be sent to City via certified or registered mail, return receipt requested.

6. PROCEEDS ACCOUNT

Subject to the Collateral Agent directing otherwise in accordance with this Direct Agreement, Principal Project Company irrevocably directs City to remit all amounts due and owing to Principal Project Company under the IF DBFOM Agreement directly to the Proceeds Account.

7. LENDER NOTICE

7.1 The Collateral Agent shall give City notice (a "**Lender Notice**") via written correspondence and email, with a hardcopy and electronic copy to Principal Project Company, promptly upon becoming aware of the occurrence of any Default or Event of Default (whether or not a City Notice has been served relating to the same event). The hardcopy Lender Notice shall be sent to City via certified or registered mail, return receipt requested.

7.2 The Collateral Agent shall specify in any Lender Notice the circumstances and nature of the Default or Event of Default to which Lender Notice relates.

7.3 Unless directed otherwise by the Collateral Agent pursuant to Section 7.4, City shall, following receipt of a Lender Notice of the occurrence of any Event of Default and until further notice from the Collateral Agent pursuant to Section 7.8, continue to make any payments required to be made by City to Principal Project Company under the IF DBFOM Agreement, including any payment of any termination sum calculated in accordance with Article 17 (Termination) of the IF DBFOM Agreement, to the Proceeds Account.

7.4 The Collateral Agent may direct City to make the payments described in Section 7.3 to an alternate account designated by the Collateral Agent by providing written notice to City specifying the following information with respect to the account: (a) account details and wiring instructions; and (b) the name, title, mailing address, telephone number, fax number, and email address of the individual responsible for administering the account. City shall have no liability, whatsoever, for any delay in processing any payment request pursuant to this Section 7.4, provided that such delay does not extend 20 days beyond the date of City's certified, return-receipt or registered mail receipt of the Lender Notice.

7.5 All sums paid as provided in Sections 7.3 and 7.4 shall be deemed paid to Principal Project Company under the IF DBFOM Agreement and shall constitute a complete discharge of City's relevant payment obligations to Principal Project Company.

7.6 The Collateral Agent shall promptly notify City via written correspondence and email of any decision to accelerate amounts outstanding under the Financing Documents or to exercise any enforcement remedies under the Financing Documents.

7.7 Neither the Collateral Agent nor the Lender shall exercise any right it may have pursuant to the Security Documents to assign, transfer or otherwise dispose of any right, title or interest it may have in, or obligations it may have pursuant to, the Security Documents to the extent the

exercise of such rights would constitute a Refinancing and Principal Project Company has failed to comply with the requirements of Section 4.4 (Refinancing) of the IF DBFOM Agreement.

7.8 The Collateral Agent shall promptly notify City via written correspondence and email, with a hardcopy and electronic copy to Principal Project Company, of a full cure of an Event of Default that is the subject of a Lender Notice.

7.9 Following receipt of a Lender Notice of the occurrence of an Event of Default until delivery of a further notice under Section 7.8 with respect to any full cure of such Event of Default, the Collateral Agent shall have the right to deliver to City a Step-in Notice as provided in Section 9 (Step-in Notice).

8. NO TERMINATION DURING CURE PERIOD

8.1 City agrees not to take any of the following actions prior to the expiration of any applicable Cure Period:

(a) terminate or give notice terminating the IF DBFOM Agreement or exercise any rights under Sections 10.4 (Letters of Credit), 10.5 (Guarantees), 16.2.4 (Remedies for Failure to Meet Safety Standards or Perform Safety Compliance), 16.2.5 (City Step-in Rights), 16.2.7 (Performance Bond), 16.2.8 (Suspension of Work), 16.2.9 (Other Rights and Remedies) or 17.3.1 (PPC Defaults Triggering City Termination Rights) of the IF DBFOM Agreement or in respect of the IFM Contract or D&C Contract;

(b) suspend its performance (including with respect to (i) payments required to be made to Principal Project Company to the Proceeds Account or to an alternate account designated by the Collateral Agent in accordance with Section 7.4, or (ii) any insolvency or bankruptcy proceeding in relation to Principal Project Company) under the IF DBFOM Agreement; and

(c) take or support any action for the liquidation, bankruptcy, administration, receivership, reorganization, dissolution or winding up of Principal Project Company or for the composition or readjustment of Principal Project Company's debts, or any similar insolvency procedure in relation to Principal Project Company, or for the appointment of a receiver, trustee, custodian, sequestrator, conservator, liquidator, administrator or similar official for Principal Project Company or for any part of Principal Project Company's property;

provided that such agreement of City shall not prevent City from taking actions which are permitted under this Direct Agreement on a Revival Date in respect of any other prior PPC Default or other breach by Principal Project Company of the IF DBFOM Agreement which has occurred and has not been remedied or waived.

8.2 During any Cure Period, without giving a Step-in Notice, the Collateral Agent shall have the right (but shall have no obligation), at its sole option and discretion, to perform or arrange for the performance of any act, duty, or obligation required of Principal Project Company under the IF DBFOM Agreement, or to cure any default of Principal Project Company thereunder, which performance by the Collateral Agent shall be accepted by City in lieu of performance by Principal Project Company and in satisfaction of Principal Project Company's obligations under

the IF DBFOM Agreement. To the extent that any default of Principal Project Company under the IF DBFOM Agreement is cured and/or any payment liabilities or performance obligations of Principal Project Company are performed by the Collateral Agent during the Cure Period, such action shall discharge the relevant liabilities or obligations of Principal Project Company to City. Subject to the terms of this Direct Agreement, the Collateral Agent's right to cure any default of Principal Project Company as provided in this Section 8.2 may be exercised after the expiration of relevant cure period granted to Principal Project Company in Section 16.1.2 (Default Notice and Cure Periods) of the IF DBFOM Agreement, provided that the cure occurs within the Cure Period. Curing of any PPC Default by the Collateral Agent shall not be construed as an assumption by the Collateral Agent of any obligations, covenants or agreements of Principal Project Company under the Contract Documents, except to the extent the Collateral Agent has exercised step-in rights or proposed a Substitute Entity and otherwise as set forth in this Direct Agreement.

9. STEP-IN NOTICE

9.1 Upon the issuance of a City Notice or a Lender Notice of the occurrence of any Event of Default, the Collateral Agent may give a written notice (a "**Step-in Notice**") under this Section 9 (Step-in Notice) to City at any time during the Cure Period in the case of the issuance of a City Notice or at any time following the receipt by City of a Lender Notice, provided that the Event of Default to which Lender Notice relates is continuing.

9.2 The Collateral Agent shall nominate, in the Step-in Notice: (a) the Collateral Agent, a Lender or any of their respective Affiliates; or (b) any Person, subject to approval by City in accordance with Section 12 (Substitution Entities and Substitution Proposals), and the person so nominated being referred to as the "**Step-in Party**."

10. RIGHTS AND OBLIGATIONS ON STEP-IN

10.1 On and from the date of the receipt of the Step-in Notice and the approval of City to the appointment of the Step-in Party if required by Section 9.2 (the "**Step-in Date**") and during the Step-in Period, the Step-in Party shall be:

(a) entitled to exercise and enjoy the rights and powers expressed to be assumed by or granted to Principal Project Company under the IF DBFOM Agreement and this Direct Agreement;

(b) entitled to exercise and enjoy the rights and powers expressed to be assumed by or granted to a Step-in Party under this Direct Agreement; and

(c) liable for the performance of all of Principal Project Company's obligations under the IF DBFOM Agreement and this Direct Agreement arising on or after the Step-in Date.

10.2 Without prejudice to Section 14 (Revival of Remedies), during the Step-in Period, City shall:

(a) not terminate or give notice terminating the IF DBFOM Agreement or exercise any rights under Sections 10.4 (Letters of Credit), 10.5 (Guarantees), 16.2.4 (Remedies for Failure to Meet Safety Standards or Perform Safety Compliance),

16.2.5 (City Step-in Rights), 16.2.7 (Performance Bond), 16.2.8 (Suspension of Work), 16.2.9 (Other Rights and Remedies), or 17.3.1 (PPC Defaults Triggering City Termination Rights) of the IF DBFOM Agreement or in respect of the IFM Contract or D&C Contract, unless the grounds for termination or giving notice of termination pursuant to Section 17.3.1 (PPC Defaults Triggering City Termination Rights) of the IF DBFOM Agreement or exercising its rights under the above listed sections of the IF DBFOM Agreement are failure by the Step-in Party to perform Principal Project Company's obligations under the IF DBFOM Agreement;

(b) not suspend its performance (including in connection with any insolvency or bankruptcy proceeding in relation to Principal Project Company) under the IF DBFOM Agreement, unless the grounds for suspension of performance are failure by the Step-in Party to perform Principal Project Company's obligations under the IF DBFOM Agreement;

(c) not take or support any action for the liquidation, bankruptcy, administration, receivership, reorganization, dissolution or winding up of Principal Project Company or for the composition or readjustment of Principal Project Company's debts, or any similar insolvency procedure in relation to Principal Project Company, or for the appointment of a receiver, trustee, custodian, sequestrator, conservator, liquidator, administrator or similar official for Principal Project Company or for any part of Principal Project Company's property;

(d) continue to make payments required to be made to Principal Project Company under the IF DBFOM Agreement to the Proceeds Account or to an alternate account designated by the Collateral Agent in accordance with Section 7.4; and

(e) endorse or pay over, as directed by the Collateral Agent, any checks received by City with respect to, or funds drawn by City under, the Performance Bond; provided that the Collateral Agent reimburses City for any Losses incurred by City in attempting to cure the PPC Default as and to the extent: (i) City is entitled to such reimbursement pursuant to the IF DBFOM Agreement; (ii) City has promptly notified the Collateral Agent of such Losses at or prior to the time of endorsement or payment and (iii) the Collateral Agent's obligation to reimburse City for such Losses does not exceed the proceeds from any such security.

10.3 City shall owe its obligations under the IF DBFOM Agreement and this Direct Agreement to Principal Project Company and the Step-in Party jointly; provided that:

(a) the receipt of, or performance by City in favor of, either such Step-in Party or Principal Project Company shall be a good and effective discharge of City's obligations under this Direct Agreement and the IF DBFOM Agreement;

(b) the Collateral Agent shall be entitled at any time by notice in writing to City to direct (such direction being binding on the Collateral Agent, City and Principal Project Company) that, at all times during the Step-in Period, the Step-in Party shall be solely entitled to make any decisions, to give any directions, approvals or consents, to receive any payments or otherwise to deal with City under the IF DBFOM Agreement and this Direct Agreement; and

(c) any amount due from Principal Project Company to City under the IF DBFOM Agreement or this Direct Agreement as of the Step-in Date and notified to such Step-in Party prior to the Step-in Date shall be paid to City on the Step-in Date, failing which City shall be entitled to exercise its rights under the IF DBFOM Agreement in respect of the amount so due and unpaid.

10.4 Principal Project Company shall not be relieved from any of its obligations under the IF DBFOM Agreement or this Direct Agreement, whether arising before or after the Step-in Date, by reason of the Step-in Party exercising the rights provided herein, except to the extent provided in Section 8.2 and Section 11 (Step-out).

11. STEP-OUT

A Step-in Party may, at any time, by giving not less than 30 days' prior written notice ("**Step-out Notice**") to City terminate its obligations to City under this Direct Agreement, in which event such Step-in Party shall be released from all obligations under this Direct Agreement, except for any obligation or liability of the Step-in Party arising during the Step-in Period. The obligations of City to the Step-in Party under this Direct Agreement shall also terminate on the Step-Out Date. Notwithstanding the foregoing, this Direct Agreement shall continue to remain effective according to its terms after the Step-Out Date if the Step-in Party is the Collateral Agent or a Lender.

12. SUBSTITUTION ENTITIES AND SUBSTITUTION PROPOSALS

12.1 Any payment to be made or action to be taken by the Collateral Agent as a prerequisite to keeping the IF DBFOM Agreement in effect shall be deemed properly to have been made or taken by the Collateral Agent if such payment is made or action is taken by a Substituted Entity proposed by the Collateral Agent and reasonably approved by City. City shall have no obligation to recognize any claim to PPC's Interest by any person or entity that has acquired PPC's Interest by, through, or under any Security Document or whose acquisition shall have been derived immediately from any holder thereof, unless such person or entity is a Substituted Entity reasonably approved by City in accordance with this Section 12 (Substitution Entities and Substitution Proposals).

12.2 The Collateral Agent may give a notice ("**Substitution Notice**") under this Section 12 (Substitution Entities and Substitution Proposals) in writing to City at any time:

(a) during any Cure Period;

(b) during any Step-in Period; or

(c) after delivery of a Lender Notice of the occurrence of any Event of Default and prior to delivery by the Collateral Agent to City of a further notice under Section 7.9.

12.3 In any Substitution Notice, the Collateral Agent shall notify City that it intends to designate a Substituted Entity.

12.4 The Collateral Agent shall, as soon as practicable, provide to City the information regarding the proposed Substituted Entity and any third party entering into a material

subcontract with such Substituted Entity as required by this Section 12 (Substitution Entities and Substitution Proposals), including:

(a) the name and address of the proposed Substituted Entity;

(b) the names of the proposed Substituted Entity's shareholders or members and the share capital or partnership or membership interests, as the case may be, held by each of them;

(c) the manner in which the proposed Substituted Entity will be financed and the extent to which such financing is committed;

(d) copies of the proposed Substituted Entity's most recent financial statements (and if available such financial statements shall be for the last three financial years) or in the case of a newly-formed special purpose company its opening balance sheet;

(e) a copy of the proposed Substituted Entity's formation documents;

(f) details of the resources available to the proposed Substituted Entity and the proposed Substituted Entity's appropriate qualifications, experience and technical competence available to the proposed Substituted Entity to enable it to perform the obligations of Principal Project Company under the IF DBFOM Agreement;

(g) the names of the proposed Substituted Entity's directors and any key personnel who will have responsibility for the day-to-day management of its participation in the Project;

(h) a rectification plan providing details of the plan to rectify Principal Project Company's breaches with respect to the breaches which are capable of being rectified by the Substituted Entity;

(i) such other information, evidence and supporting documentation concerning the identity, financial resources, pre-qualifications, experience and potential conflicts of interest of the proposed Substituted Entity and its contractors as City may reasonably request; and

(j) such evidence of organization, authority, incumbency certificates, certificates regarding debarment or suspension, and other certificates, representations and warranties as City may reasonably request.

12.5 City will approve or disapprove a proposed Substituted Entity within 45 days after it confirms receipt from the Collateral Agent of a request for approval together with the information required under Section 12.4. City will evaluate the financial resources, qualifications, experience and potential conflicts of interest of the proposed Substituted Entity and its contractors using the same standards and criteria that it is then currently applying, or if there is no current application, then the same standards and criteria it most recently applied, to the evaluation of Persons responding to City's requests for qualifications for concession or similar agreements for comparable projects and facilities.

12.6 City shall have no obligation to approve the proposed Substituted Entity:

(a) unless the Collateral Agent demonstrates to City's reasonable satisfaction that: (i) the proposed Substituted Entity and its contractors collectively have the financial resources, qualifications and experience to timely perform Principal Project Company's obligations under the Contract Documents and Key Contracts to which Principal Project Company is a party; (ii) the proposed Substituted Entity and its contractors, each of their respective direct and indirect beneficial owners, any proposed key personnel, each of their respective officers and directors and each of their respective affiliates have a good and sound background and reputation (including the absence of criminal, civil or regulatory claims or actions against any such Person, and each such Person's adherence to Good Industry Practice, contract terms and applicable standards regarding past or present performance on comparable projects); and (iii) the proposed Substituted Entity and its contractors are in compliance with City's rules, regulations and adopted written policies regarding pre-qualification and organizational conflicts of interest;

(b) if there are unremedied breaches under the IF DBFOM Agreement and there is no rectification plan reasonably acceptable to City with respect to the breaches which are capable of being rectified by the Substituted Entity; and

(c) if any proposed security interests to be granted by the proposed Substituted Entity to the Collateral Agent and/or the Lender in addition to (or substantially different from) the security interests granted to the Collateral Agent and/or the Lender under the Initial Financing Documents materially and adversely affect the ability of the Substituted Entity to perform Principal Project Company's obligations under the Contract Documents or have the effect of increasing any liability of City, whether actual or potential (unless a Rescue Refinancing is concurrently proposed, in which case the Lenders' Liabilities may increase by up to 10%).

12.7 The Collateral Agent may request approval of more than one Substituted Entity. The Collateral Agent may request approval at any time or times. Any approval by City of a Substituted Entity shall expire (unless otherwise agreed in writing by City) one year after the approval is issued if the Substituted Entity has not succeeded to PPC's Interest within that period of time. City may revoke an approval if at any time prior to succeeding to PPC's Interest the Substituted Entity ceases to be in compliance with City's rules and regulations regarding organizational conflicts of interest. If the Substituted Entity succeeds to PPC's Interest, then City shall not be entitled to terminate due to Noncompliance Points accumulated by Principal Project Company prior to its replacement by the Substituted Entity, provided the Noncompliance Event that resulted in such Noncompliance Points are being cured by the Substituted Entity as quickly as practicable using commercially reasonable efforts. Once all Noncompliance Events have been cured, City shall cancel any Noncompliance Points accrued prior to succession.

12.8 Notwithstanding the foregoing, any entity that is wholly owned by a Lender or group of Lenders shall be deemed a Substituted Entity, without necessity for City approval, upon delivery to City of documentation proving that the entity is duly formed, validly existing and wholly owned by the Lender, including a certificate signed by a duly authorized officer of each Lender in favor of City certifying, representing and warranting such ownership.

13. SUBSTITUTION

13.1 If City approves (or is deemed to have approved) a Substitution Notice pursuant to Section 12 (Substitution Entities and Substitution Proposals), the Substituted Entity named therein shall execute a duly completed Substitute Accession Agreement substantially in the form attached to this Direct Agreement as Schedule A and submit it to City (with a copy thereof to the other parties to this Direct Agreement) and such assignment shall become effective on and from the date on which City countersigns the Substitute Accession Agreement (the "**Substitution Effective Date**") or the date that is 10 days after the date City receives the completed Substitute Accession Agreement if City fails to sign the Substitute Accession Agreement.

13.2 As of the Substitution Effective Date:

(a) such Substituted Entity shall become a party to the IF DBFOM Agreement and this Direct Agreement in place of Principal Project Company who shall be immediately released from its obligations arising under, and cease to be a party to, the IF DBFOM Agreement and this Direct Agreement from and after Substitution Effective Date;

(b) all of Principal Project Company's obligations and liabilities under the IF DBFOM Agreement and under this Direct Agreement arising from and after the Substitution Effective Date shall be immediately and automatically transferred to the Substituted Entity;

(c) such Substituted Entity shall exercise and enjoy the rights and perform the obligations of Principal Project Company under the IF DBFOM Agreement and this Direct Agreement; and

(d) City shall owe its obligations (including any undischarged liability with respect to any loss or damage suffered or incurred by Principal Project Company prior to the Substitution Effective Date) under the IF DBFOM Agreement and this Direct Agreement to such Substituted Entity in place of Principal Project Company, subject to City's right to offset any losses or damages suffered or incurred by City as provided under the IF DBFOM Agreement and this Direct Agreement.

13.3 City shall use its reasonable efforts to facilitate the transfer to the Substituted Entity of Principal Project Company's obligations under the IF DBFOM Agreement and this Direct Agreement.

13.4 The Substituted Entity shall pay to City on the Substitution Effective Date any amount due to City under the IF DBFOM Agreement and this Direct Agreement, including City's reasonable costs and expenses incurred in connection with (a) Principal Project Company's default and termination, (b) City's activities with respect to the Project during any period City was in possession of the Project, and (c) the approval of the Substituted Entity, all as of the Substitution Effective Date and notified to such Substituted Entity prior to the Substitution Effective Date. City's receipt of the payment pursuant to this Section 13.4 shall be a condition precedent to the Substitution Effective Date.

13.5 As of the Substitution Effective Date:

(a) any right of termination suspended by virtue of Section 8.1 shall be of no further effect and City shall not be entitled to terminate or suspend performance of the IF DBFOM Agreement and this Direct Agreement by virtue of any act, omission or circumstance that occurred prior to such Substitution Effective Date; and

(b) City shall enter into an equivalent direct agreement on substantially the same terms as this Direct Agreement, save that Principal Project Company shall be replaced as a party by the Substituted Entity.

14. REVIVAL OF REMEDIES

14.1 If a City Notice has been given, the grounds for that notice are continuing and have not been remedied or waived and:

(a) as of the end of the Cure Period, no Step-in Notice has been given and no Substituted Entity becomes a party to the IF DBFOM Agreement and this Direct Agreement; or

(b) the Step-in Period ends without a Substituted Entity becoming a party thereto,

then, from and after the date such Cure Period or such Step-in Period, as the case may be, expires (the "**Revival Date**"), City shall be entitled to:

(i) act upon any and all grounds for termination or suspension available to it in relation to the IF DBFOM Agreement in respect of defaults under the IF DBFOM Agreement not remedied or waived;

(ii) pursue any and all claims and exercise any and all remedies against Principal Project Company; and

(iii) if and to the extent that it is then entitled to do so under the IF DBFOM Agreement, take or support any action of the type referred to in Section 16.2 (City Remedies for PPC Default) of the IF DBFOM Agreement.

15. NEW PROJECT AGREEMENT

15.1 If:

(a) the IF DBFOM Agreement is rejected by a trustee or debtor-in-possession in, or terminated as a result of, any bankruptcy or insolvency proceeding involving Principal Project Company, or

(b) a PPC Default under Section 16.1.1(m) of the IF DBFOM Agreement occurs with respect to any Equity Member with a material financial obligation owing to Principal Project Company for a Committed Investment, and Equity Members' obligations relating to Principal Project Company or the Project are rejected by a trustee or debtor-in-possession in, or terminated as a result of any bankruptcy or insolvency proceeding involving such Equity Member and, within 90 days after such rejection or termination, the Collateral Agent shall so request and shall

certify in writing to City that it intends to perform the obligations of Principal Project Company as and to the extent required under the IF DBFOM Agreement,

then City will execute and deliver to the Collateral Agent (or any Substituted Entity satisfying the requirements of this Direct Agreement if directed to do so by the Collateral Agent) a new project agreement. Such new project agreement shall contain conditions, agreements, terms, provisions and limitations which are the same as those of the IF DBFOM Agreement, except for any obligations that have been fulfilled by Principal Project Company, any party acting on behalf of or stepping-in for Principal Project Company or City prior to such rejection or termination. References in this Direct Agreement to the "Agreement" shall be deemed also to refer to any such new project agreement.

16. RECEIVERS

16.1 The appointment of a receiver at the behest of Principal Project Company shall be subject to City's prior written approval in its sole discretion. The appointment of a receiver at the behest of any Lender shall be subject to the following terms and conditions:

(a) City's prior approval shall not be required for the appointment of the receiver or the selection of the Person to serve as receiver;

(b) whenever any Lender commences any proceeding for the appointment of a receiver, the Collateral Agent shall serve on City not less than ten (10) days' prior written notice of the hearing for appointment and of the Lender's pleadings and briefs in the proceeding;

(c) City may appear in any such proceeding to challenge the selection of the Person to serve as receiver, but waives any other right to oppose the appointment of the receiver; and

(d) City may at any time seek an order for replacement of the receiver by a different receiver.

16.2 No receiver appointed at the behest of Principal Project Company or any Lender shall have any power or authority to replace the IFM Contractor or D&C Contractor except by reason of default or unless the replacement is a Substituted Entity reasonably approved or deemed approved by City.

17. ESTOPPEL CERTIFICATES

17.1 At any time and from time to time, within 30 days after written request of any Lender or proposed Lender, City, without charge, shall certify by written instrument duly executed and acknowledged, to any Lender or proposed Lender as follows:

(a) as to whether the IF DBFOM Agreement has been supplemented or amended, and if so, attaching a copy of such supplement or amendment to such certificate;

(b) as to the validity and force and effect of the IF DBFOM Agreement against City, in accordance with its terms, subject to applicable bankruptcy, insolvency and

similar laws affecting the enforceability of creditors' rights generally and the general principles of equity;

(c) as to the existence of any PPC Default of which City has Actual Knowledge;

(d) as to the existence of events which, by the passage of time or notice or both, would constitute a PPC Default, to City's Actual Knowledge;

(e) as to the then accumulated amount of Noncompliance Points;

(f) as to the existence of any Claims by City regarding the IF DBFOM Agreement; and

(g) as to the Effective Date and the expiration date of the Term.

17.2 City shall deliver the same certified, written instrument to a Substituted Entity or proposed Substituted Entity within fifteen (15) days after receiving its written request, provided that the request is delivered to City either before the proposed Substituted Entity succeeds to PPC's Interest or within sixty (60) days after the Substituted Entity has succeeded to PPC's Interest.

17.3 Any such certificate may be relied upon by, and only by, the Lender, proposed Lender, Substituted Entity or proposed Substituted Entity to whom the same may be delivered, and the contents of such certificate shall be binding on City.

18. GENERAL

18.1 Neither the Lender nor the Collateral Agent shall have any obligation hereunder to extend credit to City or any contractor to City at any time, for any purpose.

18.2 For so long as any amount under the Financing Documents is outstanding, City shall not, without the prior written consent of the Collateral Agent, consent to any assignment, transfer, pledge or hypothecation of the IF DBFOM Agreement or any interest therein by Principal Project Company, other than as specified in the IF DBFOM Agreement or this Direct Agreement.

18.3 No Lender holding Equity Member Debt, whether secured or unsecured, shall have any rights, benefits or protections under this Direct Agreement.

19. TERMINATION

This Direct Agreement shall remain in effect until the earlier to occur of (a) the Discharge Date; (b) the time at which all of City's obligations and liabilities have expired or have been satisfied in accordance with the terms of the IF DBFOM Agreement and this Direct Agreement; and (c) any assignment to a Substituted Entity has occurred under Section 13 (Substitution) and City shall have entered into an equivalent direct agreement on substantially the same terms as this Direct Agreement, save that Principal Project Company has been replaced as a party by the Substituted Entity.

20. EFFECT OF BREACH

Without prejudice to any rights a party may otherwise have, a breach of this Direct Agreement shall not of itself give rise to a right to terminate the IF DBFOM Agreement.

21. NO PARTNERSHIP

Nothing contained in this Direct Agreement shall be deemed to constitute a partnership between the parties to this Direct Agreement. None of the parties shall hold itself out contrary to the terms of this Section 21 (No Partnership).

22. REMEDIES CUMULATIVE; NO WAIVER

No failure or delay by City, the Lenders or the Collateral Agent (or their designee) in exercising any right or power hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The remedies provided herein are cumulative and not exclusive of any remedies provided by law and may be exercised by the Lenders, the Collateral Agent or any designee, transferee or assignee thereof from time to time. In no event shall any provision of this Direct Agreement or any consent to any departure by any party therefrom be effective unless such waiver is permitted by Section 23 (Amendment), and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given.

23. AMENDMENT

No amendment, modification or waiver of any provision of this Direct Agreement, or consent to any departure herefrom by any party to this Direct Agreement, shall be effective against any party to this Direct Agreement unless the same shall be in writing and signed by the party against whom enforcement is sought, and then such amendment or waiver shall be effective only in the specific instance and for the specific purpose for which it was given.

24. SUCCESSORS AND ASSIGNS

24.1 No party to this Direct Agreement may assign or transfer any part of its rights or obligations hereunder without the consent of the other parties, save that the Collateral Agent may assign or transfer its rights and obligations hereunder to a successor Collateral Agent in accordance with the Financing Documents. In connection with any such assignment or transfer, City agrees to enter into a new Direct Agreement with the successor Collateral Agent on terms that are substantially the same as those of this Direct Agreement.

24.2 This Direct Agreement shall be binding upon and inure to the benefit of the parties to this Direct Agreement and their respective successors and permitted assigns.

25. COUNTERPARTS

This Direct Agreement may be executed in any number of counterparts, each of which shall be identical and all of which, taken together, shall constitute one and the same instrument, and the parties may execute this Direct Agreement by signing any such counterpart. Transmission by facsimile or electronic mail of an executed counterpart of this Direct Agreement shall be deemed

to constitute due and sufficient delivery of such counterpart, to be followed thereafter by an original of such counterpart. The Parties, in the manner specified by City, may sign this Direct Agreement electronically.

26. SEVERABILITY

If, at any time, any provision of this Direct Agreement is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of such provision under the law of any other jurisdiction will in any way be affected or impaired.

27. NOTICES

27.1 Any notice, approval, election, demand, direction, consent, designation, request, agreement, instrument, certificate, report or other communication required or permitted to be given or made under this Direct Agreement (each, a notice) to a party must be given via written correspondence and email. All notices will be validly given if given on a Business Day to each party at the following address:

To City:	San Francisco Municipal Transportation Agency 1 South Van Ness, 8th Floor San Francisco, CA 94103 Attn: Chris Lazaro Email: Chris.Lazaro@sfmta.com
with copies to:	Office of the City Attorney City Hall, Room 234 1 Dr. Carlton B. Goodlett Place San Francisco, California 94102-4682 Attn: Real Estate & Finance Group Re: Potrero Yard Modernization Project Email: isidro.jimenez@sfcityatty.org
To Principal Project Company:	[Address] Attention: [____] E-Mail: [____]
with copies to:	[Address] Attention: [____] E-Mail: [____]
To the Collateral Agent:	[______] [Address] Attention: [____] Email: [____]

27.2 A notice shall be deemed to have been given on the earliest of:

(a) date of receipt, if delivered in person;

(b) date of receipt (confirmed by automatic answer back or equivalent evidence of receipt), if validly transmitted electronically before 3:00 p.m. (local time at the place of receipt) on a Business Day;

(c) one Business Day after delivery to the courier properly addressed, if delivered by overnight courier; and

(d) four Business Days after deposit with postage prepaid and properly addressed, if delivered by United States certified or registered mail.

27.3 Each of the parties will notify each other via written correspondence and email of any change of address, such notification to become effective 15 days after notification.

28. GOVERNING LAW AND JURISDICTION

28.1 The venue for any litigation arising out of, relating to or resulting from any matter relating to this Direct Agreement shall be in San Francisco, California to the extent that a court located in San Francisco has subject matter jurisdiction.

28.2 This Direct Agreement shall be governed by and construed in accordance with the laws of the State of California, any applicable federal law, the San Francisco City Charter and Municipal Code, and the ordinances, regulations, codes, and Executive Orders enacted and/or promulgated pursuant thereto.

28.3 Each of Principal Project Company, City and the Collateral Agent irrevocably consents to service of process by personal delivery, certified mail, postage prepaid or overnight courier. Nothing in this Direct Agreement will affect the right of any party to serve process in any other manner permitted by law.

28.4 Each of City, Principal Project Company and the Collateral Agent (a) certifies that no representative, agent or attorney of another party has represented, expressly or otherwise, that such party would not, in the event of a proceeding, seek to enforce the mutual waivers in this Section 28 (Governing Law and Jurisdiction) and (b) acknowledges that it has been induced to sign, or change its position in reliance upon the benefits of, this Direct Agreement by, among other things, the mutual waivers and certifications in this Section 28 (Governing Law and Jurisdiction).

29. CONFLICT WITH PROJECT AGREEMENT

In the event of any conflict or inconsistency between the provisions of this Direct Agreement and the IF DBFOM Agreement, the provisions of this Direct Agreement shall prevail.

IN WITNESS WHEREOF, each of the parties to this Direct Agreement has caused this Direct Agreement to be duly executed by its duly authorized officer as of the date first written above.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

[INSERT COLLATERAL AGENT'S NAME]

By:____

Name:____

Title:____

[INSERT PRINCIPAL PROJECT COMPANY'S NAME]

CA Contractors License No.:__________________________

By:____

Name:____

Title:____

CITY AND COUNTY OF SAN FRANCISCO

By:____
Jeffrey Tumlin
Director of Transportation

Approved as to Form
David Chiu, City Attorney

Date:____

By:____
[____________________]
Deputy City Attorney

Attest:

By:____
Secretary (Signature)

Print Name:______________________________________

[SEAL]

SCHEDULE A
Form of Substitute Accession Agreement

[Date]

To: City and County of San Francisco
For the attention of: Contracting Officer and Chief Counsel
[Lender and other parties to Financing Agreements to be listed]
[insert address]
For the attention of: [__________]

From: *[Substituted Entity]*

POTRERO YARD MODERNIZATION PROJECT: INFRASTRUCTURE FACILITY SUBSTITUTE ACCESSION AGREEMENT

Ladies and Gentlemen:

Reference is made to the Design-Build-Finance-Operate-Maintain Agreement, dated as of [__________], 2025 (as amended, amended and restated, supplemented or otherwise modified from time to time, the "***IF DBFOM Agreement***") between the City and County of San Francisco ("***City***"), a municipal corporation, acting by order of and through the San Francisco Municipal Transportation Agency, and [______________________________] ("***Principal Project Company***") and the Direct Agreement, dated as of [__________], 2025 (as amended, amended and restated, supplemented or otherwise modified from time to time, the "***Direct Agreement***") among City, Principal Project Company and [__________], as Collateral Agent. Terms defined in the Direct Agreement and not otherwise defined herein have the respective meanings set forth in or incorporated into in the Direct Agreement.

1. We confirm that we are a Substituted Entity pursuant to Section 13 (Substitution) of the Direct Agreement.

2. We acknowledge and agree that, upon and by reason of our execution of this Substitute Accession Agreement, we will become a party to the IF DBFOM Agreement and the Direct Agreement as a Substituted Entity and, accordingly, shall have the rights, powers and obligations of Principal Project Company under the IF DBFOM Agreement and the Direct Agreement.

3. Our address, telephone number and address for electronic mail for the purpose of receiving notices are as follows:

[*Contact details of Substituted Entity*]

4. This Substitute Accession Agreement is subject to and shall be construed and interpreted in accordance with the laws of the State of California, any applicable federal law, the San Francisco City Charter and Municipal Code, and the ordinances, regulations, codes, and Executive Orders enacted and/or promulgated pursuant thereto.

The terms set forth herein are agreed to:

[Substituted Entity]

By:______________________________________
Name: ___________________________________
Title:_____________________________________

Agreed for and on behalf of:

CITY AND COUNTY OF SAN FRANCISCO

By:____
Jeffrey Tumlin
Director of Transportation

Approved as to Form
David Chiu, City Attorney

Date:____

By:____
[____________________]
Deputy City Attorney

Attest:

By:____
Secretary (Signature)

Print Name:_____________________________________

[SEAL]

EXHIBIT 5C

CALCULATION OF REFINANCING GAIN

1. Calculation of the Refinancing Gain

The total amount of Refinancing Gain equals (A – B), as calculated in accordance with this Exhibit 5C (Calculation of the Refinancing Gain), provided that such amount is greater than zero. Each of the variables used to calculate Refinancing Gain shall be determined as follows:

1.1 Create a Pre-Refinancing Financial Model

Principal Project Company shall create a pre-Refinancing financial model (the "**Pre-Refinancing Financial Model**") by updating the Financial Model then in effect for actual and projected Project Financial Performance so as to be current immediately prior to the Refinancing, but excluding the impact of the current Refinancing. The Pre-Refinancing Financial Model shall take into account any Refinancing that qualifies as an Exempt Refinancing (under clause (a) of the definition of Exempt Refinancing) exactly as it was reflected in the Base Case Financial Model. In the Pre-Refinancing Financial Model, the resulting net present value of Distributions projected from the anticipated date of the Refinancing through to the end of the Term, discounted at the Original Equity IRR, shall be the value of "B".

1.2. Create a Post-Refinancing Financial Model

Principal Project Company shall create a post-Refinancing financial model (the "**Post-Refinancing Financial Model**") by updating the Pre-Refinancing Financial Model for the impact of the Refinancing, including costs reasonably incurred to achieve the Refinancing. In the Post-Refinancing Financial Model, the resulting net present value of Distributions projected from the anticipated date of the Refinancing through to the end of the Term, discounted at the Original Equity IRR, shall be the value of "A".

2. Calculating City's 50% Entitlement

2.1 Create a Final Refinancing Financial Model

2.1.1 Principal Project Company shall create a final refinancing financial model by updating the Post-Refinancing Financial Model to reflect the impact of the amounts and timing of the payment(s) (or credits) to be made to City under Section 4.5 (Refinancing Gain) of the Agreement, such that the net present value of such payments, discounted at the Original Equity IRR, is equal to 50% of the amount equal to (A – B). The resulting nominal post-tax equity internal rate of return shall be deemed to be the "**Refinancing Equity IRR**."

2.1.2 If the Refinancing Equity IRR is lower than the Original Equity IRR, then Principal Project Company shall adjust the amounts and timing of the payment(s) (or credits) to be made to City under Section 4.5 (Refinancing Gain) of the Agreement, such that the Refinancing Equity IRR would be increased to a level up to, but not in excess of, the Original Equity IRR.

3. Mutual Agreement and Financial Model Update

Subject to the mutual agreement by Principal Project Company and City of the Refinancing Gain calculations and entitlement amount, Principal Project Company shall prepare a Financial Model Update to the Financial Model then in effect in accordance with Section 4.7.2 (Updates to the Financial Model) of the Agreement that incorporates actual and projected Project Financial Performance, the impact of the Refinancing and the sharing of the Refinancing Gain.

EXHIBIT 5D

FORM OF OPINION FROM CITY'S LEGAL COUNSEL

[***City Attorney's Office Letterhead***]

1. **[***Insert Address of Principal Project Company and Lender(s)***]**

____, 2025

Ladies and Gentlemen:

I am a Deputy City Attorney assigned to provide counsel to the City and County of San Francisco ("**City**"), a municipal corporation acting by and through the San Francisco Municipal Transportation Agency ("**SFMTA**"), and as such have advised City in connection with its execution of:

(i) the Infrastructure Facility Design-Build-Finance-Operate-Maintain Agreement for the Potrero Yard Modernization Project dated as of [___], 2025 by and between the City and [____], a [___] (the "**Principal Project Company**"); and

(ii) the Direct Agreement dated as of [___], 2025 by and between the City, the Principal Project Company and [___], the collateral agent for the Lenders.

The agreements in clauses (i) – (ii) are collectively referred to hereinafter as the "**City Agreements**".

We have examined executed originals or copies identified to our satisfaction of each of the City Agreements. We have further examined such other documents, certificates and other materials as we have deemed necessary in order to render the opinions expressed herein.

With respect to the various factual matters material to my opinion, we have relied upon certificates and representations of the City and other public officials. We have assumed the due execution and delivery, pursuant to due authorization of the City Agreements by parties other than the City, the validity and binding effect thereof as to such other parties and the genuineness of all signatures (other than those of the City) on all documents seen or reviewed by us, the authenticity of all documents submitted to us as originals and the conformity with the original documents of all documents submitted to us as copies.

Whenever an opinion expressed herein is stated to be to my knowledge, or known to me, it means that, during the course of my representation of the City, I have not acquired information giving me actual knowledge of the existence or absence of the facts forming the basis for such opinion, and that, except to the extent expressly set forth herein I have not conducted an independent investigation to determine the existence or absence of such facts.

Based on the foregoing, I am of the opinion that:

1. Ordinance No. 38-21, adopted by the Board of Supervisors on March 16, 2021, has been duly enacted and is in full force and effect.

2. The City and County of San Francisco is a charter city and municipal corporation duly organized and validly existing under the Constitution of the State of California.

3. The City is duly organized and operating pursuant to the San Francisco Charter and has the full legal capacity, right, power and authority to enter into and deliver the City Agreements. The City has the full legal capacity, right, power and authority to carry out and perform its obligations under the City Agreements.

4. Each of the City Agreements has been duly authorized, executed and delivered by the City, and such documents are legal, valid and binding instruments of the City and are enforceable against the City in accordance with their terms, except as enforceability may be limited or otherwise affected by (a) bankruptcy, insolvency, reorganization, moratorium and other laws affecting the rights of creditors generally, (b) principles of equity, whether considered at law or in equity, (c) the sovereign immunity of the City; provided that sovereign immunity shall not bar the enforcement of claims presented in accordance with the provisions of the applicable City Agreement, City Charter and Administrative Codes and California law, so long as such claims are based on contractual rights, and (d) the limitations and conditions set forth herein.

5. The execution and delivery by the City of the City Agreements and the performance of its obligations under the City Agreements are within its powers and do not and will not conflict with, or constitute a breach or result in a violation of (a) any existing constitutional or statutory provision of the State of California, (b) to my knowledge, any existing agreement or other instrument to which the City is a party or by which it is bound, or (c) to my knowledge, any existing order, rule, regulation, judgment, decree ordinance of any court, government or governmental authority having jurisdiction over the City as applicable or its properties.

6. All official action required to be taken by the City and all consents, approvals, authorizations or orders of or filings with or notice to, any governmental or regulatory authority necessary to authorize and enable the City to execute and deliver the City Agreements or to authorize and enable City to perform its obligations thereunder (other than acts under the City Agreements that may be taken by City in the future) have been taken and obtained.

The opinions expressed in this letter are limited to the opinions expressly stated, and no other opinions should be inferred. The opinions are expressed only as of the date hereof.

Sincerely,

[*Insert Signature*]

EXHIBIT 5E

FORM OF OPINION FROM PRINCIPAL PROJECT COMPANY'S LEGAL COUNSEL

[***Insert Firm Letterhead***]

[***Insert City Address***]

[***Insert Lender Addressees***]

____, 2025

Ladies and Gentlemen:

We [___] ("**Firm**") have acted as special counsel to [___], a [___] (the "**Principal Project Company**") in connection with the Infrastructure Facility Design-Build-Finance-Operate-Maintain Agreement for the Potrero Yard Modernization Project dated as of [___], 2025 (the "**Agreement**") between the City and County of San Francisco ("**City**"), a municipal corporation acting by and through the San Francisco Municipal Transportation Agency ("**SFMTA**"), and the Principal Project Company (Contract # ____). This opinion is being furnished pursuant to Section 3.2.4 (Conditions Precedent to Financial Close) of the Agreement. Capitalized terms used herein without definition have the meanings ascribed to such terms in the Agreement.

In connection with the opinions contained herein, we have examined executed counterparts, or copies of such executed counterparts certified or otherwise identified to our satisfaction, of:

(i) the Agreement;

(ii) the Direct Agreement, by and between the City, the Principal Project Company and the Collateral Agent;

(iii) the Equity Members Funding Agreements;

(iv) the D&C Contract;

(v) the IFM Contract; and

(vi) the Financing Documents.

[***add other agreements, if necessary***]

Collectively, (i) through (iv) above shall be hereinafter referred to as the "**Transaction Documents**".

We have further examined and relied upon the accuracy of original, certified, conformed, photocopied or telecopied copies of such records, agreements, certificates and other

documents as we have deemed necessary or appropriate to enable us to render the opinions expressed herein. In all such examinations we have assumed the genuineness of signatures on original documents and the conformity to such original documents of all copies submitted to us as certified, conformed, photocopied or telecopied copies. We have further assumed that none of such documents has been subsequently rescinded, revoked, restated, modified or amended in any way other than by documents that have been submitted to us. We have made no independent inquiry or investigation of any factual matters or circumstances relevant to the opinions herein set forth, but instead have relied solely upon the accuracy of oral or written statements and representations of officers and other representatives of the Principal Project Company, statements, representations and warranties made in the Transaction Documents.

In our examination, we have assumed, without independent investigation, the following:

(i) the Transaction Documents have been duly authorized, executed and delivered by each party thereto (other than the Principal Project Company);

(ii) that each party (other than the Principal Project Company) to each Transaction Document is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization, and has full power and authority to enter into and to carry out its obligations under such Transaction Document;

(iii) the authorization, execution and delivery by each party (other than the Principal Project Company) of each Transaction Document to which it is a party does not, and such party's performance thereunder will not, breach, conflict with, or constitute a violation of, (A) the organizational documents, bylaws or similar governing documents of such party or (B) any laws or any writ, order, injunction or decree of any court or governmental authority or any provision of any agreement or instrument to which such party or its properties may be bound;

(iv) that each Transaction Document is the legal, valid and binding obligation of each party thereto (other than the Principal Project Company) enforceable against such party in accordance with the terms of such Transaction Document;

(v) the legal capacity and competency of all Persons signing the Transaction Documents on behalf of the parties thereto (other than the Principal Project Company); and

(vi) that each party to the Transaction Documents (other than the Principal Project Company) has all necessary governmental consents, approvals, licenses or permits required in order to execute and deliver the Transaction Documents to which it is a party.

The opinions set forth below that make reference to, or are stated to be qualified by, the expression "to our knowledge" or any expression of similar import are limited to the current actual knowledge of the individual attorneys at this Firm who have devoted substantial attention to the representation of the Principal Project Company in connection with the preparation, negotiation, execution and delivery of the Transaction Documents (but not the knowledge of any other attorney

of this Firm or any constructive or imputed knowledge of any information, whether by reason of our representation of the Principal Project Company or otherwise). We have not undertaken an independent investigation to determine the accuracy of any such statement, and any limited inquiry undertaken by us during the preparation of this letter should not be regarded as such an investigation.

Based upon the foregoing and our examination of such questions of law as we have deemed necessary or appropriate, and subject to limitations and qualifications set forth below, it is our opinion that:

1. The Principal Project Company is a [___] validly existing and in good standing under the laws of [___] and has all requisite limited liability company power to execute and deliver, and to perform its obligations under, the Transaction Documents.

2. The Principal Project Company is qualified to transact interstate business as a foreign limited liability company in the State of California.

3. The execution and delivery of, and the performance of obligations under, the Transaction Documents by the Principal Project Company, have been duly authorized by all necessary action on the part of the Principal Project Company. Each person executing such Transaction Documents on the Principal Project Company's behalf has been duly authorized to execute and deliver each such document on Principal Project Company's behalf, and such Transaction Documents have been duly executed and delivered by the Principal Project Company.

4. Each of the Transaction Documents constitutes the valid and binding obligation of the Principal Project Company, enforceable against the Principal Project Company in accordance with the terms thereof.

5. The execution and delivery by the Principal Project Company of the Transaction Documents does not, and the consummation by the Principal Project Company of any of the transactions contemplated thereunder will not, result in the violation by Principal Project Company of any United States federal statute, rule or regulation, which in our experience is normally applicable with respect to transactions of the type contemplated by the Transaction Documents (without taking into account the particular nature of the business conducted by the parties to the Transaction Documents). The execution and delivery by the Principal Project Company of the Transaction Documents does not, and the consummation by it of the transactions contemplated thereunder will not, result in a violation by Principal Project Company of any provision of the LLC Agreement (as defined in Annex I) or the Certificate of Formation (as defined in Annex I).

6. The execution and delivery by the Principal Project Company of the Transaction Documents and the performance of its obligations under the Transaction Documents are within its powers and do not and will not conflict with, or constitute a breach or result in a violation of (a) any existing constitutional or statutory provision of the State of California, (b) to my knowledge, any existing agreement or other instrument to which Principal Project Company is a party or by which it is

bound, or (c) to my knowledge, any existing order, rule, regulation, judgment, decree ordinance of any court, government or governmental authority having jurisdiction over Principal Project Company as applicable or its properties.

Our opinions are subject to the following additional assumptions, limitations and qualifications:

A. Our opinions are subject to bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar laws of general applicability relating to or affecting creditors' rights and to general principles of equity. Without limiting the foregoing qualifications, the opinions expressed herein do not purport to cover, and we express no opinion with respect to, the applicability of Section 548 of the federal Bankruptcy Code or any comparable provision of state law, including the provisions relating to fraudulent conveyances.

B. Indemnities, rights of contribution, exculpatory provisions, provisions in respect of rights to liquidated damages, penalties or punitive damages, waivers of rights and provisions requiring arbitration of disputes may be limited on public policy grounds or may be prohibited by law.

C. Certain of the remedies in the Transaction Documents may be limited or rendered unenforceable by applicable law. In our opinion, however, applicable law does not render the remedies afforded by the Financing Documents inadequate for the practical realization by the Lenders of the principal benefits intended to be provided by the Financing Documents.

D. We express no opinion with respect to any provision of the Transaction Documents that purports to require a prevailing party in a dispute to pay attorney's fees and expenses, or other costs, to a non-prevailing party.

E. We express no opinion as to the enforceability of any agreements in any Transaction Document by the parties thereto to agree in the future upon any matter.

This letter speaks only as of the date hereof, and we disclaim any undertaking to update this letter to take into account any future changes of fact or law. The opinions expressed herein are solely for your benefit, and may not be relied on in any manner or for any purposes by any other Person without our written consent, and are not to be used, circulated, quoted, published or otherwise referred to or disseminated for any other purpose.

Very truly yours,

[*Insert Signature*]

EXHIBIT 5F

BASE CAPITAL MaxAP ADJUSTMENT FOR BASE INTEREST RATE FLUCTUATION AND CREDIT SPREAD RISK MITIGATION

To facilitate the adjustment process described in this Exhibit, Principal Project Company and City will collaboratively prepare a Financial Model closing protocols document that will set forth additional details for how the calculations set forth in this Exhibit will be applied to the Base Case Financial Model and the Key Ratios therein.

1. Base Interest Rate Fluctuations

1.1 Promptly following Financial Close, Principal Project Company shall update the Base Case Financial Model in effect as of the Effective Date to:

(a) reflect 100% of the changes to the Base Interest Rates that have occurred during the Bond Rate Protection Period or Bank Debt Rate Protection Period (as applicable), without changing the coupon structure of any Bond Financing;

(b) solve for the lowest possible MaxAP;

(c) maintain the Equity IRR to be equal to the Original Equity IRR; and

(d) satisfy all Key Ratios in the Base Case Financial Model.

1.2 The capital portion of the MaxAP resulting from the update to the Base Case Financial Model in accordance with Section 1.1 will be the Base Interest Rate adjusted Base Capital MaxAP ("**$MaxAP_{BIRBase}$**") and the resulting Financial Model will be referred to herein as "**BIR Financial Model**").

2. Credit Spread Fluctuations

2.1 If Principal Project Company is not eligible for Credit Spread Risk Mitigation:

(a) Principal Project Company shall bear 100% of the impact (either positive or negative) on its Original Equity IRR for changes in credit spreads over the Bond Rate Protection Period;

(b) the remainder of this Section 2 (Credit Spread Fluctuations) and Section 3 (Adjustments to the Base Capital MaxAP for Base Interest Rate fluctuation and Credit Spread Risk Mitigation) of this Exhibit 5F (Base Capital MaxAP Adjustment for Base Interest Rate Fluctuation and Credit Spread Risk Mitigation) do not apply to Principal Project Company; and

(c) $MaxAP_{BIRBase}$ calculated pursuant to Section 1 (Base Interest Rate Fluctuations) will become the interim Base Capital MaxAP ("**$MaxAP_{INTERIM}$**") used in the final Financial Model solve required under Section 4 (Financial Model Update, Base Capital MaxAP and Base Operating MaxAP Revision).

2.2 If Principal Project Company is eligible for Credit Spread Risk Mitigation, Principal Project Company shall calculate the following, in each case, to achieve the lowest possible applicable MaxAP and maintain the Original Equity IRR at the same levels reflected in Principal Project Company's Base Case Financial Model while its Key Ratios remain in compliance with the Financing Agreements and consistent with the Base Case Financial Model:

(a) "**$MaxAP_{BASELINE}$**" representing the Base Capital MaxAP calculated by updating the BIR Financial Model (which was prepared in accordance with Section 1 (Base Interest Rate Fluctuations) of this Exhibit 5F(Base Capital MaxAP Adjustment for Base Interest Rate Fluctuation and Credit Spread Risk Mitigation)) with the applicable Baseline Credit Spreads (if different from those already in BIR Financial Model);

(b) "**$MaxAP_{PRICING}$**" representing the Base Capital MaxAP calculated by updating the Base Case Financial Model with the actual Bond Financing pricing and the actual net proceeds, coupon and term structure as of the Bond Pricing Date; and

(c) the upper boundary ("**$MaxAP_{UPPER}$**") and lower boundary ("**$MaxAP_{LOWER}$**") between which Principal Project Company shall bear the full impact of changes in credit spreads (the "**No-Mitigation Range**"), calculated as follows:

(i) $MaxAP_{UPPER}$ shall be the greater of $MaxAP_{BIRBase}$ and $MaxAP_{BASELINE}$,
$MaxAP_{UPPER} = \text{Maximum} (MaxAP_{BIRBase}, MaxAP_{BASELINE})$

and

(ii) $MaxAP_{LOWER}$ shall be the lessor of $MaxAP_{BIRBase}$ and $MaxAP_{BASELINE}$
$MaxAP_{LOWER} = \text{Minimum} (MaxAP_{BIRBase}, MaxAP_{BASELINE})$.

3. Adjustments to the Base Capital MaxAP for Base Interest Rate fluctuation and Credit Spread Risk Mitigation

Principal Project Company shall, subject to City's review and approval, calculate the Base Capital MaxAP ("**$MaxAP_{INTERIM}$**") to be used in Section 4 (Financial Model Update, Base Capital MaxAP and Base Operating MaxAP Revision), in accordance with one of the following scenarios:

(a) if $MaxAP_{PRICING}$ is above the No-Mitigation Range, then $MaxAP_{INTERIM}$ shall be $MaxAP_{BIRBase}$ plus 50% of the difference between the $MaxAP_{PRICING}$ and the higher of the $MaxAP_{BASELINE}$ and $MaxAP_{BIRBase}$:

if $MaxAP_{PRICING} > MaxAP_{UPPER}$, then
$MaxAP_{INTERIM} = MaxAP_{BIRBase} + 50\% \times (MaxAP_{PRICING} – MaxAP_{UPPER})$;

(b) if $MaxAP_{PRICING}$ is below the No-Mitigation Range, then $MaxAP_{INTERIM}$ shall be $MaxAP_{BIRBase}$ reduced by 50% of the difference between the $MaxAP_{PRICING}$ and the lower of the $MaxAP_{BASELINE}$ and $MaxAP_{BIRBase}$:

if $MaxAP_{PRICING} < MaxAP_{LOWER}$, then
$MaxAP_{INTERIM} = MaxAP_{BIRBase} + 50\% \times (MaxAP_{PRICING} – MaxAP_{LOWER})$; and

(c) if $MaxAP_{PRICING}$ falls on or within the No-Mitigation Range, then there will be no further adjustment to $MaxAP_{BIRBase}$ and $MaxAP_{INTERIM}$ will equal $MaxAP_{BIRBase}$.

if ($MaxAP_{PRICING} \leq MaxAP_{UPPER}$ *AND* $MaxAP_{PRICING} \geq MaxAP_{LOWER}$), then $MaxAP_{INTERIM} = MaxAP_{BIRBase}$.

Tables 3A and 3B below illustrate the scenarios described in Section 3 (Adjustments to the Base Capital MaxAP for Base Interest Rate fluctuation and Credit Spread Risk Mitigation).

Table 3A - Scenario A
After adjusting for movements in Base Interest Rates, the Base Capital MaxAP is equal to or lower than the Base Capital MaxAP calculated using the Baseline Credit Spreads (also adjusted for movements in Base Interest Rates).

	Pricing Outcomes:		
	(i) $MaxAP_{PRICING}$ is above the No-Mitigation Range	**(ii)** $MaxAP_{PRICING}$ is below the No-Mitigation Range	**(iii)** $MaxAP_{PRICING}$ falls on or within the No-Mitigation Range
	$MaxAP_{PRICING}$ ↑		
$MaxAP_{BASELINE}$			↓ $MaxAP_{PRICING}$ ↑
$MaxAP_{BIRBase}$			
		↓ $MaxAP_{PRICING}$	
	$MaxAP_{BIRBase}$ is increased by 50% of the difference between $MaxAP_{BASELINE}$ and $MaxAP_{PRICING}$	$MaxAP_{BIRBase}$ is decreased by 50% of the difference between $MaxAP_{BIRBase}$ and $MaxAP_{PRICING}$	No adjustment made to $MaxAP_{BIRBase}$

Table 3B - Scenario B
After adjusting for movements in Base Interest Rates, the Base Capital MaxAP is higher than the Base Capital MaxAP calculated using the Baseline Credit Spreads (also adjusted for

movements in Base Interest Rates).

	Pricing Outcomes: (i) $MaxAP_{PRICING}$ is above the No-Mitigation Range	(ii) $MaxAP_{PRICING}$ is below the No-Mitigation Range	(iii) $MaxAP_{PRICING}$ falls on or within the No-Mitigation Range
	$MaxAP_{PRICING}$ ↑		
$MaxAP_{BIRBase}$			↓ $MaxAP_{PRICING}$ ↑
$MaxAP_{BASELINE}$			
		↓ $MaxAP_{PRICING}$	
	$MaxAP_{BIRBase}$ is increased by 50% of the difference between $MaxAP_{BIRBase}$ and $MaxAP_{PRICING}$	$MaxAP_{BIRBase}$ is decreased by 50% of the difference between $MaxAP_{BASELINE}$ and $MaxAP_{PRICING}$	No adjustment made to $MaxAP_{BIRBase}$

4. Financial Model Update, Base Capital MaxAP and Base Operating MaxAP Revision

4.1 On the date of Financial Close, Principal Project Company shall update and solve the Base Case Financial Model then in effect with the following:

(a) Base Capital MaxAP set equal to the $MaxAP_{INTERIM}$ (as calculated in accordance with Section 2.1 or Section 3 (Adjustments to the Base Capital MaxAP for Base Interest Rate fluctuation and Credit Spread Risk Mitigation), as applicable);

(b) actual Project Debt pricing, including net proceeds, Base Interest Rates, credit spreads, coupons and term structure as of the Bank Debt Pricing Date or Bond Pricing Date, as applicable;

(c) all other changes in terms of financing assumed between those indicated in the Bid Financial Model submitted with Principal Project Company's Financial Proposal and in Principal Project Company's financial plan as set forth in the Financing Documents as of the Financial Close Date; and

(d) all other changes required to be reflected in the Financial Model as result of any steps taken under Section 3.4.2 of the Agreement.

4.2 The financial model resulting from the update to the Base Case Financial Model in accordance with Section 4.1 shall be proposed by Principal Project Company to City as the Financial Model Update described in Section 3.3.1 of the Agreement and, upon execution of the amendment agreement referred to in Section 3.3.2 of the Agreement: (a) the resulting financial model shall become the "**Financial Model**"; (b) the projected Base Capital MaxAP for the first Contract Year (annualized to be a 12-calendar month period) therein will become the new "**Base Capital MaxAP**"; (c) the Base Operating MaxAP shall become the new "**Base Operating MaxAP**"; and (d) the internal rate of return on equity therein shall become the "**Equity IRR.**"

EXHIBIT 5G

FINANCING DOCUMENT TERMS

(a) The Security Documents may only secure Project Debt, the proceeds of which are obligated to be used exclusively for the purposes of:

(i) performing the Work;

(ii) paying interest and principal on other existing Project Debt and any costs and fees in connection with the development and award of the Project, achieving commercial close and closing and administering of any permitted Project Debt;

(iii) paying reasonable development fees to PPC-Related Entities or to a D&C Contractor or its affiliates for services related to the Project;

(iv) paying fees and premiums to any Lender of the Project Debt or such Lender's agents;

(v) paying Taxes;

(vi) funding reserves required under this Agreement, Financing Documents, applicable securities laws, or Environmental Laws;

(vii) making Distributions; and

(viii) Refinancing any Project Debt in accordance with this Agreement.

(b) The Security Documents may only secure Project Debt and Financing Documents issued and executed by (a) Principal Project Company, (b) its permitted successors and permitted assigns, (c) a special purpose entity that owns Principal Project Company but no other assets and has purposes and powers limited to the Project and the Work or (d) any special purpose entity or subsidiary wholly owned by Principal Project Company or such entity.

(c) Project Debt under a Financing Agreement and secured by a Security Document must be issued and held only by Institutional Lenders who qualify as such at the date the Security Document is executed and delivered (or, if later, at the date any such Institutional Lender becomes a party to the Security Document), except that (i) qualified investors, including PABs holders that may purchase the PABs in a public offering, other than Institutional Lenders may acquire and hold interests in Project Debt, but only if an Institutional Lender acts as Collateral Agent for such Project Debt and (ii) Equity Member Debt is not subject to this provision.

(d) The Security Documents, as a whole, securing each separate issuance of debt shall encumber the entire PPC's Interest, provided that the foregoing does not preclude entry by Principal Project Company into subordinate Security Documents (such subordination to be in accordance with the terms set forth in the Financing Documents) or into equipment lease financing.

(e) No Security Document or other instrument purporting to mortgage, pledge, encumber, or create a lien, charge or security interest on or against PPC's Interest shall extend to or affect the

right, title and interest of the City in the Project or the Facility or City's rights or interests under this Agreement.

(f) No Security Document or other instrument purporting to mortgage, pledge, encumber, or create a lien, charge or security interest on or against PPC's Interest shall extend to or affect City's right to access Principal Project Company's funds held in an operating account in the event of a PPC Default and the exercise of remedies by City under Section 16.2 (City Remedies for PPC Default) of the Agreement; provided such right shall not include a security interest in such funds nor shall the exercise of such right by City interfere with the right of the Lenders, if any, under the Security Documents and the Direct Agreement to access such funds. Specifically, with respect to any such operating account (and associated account agreement and account control agreement):

> (i) City shall be named as an authorized representative of Principal Project Company for purposes of the account, including specifically under any associated account control agreement, in the event of City's exercise of its Step-In Rights, and
>
> (ii) Any account control agreement shall expressly state the terms, prohibitions, City rights and other provisions in this Exhibit 5G (Financing Document Terms), including specifically those set forth in Sections (g) through (m) of this Exhibit 5G (Financing Document Terms).

(g) Each note, bond or other negotiable or non-negotiable instrument evidencing Project Debt, or evidencing any other obligations issued or incurred by any Person described in this Exhibit 5G (Financing Document Terms) in connection with this Agreement or the Project shall include or refer to a document controlling or relating to the foregoing that includes a conspicuous recital on its face to the effect that payment of the principal thereof and interest thereon is a valid claim only as against the obligor and the security pledged by Principal Project Company or the obligor therefor, is not an obligation, moral or otherwise, of the City, any other agency, instrumentality or political subdivision of the City, or any elected official, member, director, officer, employee, agent or representative of any of them, and neither the full faith and credit nor the taxing power, and no assets, of the City, or any other agency, instrumentality or political subdivision of the City is pledged to the payment of the principal thereof and interest thereon.

(h) Each Financing Document containing provisions regarding default by Principal Project Company shall require that if Principal Project Company is in default thereunder and the Collateral Agent gives notice of such default to Principal Project Company, then the Collateral Agent shall also give concurrent notice of such default to City. Each Financing Document and Security Document that provides Lender remedies for default by Principal Project Company or the borrower shall require that the Collateral Agent deliver to City, concurrently with delivery to Principal Project Company or any other Person, every notice of election or enforcement of remedies, including an election to sell or foreclose, notice of sale or foreclosure or other notice required by Applicable Law or by the Security Document in connection with the exercise of remedies under the Financing Document or Security Document.

(i) No Financing Document that may be in effect during any part of the period that the Handback Requirements apply shall grant to the Lender any right to apply funds in the Handback Requirements Reserve Account or to apply proceeds from any Handback Requirements Letter of Credit in accordance with Section 8.7.5 (Handback Requirements Letters of Credit) of the Agreement to the repayment of Project Debt, to any other obligation owing the Lender or to any

other use except the uses set forth in Section 8.6 (Handback) of the Agreement, and any provision purporting to grant such right shall be null and void, provided, however, that (a) any Lender or Substituted Entity shall, following foreclosure or transfer in lieu of foreclosure, automatically succeed to all rights, claims and interests of Principal Project Company in and to the Handback Requirements Reserve Account and (b) a Financing Document or Security Document may create such rights regarding excess funds described in Section 8.7.2.5 of the Agreement.

Each relevant Financing Document and Security Document that may be in effect during any part of the period that the Handback Requirements apply shall expressly permit, without condition or qualification, Principal Project Company to (a) use and apply funds in the Handback Requirements Reserve Account in the manner contemplated by this Agreement, (b) issue additional Project Debt, secured by the PPC's Interest, for the added limited purposes of funding work pursuant to Handback Requirements in accordance with Section 8.6 (Handback) of the Agreement and (c) otherwise comply with its obligations in this Agreement regarding Handback Renewal Work, the Handback Requirements and the Handback Requirements Reserve Account. Subject to the foregoing, any protocols, procedures, limitations and conditions concerning draws from the Handback Requirements Reserve Account set forth in any Financing Document or the issuance of additional Project Debt as described in clause (b) above shall be consistent with the permitted uses of the Handback Requirements Reserve Account, and shall not constrain Principal Project Company's or City's access thereto for such permitted uses, even during the pendency of a default under the Financing Document.

For the avoidance of doubt:

(i) The Lenders then holding Project Debt may limit additional Project Debt if other funds are then, in City's determination, readily available to Principal Project Company for the purpose of funding the Work;

(ii) No Lender then holding Project Debt is required hereby to grant pari passu lien or payment status to any such additional Project Debt; and

(iii) The Lenders then holding Project Debt may impose reasonable and customary requirements as to performance and supervision of the Work that are no more onerous than those set forth in their respective existing Financing Documents or Security Documents.

(j) Each Financing Document and Security Document shall expressly state that the Lender shall not name or join City, any other agency, instrumentality or political subdivision of the City, or any elected official, member, director, officer, employee, agent or representative of any of them in any legal proceeding seeking collection of the Project Debt or other obligations secured thereby or the foreclosure or other enforcement of the Financing Documents, except as such language may be modified in the Financing Documents approved by City as provided in any Direct Agreement.

(k) Each Financing Document shall expressly state that the Lender shall not seek any damages or other amounts from City, any other agency, instrumentality or political subdivision of the City, or any elected official, member, director, officer, employee, agent or representative of any of them, whether for Project Debt or any other amount, except (a) damages from City only for a violation by City of its express obligations to Lenders set forth in any Direct Agreement, if applicable, and (b) amounts due from City under this Agreement where the Lender has succeeded

to the rights and interests of Principal Project Company under this Agreement, whether by way of assignment or subrogation.

(l) Each Financing Document shall expressly state that the Lender and the Collateral Agent shall respond to any request from City or Principal Project Company for consent to a modification or amendment of any of this Agreement within a reasonable period of time.

(m) Each Financing Document that addresses the use of insurance proceeds shall expressly state that the Lender and the Collateral Agent shall (a) apply proceeds from Insurance Policies as specified in Exhibit 7 (Insurance Requirements) and (b) remit any amounts due to City from proceeds from Insurance Policies, as set forth in Exhibit 7 (Insurance Requirements), in each case, if any such Lender or Collateral Agent is named as the loss payee for the Insurance Policy.

EXHIBIT 6

FORMS OF PAYMENT AND PERFORMANCE SECURITY

Exhibit 6A: Financial Close Security

Exhibit 6B: Form of D&C Payment Bond[1]

Exhibit 6C: Form of D&C Performance Bond[1]

Exhibit 6D: Form of Multiple Obligee Rider for D&C Payment Bond[1]

Exhibit 6E: Form of Multiple Obligee Rider for D&C Performance Bond[1]

Exhibit 6F: Form of SFMTA O&M Facilities Warranty Bond

[1] If the bond is to secure the performance or payment obligations of the D&C Contractor or other Key Contractor, rather than Principal Project Company, then the form of the bond shall be revised in accordance with Section 10.3.1.8 of this Agreement.

EXHIBIT 6A

FORM OF FINANCIAL CLOSE SECURITY

FORM 6A-1 - FORM OF FINANCIAL CLOSE BOND[1]

Bond No. _______

KNOW ALL PERSONS BY THESE PRESENTS, that the __________________, as Principal and ___________________, as Surety, each authorized and licensed to transact business in the State of California ("**State**"), and each a corporation duly organized under the laws of the State indicated on the attached page, having its principal place of business at the address listed on the attached page, in the State indicated on the attached page, and each Surety authorized as a surety in the State, are jointly and severally held and firmly bound unto the City and County of San Francisco (the "**City**"), a municipal corporation acting by and through the **San Francisco Municipal Transportation Authority** ("**SFMTA**"), in the sum of [**____________ United States Dollars (US $_________)**] (the "**Bonded Sum**"), the payment of which we each bind ourselves, and our heirs, executors, administrators, representatives, successors, and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into an Infrastructure Facility Design-Build-Finance-Operate-Maintain Agreement with the City dated as of ____ 2025 (the "**Agreement**") to design, construct, finance, operate and maintain the Infrastructure Facility of the Potrero Yard Modernization Project (the "**Project**");

NOW, THEREFORE, the condition of this bond is such that this obligation shall be null and void upon (a) occurrence of Financial Close for the Project by the Financial Close Deadline set forth in the Agreement; or (b) Principal's receipt of written Notice from City that the Agreement is terminated pursuant to Section 17.6 of the Agreement; otherwise it shall remain in full force and effect, and the Bonded Sum will be forfeited to City as liquidated damages and not as a penalty, upon receipt by Principal and Surety of Notice of such forfeiture from City:

The Surety hereby agrees to pay to City the full Bonded Sum hereinabove set forth, as liquidated damages and not as a penalty, within ten days after Notice from City that Principal has failed to achieve Financial Close by the Financial Close Deadline set forth in the Agreement, and such failure is not excused in accordance with the Agreement.

[1] The amount of a single bond may be less than $[________] on the condition that Proposer provides Financial Close Security that totals $[________] in the aggregate.

The following terms and conditions shall apply with respect to this bond:

1. If suit is brought on this bond by City and judgment is recovered, Surety shall pay all costs incurred by City in bringing such suit, including, without limitation, reasonable attorneys' fees and costs as determined by the court.

2. Any extension(s) of the time for award of the Agreement that Principal may grant in accordance with the Agreement or otherwise, shall be subject to the reasonable approval of Surety.

3. Correspondence, Notices or claims relating to this bond should be sent to Surety at the following address:

____
____
____

This agreement shall be binding on the Principal and Surety executing the same, their legal representatives, successors and assigns.

Capitalized terms used but not defined herein shall have the meaning given to them in the Agreement.

SIGNED and SEALED this ___________ day of ______________________, 2025

____
Principal

By: ____

____
Surety

By: ____
Attorney in Fact

[add appropriate Surety acknowledgments]

FORM 6A-2 - FORM OF FINANCIAL CLOSE LETTER OF CREDIT[b]

IRREVOCABLE STANDBY LETTER OF CREDIT – FINANCIAL CLOSE

ISSUER:____

PLACE FOR PRESENTATION OF DRAFT: (Name and Address of Bank/Branch -- MUST be San Francisco, California, Los Angeles, California, Chicago, Illinois, or New York, New York address)

APPLICANT:____

BENEFICIARY: CITY AND COUNTY OF SAN FRANCISCO
____
____
____

LETTER OF CREDIT NUMBER:______________________________

PLACE AND DATE OF ISSUE:______________________________

AMOUNT: [[**________] United States Dollars (US $[________])**]

EXPIRATION DATE: __________

The above named Issuer issues this Irrevocable Standby Letter of Credit in favor of the City and County of San Francisco ("**City**"), for any sum or sums up to the aggregate amount of [[________] **United States Dollars (US $**[________]**)**], available by draft at sight drawn on the Issuer. Any draft under this Irrevocable Standby Letter of Credit shall be signed by an authorized representative of the above named Beneficiary and shall:

1. Identify this Irrevocable Standby Letter of Credit by the name of the Issuer, and the Letter of Credit number, amount, and place and date of issue, stated above; and

2. State:

   "This drawing is due to ______(Applicant's name)_____'s failure to achieve Financial Close by the Financial Close Deadline set forth in the Infrastructure Facility Design-Build-Finance-Operate-Maintain Agreement with the City and County of San Francisco dated as of ____ 2025 (the "**Agreement**") without excuse under the Agreement."

All drafts presented in compliance with the terms of this Irrevocable Standby Letter of Credit will be honored if presented by physical delivery of such original documents or via overnight courier

[b] The amount of a single letter of credit may be less, on the condition that Proposer provides Financial Close Security that totals $[________] in the aggregate.

of such original documents to ____(Name & San Francisco, California, Los Angeles, California, Chicago, Illinois, or New York, New York address)____ on or before the stated expiration date described above or any extended expiration date.

This Irrevocable Standby Letter of Credit is subject to the rules of the "International Standby Practices" ISP98. If a conflict between ISP98 and New York law should arise, New York law shall prevail, without regard to principles of conflicts of law. If legal proceedings are initiated by any party with respect to payment of the Irrevocable Standby Letter of Credit, we agree that such proceeding shall be governed by New York law and may be brought in the State Courts of New York, venue in New York City, provided that the obligations of City shall be governed and construed in accordance with California law. Venue for any proceeding involving issues related to the obligations of City shall be in San Francisco, California.

Any failure by you to draw upon this Irrevocable Standby Letter of Credit as permitted hereunder shall not cause this Irrevocable Standby Letter of Credit to be unavailable for any future drawing, provided that this Irrevocable Standby Letter of Credit has not expired prior to such future drawing and that all requirements of this Irrevocable Standby Letter of Credit are independently satisfied with respect to any such future drawing.

Capitalized terms used but not defined herein shall have the meaning given to them in the Agreement.

Issuer:

By: ____(Authorized signature of Issuer)

EXHIBIT 6B

FORM OF D&C PAYMENT BOND

(Bond No. ________)

[INSERT PRINCIPAL PROJECT COMPANY NAME] (the "**Principal Project Company**") has entered into a contract with the City and County of San Francisco (the "**City**"), a municipal corporation acting by and through the San Francisco Municipal Transportation Agency ("**SFMTA**"), bearing the date of **[INSERT DATE]**, 2025, to design, build, finance, operate and maintain the Infrastructure Facility of the Potrero Yard Modernization Project (the "**Agreement**"); and

That we **[INSERT CONTRACTOR NAME]**, an entity duly authorized to do business in the State of California (the "**State**") and having its principal place of business at **[INSERT STREET ADDRESS, CITY, STATE, ZIP AND PHONE #]** (the "**Principal**" or "**Contractor**"), have entered into a contract (the "**Contract**") with Principal Project Company bearing the date of **[INSERT DATE]**, for the performance of design and construction work in connection with the Infrastructure Facility of the Potrero Yard Modernization Project; and

That the Principal and **[INSERT SURETY NAME]** (the "**Surety**") (or the "**Co-Sureties**"), duly authorized to do business in the State, having its principal place of business at **[INSERT HOME OFFICE ADDRESS]** are held and firmly bound unto Principal Project Company, in the full and just sum of **[INSERT D&C PAYMENT BOND AMOUNT]** lawful money of the United States of America **(US$___)**, to whom payment well and truly will be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally;

CONDITIONS OF THIS BOND ARE AS FOLLOWS:

A. Principal shall promptly make all payments owing when due to all persons who furnish labor, services, or materials for the prosecution of the work provided for in the Contract.

B. Each said claimant shall have a right of action against the Principal and Surety (or Co-Sureties) for the amount due him or her, including unpaid finance charges due under the claimant's contract.

C. A claimant, except a laborer, who is not in privity with the Principal shall, before commencing or not later than 20 days after commencing to furnish labor, materials, or supplies for the prosecution of the work, furnish the Principal with a preliminary Notice that he or she intends to look to this bond for protection. No action for the labor, materials, or supplies may be instituted against the Principal or the Surety (or Co-Sureties) unless the preliminary Notice has been given. Notices required or permitted shall be given in compliance with the requirements of Sections 8100 et seq. and 9300 et seq. of the California Civil Code.

D. The amount of this bond is a fixed amount and shall not be changed.

E. Neither any change in or under the Contract, nor any compliance or noncompliance with any formalities provided in the Contract nor the change shall relieve the Surety (or Co-Sureties) of its obligations under this bond.

Correspondence, Notices or claims relating to this bond should be sent to the following Surety's authorized representative and address:

____
____
____

If there are Co-Sureties, the Co-Sureties agree to empower the above authorized representative with the authority to act on behalf of all of the Co-Sureties with respect to this bond, so that City will have no obligation to deal with multiple sureties hereunder. The above authorized representative may be changed only by delivery of written Notice (by personal delivery or by certified mail, return receipt requested) to City designating a single new authorized representative, signed by all of the Co-Sureties.

IN WITNESS WHEREOF, Principal and Surety have executed these presents and the Surety (or Co-Sureties) has affixed its seal, this _________ day of __________, 2025.

PRINCIPAL:____ Date:______________, 2025

Authorized Signature:_________________________________

Print Name & Title:___________________________________

NAME OF SURETY:__________________________________

Date: _________________________, 2025

Signature (Attorney-in-Fact): ____

(Affix Seal)

Print Full Name, Address and Telephone No.

____

[If more than one Surety, then add appropriate number of lines to signature block]

NOTES CONCERNING SURETY AND EXECUTION:

A. SURETY COMPANY REQUIREMENTS

To be acceptable to the City, each Surety shall meet all of the requirements of the Agreement and laws of California.

B. EXECUTION OF BOND

1. Enter each Surety's name and address on each copy of this bond in the space provided.

2. Have each copy of this bond signed on behalf of the Principal by the same person that signed the Contract on behalf of the Principal (affix Corporate Seal, if appropriate).

3. Have each copy of this bond signed by the person authorized to sign on behalf of the Surety (or Co-Sureties). Put the date the signature was affixed in the space provided. Print that person's name in the place provided on each copy of this bond. Also, have each Surety's Corporate Seal affixed to each copy of this bond beside that person's signature (no copies are acceptable).

4. Each copy of this bond must have a Power of Attorney attached indicating that the person in item B.3 above is authorized to sign on behalf of the relevant Surety.

5. Each copy of the Power of Attorney must have the Surety's Corporate Seal manually affixed.

6. The date of execution of the Power of Attorney is the same as the date shown on the signature line for the Surety Attorney-In-Fact.

CALIFORNIA ALL PURPOSE ACKNOWLEDGEMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy or validity of that document.

State of ______________________

County of ______________________

On this ___ day of ______________________ in the year of _________ before me, a notary public in and for the county and state aforesaid, personally appeared ______________________ ______________________who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to within the instrument and acknowledged to me that he/she executed the same in his/her authorized capacity(ies), and that by his/her signature(s) on the instrument, the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

Witness my hand and official seal:

____(SEAL)____________________________________

Signature of Notary Public

EXHIBIT 6C

FORM OF D&C PERFORMANCE BOND

(Bond No. ________)

[INSERT PRINCIPAL PROJECT COMPANY NAME] (the "**Principal Project Company**") has entered into a contract with the City and County of San Francisco (the "**City**"), a municipal corporation acting by and through the San Francisco Municipal Transportation Agency ("**SFMTA**"), bearing the date of **[INSERT DATE]**, 2025, to design, build, finance, operate and maintain the Infrastructure Facility of the Potrero Yard Modernization Project (the "**Agreement**"); and

That we **[INSERT CONTRACTOR NAME**], an entity duly authorized to do business in the State of California (the "**State**") and having its principal place of business at **[INSERT STREET ADDRESS, CITY, STATE, ZIP AND PHONE #)**] (the "**Principal**" or "**Contractor**"), have entered into a contract (the "**Contract**") with Principal Project Company bearing the date of **[INSERT DATE]** related to the performance of design and construction work for the Infrastructure Facility of the Potrero Yard Modernization Project; and

That the Principal and **[INSERT SURETY NAME]** (the "**Surety**") (or the "**Co-Sureties**"), duly authorized to do business in the State, having its principal place of business at **[INSERT HOME OFFICE ADDRESS]** are held and firmly bound unto Principal Project Company and the Indemnitees (as defined in the Agreement) (Principal Project Company and the Indemnitees are collectively referred to herein as the "**Obligees**") in the full and just sum of **[INSERT D&C PERFORMANCE BOND AMOUNT]** lawful money of the United States of America **(US$____)**, to whom payment well and truly will be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally and firmly by these presents;

WHEREAS, it was one of the conditions of the Contract and the Agreement that these presents shall be executed;

NOW, THEREFORE, the conditions of this obligation are such that if Principal shall faithfully, promptly, efficiently and fully perform in accordance with the obligations of the Contract and shall indemnify and save harmless the Obligees from all cost and damage by reason of Principal's failure to do so, then this obligation shall be void; otherwise, it shall remain in full force and effect.

The Surety's obligations under this bond shall arise after:

(a) Either: (i) Principal Project Company provides Notice to Principal and the Surety that Principal Project Company is considering declaring a default by Principal under the Contract; or (ii) the City provides Notice to the Principal Project Company, with a copy to the Surety, that it is considering declaring a default of Principal Project Company under the Agreement as the result of a material breach by Principal of its obligations to Principal Project Company under the Contract. The relevant Notice shall indicate whether the Principal Project Company or the City, as the case may be, is requesting a conference among Principal Project Company, Principal, City and the Surety to discuss Principal's performance. If a conference is not requested, the Surety may, within five (5)

business days after receipt of the relevant Notice, request such a conference. If the Surety timely requests a conference, Principal Project Company and City shall attend. Unless Principal Project Company and City agrees otherwise, any such conference shall be held within ten (10) business days of the Surety's receipt of the relevant Notice; and

(b) Principal Project Company declares a default by Principal under the Contract, terminates the Contract and provides Notice to the Surety.

Failure on the part of Principal Project Company or the City to comply with the Notice requirement in Section (a) shall not constitute a failure to comply with a condition precedent to the Surety's obligations, or release the Surety from its obligations.

Should the conditions set forth in (a)-(b) above be satisfied, the Surety (or Co-Sureties) shall pay Principal Project Company (or any one or more of the Obligees) all costs assessed against the Principal because of the default which were not withheld from Contract proceeds, and upon an Obligee's demand, the Surety (or Co-Sureties) shall (i) take over performance of the Contract obligations; provided, however, that in the event Principal Project Company (or any one or more of the Obligees) elects to have the Surety (or Co-Sureties) take over performance of the Contract obligations, the Surety (or Co-Sureties) may not select the Principal or any affiliate of the Principal to perform the Contract obligations for and on behalf of the Surety (or Co-Sureties) without the express written consent of the Obligees; or (ii) waive the right to take over performance of the Contract obligations and tender payment of an amount necessary to compensate the Obligees for the cost to perform the Principal's obligations under the Contract, up to the full penal sum of this bond.

The Surety (or Co-Sureties) shall be fully liable under this bond up to the full penal sum hereof, regardless of any modifications (of whatever amount) to the Contract amount, provided that the Surety's obligations under this bond shall not be greater than those of Principal under the Contract.

No alteration, modification or supplement to the Contract or the nature of the work to be performed thereunder, including without limitation any extension of time for performance, shall in any way affect the obligations of Surety (or Co-Sureties) under this bond. Surety hereby waives Notice of any such alteration, modification or supplement, including changes in time, to the Contract.

Correspondence, Notices or claims relating to this bond should be sent to the following Surety's authorized representative and address:

____
____
____

If there are Co-Sureties, the Co-Sureties agree to empower the above authorized representative with the authority to act on behalf of all of the Co-Sureties with respect to this bond, so that City will have no obligation to deal with multiple sureties hereunder. The above authorized representative may be changed only by delivery of written Notice (by personal delivery or by certified mail, return receipt requested) to City designating a single new authorized representative, signed by all of the Co-Sureties.

If any provision of this bond is found to be unenforceable as a matter of law, all other provisions shall remain in full force and effect.

This bond shall be governed by and construed in accordance with the laws of the State of California, without regard for conflict of laws principles, and any action seeking enforcement of the bond will be litigated exclusively in the courts of the State of California.

WITNESS the signature of the Principal and the signature of the Surety (or Co-Sureties) by ____________________ its ____________________ (Agent or Attorney-in-Fact) with the seals of said Principal and Surety (or Co-Sureties) hereunto affixed this _____ day of ____________________, 2025.

Complete the following as appropriate

____
Principal (Entity Name)*
Authorized Signature: ______________________________
*Signature: ______________________________
Printed Name: ______________________________
* ______________________________
Title: ______________________________
(Seal)
*Include the signature and printed name of each partner required to be affixed per partnership agreement.

Principal shall record this bond in the official records of the Clerk of Court of the county where the improvement is located prior to commencing the work.

Organized and existing under the laws of the State of ________________ and authorized to do business in the State of California, pursuant to the laws of the State of California.	
Countersigned: ______________________________ California Licensed Insurance Agent Print information below (California Licensed Insurance Agent; whether in Attorney-in-Fact or Countersignature role): Name: ______________________________ Business Address: ______________________________ Telephone: ______________________________	______________________________ Surety Company Name (Print) (Seal) By: ______________________________ California Licensed Insurance Agent or Attorney-in-Fact (Surety) ☐ Above Signatory is also a California Licensed Insurance Agent (check if applicable and complete business name, address and telephone number block; if not, have such an agent countersign and complete block). NOTE: Power of Attorney showing authority of Surety's Agent or Attorney-in-Fact is to be attached.

[If more than one Surety, then add appropriate number of lines to signature block]

Send "Notices to City" to:

____

CALIFORNIA ALL PURPOSE ACKNOWLEDGEMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy or validity of that document.

State of ______________________

County of ______________________

On this ___ day of ______________________ in the year of 2025 before me, a notary public in and for the county and state aforesaid, personally appeared ______________________ ______________________who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to within the instrument and acknowledged to me that he/she executed the same in his/her authorized capacity(ies), and that by his/her signature(s) on the instrument, the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

Witness my hand and official seal:

____(SEAL)____________________________________

Signature of Notary Public

EXHIBIT 6D

FORM OF MULTIPLE OBLIGEE RIDER FOR D&C PAYMENT BOND

MULTIPLE OBLIGEE RIDER

This Rider is executed concurrently with and shall be attached to and form a part of Payment Bond ____________(hereinafter referred to as the "**Payment Bond**").

WHEREAS, **[INSERT PRINCIPAL PROJECT COMPANY NAME]** (the "**Principal Project Company**") has entered into a contract with the City and County of San Francisco (the "**City**"), a municipal corporation acting by and through the San Francisco Municipal Transportation Agency ("**SFMTA**"), bearing the date of **[INSERT DATE]**, 2025, to design, build, finance, operate and maintain the Infrastructure Facility of the Potrero Yard Modernization Project (the "**Agreement**"); and

WHEREAS, on or about the _____ day of ____________, 2025_, ______________________**[INSERT CONTRACTOR NAME]**, (hereinafter called the "**Principal**"), entered into a written agreement bearing the date of ______________, 2025 (hereinafter called the "**Contract**") with Principal Project Company, (hereinafter called the "**Primary Obligee**") for the performance of design and construction work for the Infrastructure Facility of the Potrero Yard Modernization Project; and

WHEREAS, the Primary Obligee requires that Principal provide a payment bond and that the City and County of San Francisco, a municipal corporation acting by and through the San Francisco Municipal Transportation Agency, the other Indemnitees (as defined in the Agreement) [and _____ **[INSERT COLLATERAL AGENT, if appropriate]**] ("**Additional Obligee(s)**") be named as additional obligee(s) under the payment bond; and

WHEREAS, Principal and the Surety (or Co-Sureties) identified below have agreed to execute and deliver this Rider concurrently with the issuance of the Payment Bond, upon the conditions herein stated.

NOW, THEREFORE, the undersigned hereby agree and stipulate as follows:

1. The Additional Obligee(s) is/are hereby added to the Payment Bond as named obligee(s).

2. The aggregate liability of the Surety (or Co-Sureties) to the Primary Obligee and the Additional Obligee(s) is limited to the penal sum of the Payment Bond.

3. The Additional Obligee(s)'s rights under the Payment Bond are subject to the same defenses that the Principal and/or the Surety (or Co-Sureties) have against the Primary Obligee.

Signed, sealed and dated this _____ day of __________________, 2025.

Attest:	______________________________
(SEAL)	(Name of Principal
____________________________________	By: ________________________
Secretary	Title: ________________________

Attest:	______________________________
(SEAL)	(Surety / Co-Surety)
____________________________________	
Signature	By:________________________
Bonding Agent's Name:_________________	Title:________________________
	____________________________
Agent's Address:_____________________	____________________________
	(Business Address of Surety / Co-Surety)

Attest:	______________________________
(SEAL)	(Co-Surety)
____________________________________	
Signature	By:________________________
Bonding Agent's Name:_________________	Title:________________________
	____________________________
Agent's Address:_____________________	____________________________
	(Business Address of Co-Surety)

Attest:	______________________________
(SEAL)	(Co-Surety)
____________________________________	
Signature	By:________________________
Bonding Agent's Name:_________________	Title:________________________
	____________________________
Agent's Address:_____________________	____________________________
	(Business Address of Co-Surety)

Attest:

(SEAL)

____
Signature
Bonding Agent's Name:_______________________

Agent's Address:____________________________

____
(Co-Surety)

By:______________________________
Title:_____________________________
____
____
(Business Address of Co-Surety)

Approved as to legal form and sufficiency this

______ day of ______________ 2025

____
Deputy City Attorney

[Note: Add lines to signature block if needed, and strike signature lines not used.]

[Note: The bond shall be signed by authorized persons. Where such persons are signing in a representative capacity (e.g., an attorney-in-fact), but is not a member of the firm, partnership, or joint venture, or an officer of the legal entity involved, evidence of authority must be furnished.]

EXHIBIT 6E

FORM OF MULTIPLE OBLIGEE RIDER FOR D&C PERFORMANCE BOND

MULTIPLE OBLIGEE RIDER

This Rider is executed concurrently with and shall be attached to and form a part of Performance Bond ___________(hereinafter referred to as the "**Performance Bond**").

WHEREAS, **[INSERT PRINCIPAL PROJECT COMPANY NAME]** (the "**Principal Project Company**") has entered into a contract with the City and County of San Francisco (the "**City**"), a municipal corporation acting by and through the San Francisco Municipal Transportation Agency ("**SFMTA**"), bearing the date of **[INSERT DATE]**, 2025, to design, build, finance, operate and maintain the Infrastructure Facility of the Potrero Yard Modernization Project (the "**Agreement**"); and

WHEREAS, on or about the _____ day of ____________, 2025, _____________________**[INSERT CONTRACTOR NAME]**, (hereinafter called the "**Principal**"), entered into a written agreement bearing the date of ______________, 2025 (hereinafter called the "**Contract**") with Principal Project Company, (hereinafter called the "**Primary Obligee**") for the performance of design and construction work for the Infrastructure Facility of the Potrero Yard Modernization Project; and

WHEREAS, the Primary Obligee requires that Principal provide a performance bond and that the City and County of San Francisco, a municipal corporation acting by and through the San Francisco Municipal Transportation Agency, the Indemnitees (as defined in the Agreement) [and _____ **[INSERT COLLATERAL AGENT, if appropriate]**] ("**Additional Obligee(s)**") be named as additional obligee(s) under the performance bond; and

WHEREAS, Principal and the Surety (or Co-Sureties) identified below have agreed to execute and deliver this Rider concurrently with the issuance of the Performance Bond, upon the conditions herein stated.

NOW, THEREFORE, the undersigned hereby agree and stipulate as follows:

1. The Additional Obligee(s) is/are hereby added to the Performance Bond as named obligee(s).

2. The Surety (or Co-Sureties) shall not be liable under the Performance Bond to the Primary Obligee, the Additional Obligee(s), or any of them, unless the Primary Obligee, the Additional Obligee(s), or any of them, shall make payments to the Principal (or in the case the Surety (or Co-Sureties) arrange for completion of the Contract, to the Surety (or Co-Sureties)) in accordance with the terms of the Contract as to payments and shall perform all other obligations to be performed under the Contract in all material respects at the time and in the manner therein set forth such that no material breach by the Primary Obligee shall have occurred and be continuing under the Contract.

3. The aggregate liability of the Surety (or Co-Sureties) under the Performance Bond, to any or all of the obligees, as their interests may appear, is limited to the penal sum of the Performance Bond. The Additional Obligee(s)'s rights hereunder are subject to the same defenses Principal and/or Surety (or Co-Sureties) have against the Primary Obligee. The total liability of the Surety (or Co-Sureties) under the Contract shall in no event exceed the amount recoverable from the Principal by the Primary Obligee.

4. The Surety (or Co-Sureties) may, at their option, make any payments under the Performance Bond by check issued jointly to all of the obligees.

5. In the event of a conflict between the Performance Bond and this Rider, this Rider shall govern and control. All references to the Performance Bond, either in the Performance Bond or in this Rider, shall include and refer to the Performance Bond as supplemented and amended by this Rider. Except as herein modified, the Performance Bond shall be and remains in full force and effect.

Signed, sealed and dated this _____ day of ___________________, 2025.

Attest:	______________________________
(SEAL)	(Name of Principal
____________________________________	By: ___________________________
Secretary	Title: __________________________

Attest:	______________________________
(SEAL)	(Surety / Co-Surety)
____________________________________	
Signature	By:___________________________
Bonding Agent's Name:___________________	Title:__________________________
	______________________________
Agent's Address:________________________	______________________________
	(Business Address of Surety / Co-Surety)

Attest:	______________________________
(SEAL)	(Co-Surety)
____________________________________	
Signature	By:___________________________
Bonding Agent's Name:___________________	Title:__________________________
	______________________________
Agent's Address:________________________	______________________________
	(Business Address of Co-Surety)

Attest: (SEAL)	______________________________ (Co-Surety)
______________________________ Signature Bonding Agent's Name:__________________ Agent's Address:______________________	By:______________________ Title:_____________________ __________________________ __________________________ (Business Address of Co-Surety)
Attest: (SEAL)	______________________________ (Co-Surety)
______________________________ Signature Bonding Agent's Name:__________________ Agent's Address:______________________	By:______________________ Title:_____________________ __________________________ __________________________ (Business Address of Co-Surety)

Approved as to legal form and sufficiency this

______ day of ______________ 2025

____
Deputy City Attorney

[Note: Add lines to signature block if needed, and strike signature lines not used.]

[Note: The bond shall be signed by authorized persons. Where such persons are signing in a representative capacity (e.g., an attorney-in-fact), but is not a member of the firm, partnership, or joint venture, or an officer of the legal entity involved, evidence of authority must be furnished.]

EXHIBIT 6F

FORM OF SFMTA O&M FACILITIES WARRANTY BOND

Bond No. ____________________

For

POTRERO YARD MODERNIZATION PROJECT

KNOW ALL WHO SHALL SEE THESE PRESENTS:

THAT WHEREAS, the City and County of San Francisco ("City" or "Obligee"), a municipal corporation acting in its proprietary capacity by and through the San Francisco Municipal Transportation Agency, has awarded to [____________] (the "Principal Project Company" or "Principal"), an Infrastructure Facility Design-Build-Finance-Operate-Maintain Agreement dated as of [__________], 2025 (as amended from time to time, the "Agreement"), which Agreement is specifically incorporated by reference in this Bond, for the design, build, finance, operation and maintenance of the Potrero Yard Modernization Project (the "Project");

AND WHEREAS, initially capitalized terms not otherwise defined in this Bond have the meaning given in the Agreement;

AND WHEREAS, pursuant to Section 10.9 of the Agreement, upon achieving Final Acceptance Principal Project Company must provide a warranty bond to City for the SFMTA O&M Facilities warranty Work (this "Bond");

NOW THEREFORE, We the undersigned Principal and ________________________ (the "Surety" or "Co-Sureties") are firmly bound and held unto the Obligee, in the penal sum of [______________] ($[_________]) (the "Bonded Sum"), good and lawful money of the United States of America for the payment whereof, well and truly to be paid to the Obligee, we bind ourselves, our heirs, successors, executors, administrators, and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THE FOREGOING OBLIGATION IS SUCH THAT, if Principal shall promptly and faithfully perform all of its obligations under the Agreement, as they may be amended or supplemented, including, without limitation, the performance of all SFMTA O&M Facilities warranty Work and payment of claims as described in paragraph 5 below, then the obligations under this Bond shall be null and void; otherwise this Bond shall remain in full force and effect, it being expressly understood and agreed that the liability of Surety for any and all claims hereunder shall in no event exceed the bonded sum.

The following terms and conditions shall apply with respect to this Bond:

1. The Agreement is incorporated by reference into this Bond.

2. If the Principal shall promptly and faithfully perform all of its obligations under the Agreement, as they may be amended or supplemented, related to the SFMTA O&M Facilities warranty Work, enforcement of Contractor warranties, and payment of claims as described in paragraph 6 below, then the obligations under this Bond shall be null and void; otherwise this Bond shall remain in full force and effect, it being expressly understood and agreed that the liability of Surety (or Co-Sureties) for any and all claims hereunder shall in no event exceed the bonded sum.

3. If the above bound Principal, or its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by and well and truly keep and perform the covenants, conditions, obligations and agreements in the Agreement related to the SFMTA O&M Facilities warranty Work, including any and all amendments, supplements, and alterations made to the Agreement as therein provided, on the Principal's part to be kept and performed at the time and in the manner therein specified, and shall indemnify, defend and save harmless the Obligee and all other Indemnitees (as defined in the Agreement), as therein stipulated, then this obligation shall become and be null and void; otherwise, it shall be and remain in full force and virtue.

4. This Bond shall cover the cost to perform all the obligations of the Principal related to the SFMTA O&M Facilities warranty Work. The obligations covered by this Bond specifically include all payment obligations, liability for damages and warranties related to the SFMTA O&M Facilities warranty Work as specified in the Agreement, but not to exceed the bonded sum.

5. Whenever the Principal shall be, and is declared by the Obligee to be, in default under the Agreement with respect to the related to the SFMTA O&M Facilities warranty Work, the Surety (or Co-Sureties) shall promptly:

(a) remedy such default;

(b) complete the SFMTA O&M Facilities warranty Work and perform the obligations covered by this Bond in accordance with the terms and conditions of the Agreement then in effect; or

(c) select a contractor or contractors to complete the SFMTA O&M Facilities warranty Work and perform the obligations covered by this Bond in accordance with the terms and conditions of the Agreement then in effect, using a contractor or contractors approved by the Obligee in its sole discretion, arrange for a contract that contains substantially the same terms and conditions of the Agreement between such contractor or contractors and the Obligee, and make available as work progresses (even though there should be a default or a succession of defaults under such contract or contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion of the SFMTA O&M Facilities warranty Work and obligations covered by this Bond; but not exceeding, including other costs and damages for which the Surety (or Co-Sureties) is (are) liable hereunder, the bonded sum.

6. This Bond shall inure to the benefit of anyone required to be paid by law under the Agreement so as to give a right of action to such persons or their assigns in any suit brought upon this Bond. The obligations covered by this Bond specifically include:

(a) payments owing to any of the persons involved in prosecution of the SFMTA O&M Facilities warranty Work, as provided for in the Agreement;

(b) any amounts required to be deducted, withheld, and paid over to the Department of Revenue from the wages of employees of the Principal and its Contractors with respect to such work and labor, and

(d) any other payments owing to anyone required to be paid by law.

In case suit is brought to enforce the provisions of this paragraph 6, the Surety (or Co-Sureties) will pay reasonable attorneys' fees, to be fixed by the court.

7. The Surety (or Co-Sureties) agree(s) that no change, extension of time, alterations, additions, omissions or other modifications of the terms of the Agreement, or in the work to be performed with respect to the Project, or in the specifications or plans, or any change or modification of any terms of payment or extension of time for any payment pertaining or relating to the Agreement, or any rescission of this Bond, solely due to acts of Principal, or any fraud practiced by any other person other than the claimant seeking to recover this Bond, shall in any way affect its obligations on this Bond, and it does hereby waive notice of such changes, extension of time, alterations, additions, omissions or other modifications.

8. [***NTD: Use in case of multiple or co-sureties***] The Co-Sureties agree to empower a single representative with authority to act on behalf of all of the Co-Sureties with respect to this Bond, so that the Obligee and claimants will have no obligation to deal with multiple sureties hereunder. All correspondence from the Obligee or claimants to the Co-Sureties and all claims under this Bond shall be sent to such designated representative. The designated representative may be changed only by delivery of written notice (by personal delivery or by certified mail, return receipt requested) to the Obligee designating a single new representative, signed by all of the Co-Sureties. The initial representative shall be ______________________.

IN WITNESS WHEREOF, we have hereunto set our hands and seals on this at ________________ on this ______day of_________________, 2025.

Principal (full legal name): ________________

____

Address: ________________

____

By: ________________

Contact Name: ________________

Phone: (   ) ________________

Surety (full legal name): ________________

Address: ________________

By: ________________

Contact Name: ________________

Phone: ________________

[Note: if more than one surety, then add appropriate phone: (____)]

[Note: If more than one surety, then add appropriate number of lines to signature block.]

[Note: The bond shall be signed by authorized persons. Where such persons are signing in a representative capacity (e.g., an attorney-in-fact), but is not a member of the firm, partnership, or joint venture, or an officer of the legal entity involved, evidence of authority must be furnished.]

EXHIBIT 7

INSURANCE REQUIREMENTS

Principal Project Company shall obtain and keep in force, or cause to be obtained and kept in force, the following policies of insurance, in accordance with the terms of this Exhibit 7. Each policy shall be obtained and be effective as set forth below. Each policy shall contain, or be endorsed to contain, a provision that coverage cannot be canceled, voided, suspended, lapsed or modified or reduced in coverage except for 60 days' (or for non-payment of premium, 10 days') prior written notice has been given to City.

1. Insurance during the Design and Construction Period

As a condition precedent to Financial Close and issuance of NTP 1, Principal Project Company shall obtain and keep in force, or cause to be obtained and kept in force, from and after the Financial Close Date and throughout the D&C Period, the following insurance coverage.

1.1. Worker's Compensation and Employer's Liability. Worker's compensation and employer's liability insurance for Principal Project Company and Contractors as required by applicable Law, and employer's liability insurance having coverage limits of $1,000,000 for each accident, $1,000,000 for disease (each employee), and $1,000,000 for disease (policy limit). Policies shall contain a voluntary compensation endorsement; an alternative employer endorsement; and on an "if any" basis, endorsements providing coverage for all states, U.S. Longshore and Harbor Workers' Act, Jones Act and Federal Employer's Liabilities Act.

1.2. Commercial General Liability. A commercial general liability insurance policy, written on an occurrence basis and covering liabilities arising out of the construction of the Project. Coverage shall be at least as broad as the broadest available version of Insurance Services Office form CG 00 01. This insurance policy shall:

(a) have a limit for any one occurrence of not less than $2,000,000 per occurrence, a $4,000,000 general aggregate with one reinstatement during the D&C Period, and a $4,000,000 completed operations aggregate, applicable solely to the construction of the Project;

(b) have no "contractor's limitation" endorsements, as that term is defined, as of the date of this Agreement, in the Glossary of Insurance and Risk Management Terms published by the International Risk Management Institute, that have not been reviewed and approved by the City. There shall be no endorsement or modification of the CGL limiting the scope of coverage for liability assumed under an insured contract;

(c) have no exclusion for professional services except the latest ISO form CG 22 79 or CG 22 80 or both;

(d) include products and completed operations liability coverage for a period of not less than the California Statute of Repose which is currently 10 years following Final Completion or the Termination Date, whichever occurs later; and

(e) be maintained throughout the Term until Final Completion.

The City, SFMTA, and San Francisco Board of Supervisors and their employees, officers, and officials shall be added to the primary policy as insureds using Insurance Services Office forms CG 20 10 10 01 and CG 20 37 10 01 or, in City's sole discretion, forms providing the same scope of coverage, including coverage for completed operations. The policy shall provide for separation of insureds. The policy shall contain no insured vs. insured exclusion. Principal Project Company shall require its Contractors to have these additional insureds included as insureds in the same manner as specified for Principal Project Company in this Section 1.2 (Commercial General Liability), and shall prohibit use of any endorsement forms that require, to effect additional insured status, the execution or existence of any contract directly between such Contractors and any of the additional insureds. Exclusions are prohibited for work within 50 feet of a railroad. For use of any unmanned aircraft vehicles (UAV), any Principal Project Company-Related Entity may provide insurance either through an aircraft liability insurance policy, or by endorsement to the entity's commercial general liability insurance policy and excess liability policies, which shall be not less than $10,000,000 per occurrence.

1.3. Commercial Excess Liability. A policy or policies of commercial umbrella/excess liability insurance covering bodily injury, property damage, personal injury and advertising injury with an annual reinstatement of limits of not less than $100,000,000 per occurrence and general aggregate. There shall also be a project-specific products and completed operations aggregate of not less than $100,000,000. Coverage may be arranged in any combination or structure so that total required limits of liability are met. Coverage must apply as excess over commercial general liability insurance as required in Section 1.2 (Commercial General Liability), and may apply as excess over commercial automobile liability insurance and employer's liability insurance. Umbrella/excess liability policies shall follow form to all underlying policies, including coverage in the excess liability policies for insureds covered under the primary policies.

1.4. Commercial Automobile Liability. Commercial automobile liability insurance with limits of liability of not less than $20,000,000 combined single limit for Principal Project Company and Key Contractors. The required limits can be met in any combination of primary and excess/umbrella liability policies. Coverage shall be at least as broad coverage provided in Insurance Services Office form CA 00 01. The insurance must cover "any auto" ("**Symbol 1**"). If Principal Project Company or any Contractor's activities involve transportation of materials (including Hazardous Materials) that require endorsement MCS 90 (as described below), the automobile liability Insurance Policy for Principal Project Company or such Contractor shall be endorsed to include for private, non-commercial vehicles Motor Carrier Act Endorsement-Hazardous Materials Clean up (MCS-90) and shall be endorsed to provide coverage for liability arising from release of pollutants (CA 99 48 – Pollution Liability – Broadened Coverage for Covered Autos – Business Auto, Motor Carrier and Truckers Coverage Form).

1.5. Contractor's Pollution Liability. Contractor's pollution liability insurance written on an occurrence form with a limit for any one occurrence of not less than $20,000,000 and a policy aggregate limit of $20,000,000. The policy must be written on an occurrence basis and not on a "claims made" form. The policy must include coverage to extend to the full California statue of repose, which is currently 10 years.

The policy shall cover sums that the insured becomes legally obligated to pay to a third party or for the investigation, removal, remediation (including associated monitoring) or disposal of soil, surface water, groundwater or other contamination to the extent required by environmental laws (together "**clean-up costs**") caused by pollution conditions resulting from covered operations, subject to the policy terms and conditions, including bodily injury, property

damage (including natural resource damages), clean-up costs, and legal defense costs. Such policy shall cover claims related to pollution conditions to the extent such are caused (a) by the performance of Work, (b) by transportation, including loading and unloading, by owned and non-owned vehicles and/or (c) by other activities performed by or on behalf of Principal Project Company that occur on the Project. The policy shall have no exclusions or limitations for loss occurring over water including but not limited to a navigable waterway. Coverage shall apply to sudden and non-sudden pollution conditions resulting from the escape or release of smoke, vapors, fumes, acids, alkalis, toxic chemicals, liquids, or gases, waste materials, or other irritants, contaminants, or pollutants. The policy shall contain a severability provision.

1.6. Professional Liability Insurance. Professional liability insurance, in one or more policies, at Principal Project Company's discretion, which shall:

(a) cover claims for liability for providing Design Work for the Project;

(b) cover claims for liability for providing Design Work by any Contractor;

(c) be in an amount not less than $20,000,000 per claim and in the aggregate;

(d) have a deductible or self-insured retention no greater than $1,000,000 unless approved by the City;

(e) cover the performance of Design Work or other professional services in connection with the Project (except Design Work that results in the provision of a product) and shall be fully retroactive to the first date any such Design Work was performed, with no exclusion for prior acts applying to any pre-award professional services provided by any insured; and

(f) have an extended reporting period, or be renewed to be continuous for a period, of not less than ten years after the Effective Date.

1.7. Builder's Risk. A builder's risk insurance policy covering all real property at the Project Site, during testing and commissioning, while in transit and at any temporary off-site location; including all materials, supplies, machinery, fixtures and equipment intended to become a permanent part of the Project or for permanent use in the Project. Property that is incidental to the construction; foundations, including pilings, but excluding normal settling, shrinkage, or expansion. All temporary structures at the Project Site that are to be used in or incidental to the fabrication, erection, testing, or completion of the Project shall be insured and declared to and approved by the insurers and to the extent the cost thereof is included in the Work, included in the coverage while on or about the Project Site awaiting or during construction. The builder's risk policy:

(a) shall be obtained prior to the start of construction and maintained until the end of the D&C Period;

(b) shall be in an amount not less than the estimated completed value of the Project or other such amount as may be agreed up on by Principal Project Company and the City;

(c) shall be written on an "all risk," replacement cost basis with no coinsurance clauses or penalties;

(d) during any period of exposure to loss of property in transit, shall cover transit, including ocean marine (unless insured by the Supplier or through a separate marine cargo policy), with sub-limits sufficient to insure the maximum value of any property in transit at any one time;

(e) shall cover physical damage arising because of faulty workmanship or materials;

(f) shall cover ensuing loss from design error not otherwise excluded (LEG 3);

(g) shall cover water damage and flood, (including the overflow of inland or tidal waters, the unusual accumulation or runoff of surface waters from any source, or mudslides or mudflows which are caused by flooding) with a sublimit of no less than $10,000,000;

(h) shall cover perils of earthquake and earth movement with a sublimit of no less than $10,000,000;

(i) shall cover physical damage resulting from machinery accidents but excluding normal and natural wear and tear, corrosion, erosion, inherent vice or latent defect in the machinery;

(j) shall cover demolition and debris removal coverage, with a sublimit of 20% of the loss or no less than $10,000,000 insuring the buildings, structures, machinery, equipment, materials, facilities, fixtures and all other properties constituting a part of the Project;

(k) shall cover increased cost for repair, rebuilding or reconstruction of damaged property due to enforcement of any law or ordinance with a sublimit of no less than $20,000,000, including professional fees with a sublimit of no less than $10,000,000;

(l) shall include a sublimit for soft costs to include recurring costs should there be physical damage to the project, delay costs, loss of revenues during a delayed opening, including architects and engineers fees, and owner's extended project costs including administration and overhead during a restoration period of 12 months,

(m) shall include civil authority ingress and egress;

(n) shall cover plans, blueprints and specifications;

(o) shall cover full collapse, including collapse resulting from design error, as set forth in LEG3 coverage;

(p) shall include as named insureds City, SFMTA, Principal Project Company, and Contractors;

(q) shall not include "as their interests may appear" language pertaining to insureds;

(r) shall include a blanket waiver of subrogation as required by contract; and

(s) may include deductibles, but such deductible shall not exceed $1,000,000 per occurrence unless prior approval from the City.

1.8. Railroad Protective Liability. If required by any railroad, a railroad protective liability insurance policy or policies as required by one or more railroads operating near or adjacent to the Project location. The terms, limits, and specifications of such policy(ies) are set forth by each railroad.

1.9. Other. Any other form of insurance and with such limits, in such form, in amounts and for risks as the City or SFMTA, acting reasonably, may require from time to time. Principal Project Company's compensation shall be adjusted to reflect the cost of any such additionally required insurance.

2. Insurance During the Infrastructure Facilities Maintenance (IFM) Period

Principal Project Company shall obtain and keep in force, or cause to be obtained and kept in force, throughout the IFM Period the following insurance coverage:

2.1. Worker's Compensation and Employer's Liability. Worker's compensation and employer's liability insurance as required by applicable Law, and employer's liability insurance having coverage limits of $1,000,000 for each accident, $1,000,000 for disease (each employee), and $1,000,000 for disease (policy limit).

2.2. Commercial General Liability. Commercial general liability insurance insuring against liability of Principal Project Company and Lead IFM Contractor with respect to the Project or arising out of the Work, written on an occurrence basis. Coverage shall be at least as broad as the broadest available version of Insurance Services Office form CG 00 01. City, SFMTA, and the Board of Supervisors and their employees, officers, and officials shall be added to the primary policy as insureds using Insurance Services Office form CG 20 10 10 01 or, in City's sole discretion, forms providing the same scope of coverage. Principal Project Company shall require its Contractors to have these additional insureds included as insureds in the same manner as specified for Principal Project Company in this Section 2.2 (Commercial General Liability), and shall prohibit use of any endorsement forms that require, to effect the insured status, the execution or existence of any contract directly between such Contractors and any of the additional insureds. The insurance shall (a) apply separately for each insured against whom a claim is made or a lawsuit is brought, subject only to the insurance policy limits of liability and (b) have coverage for any one occurrence of not less than $50,000,000, $50,000,000 general aggregate, and $50,000,000 products/completed operations which requirement may be met by any combination of primary and excess coverage so long as the excess coverage is written on a "follow form" basis. Exclusions are prohibited for work within 50 feet of a railroad.

2.3. Commercial Automobile Liability. Commercial automobile liability insurance with limits of liability of not less than $5,000,000 per accident. The insurance must cover liability arising from any motor vehicle (i.e., "**Symbol 1**"), including owned, hired or non-owned vehicles, assigned to or used in connection with the operation and maintenance of the Project.

2.4. Pollution Legal Liability. Pollution legal liability insurance applicable to bodily injury, property damage, including loss of use of damaged property or of property that has not

been physically injured or destroyed, cleanup costs, and defense, including costs and expenses incurred in the investigation, defense, or settlement of claims, all in connection with any loss arising from the Project. Coverage shall be maintained in an amount of at least $10,000,000 per loss, with an annual aggregate of at least $10,000,000. Coverage shall apply to sudden and non-sudden pollution conditions resulting from the escape or release of smoke, vapors, fumes, acids, alkalis, toxic chemicals, liquids, or gases, waste materials, or other irritants, contaminants, or pollutants. If coverage is written on a claims-made basis, Principal Project Company warrants that continuous coverage will be maintained or an extended discovery period will be exercised for a period of 10 years beginning from the Termination Date.

2.5. Property Insurance. A property insurance policy covering the full replacement value of the Project throughout the entire IFM Period. Coverage shall include the following: equipment breakdown, wind perils, collapse, terrorism, water damage including overflow, leakage, sewer backup or seepage, utility interruption, debris removal, extra expense, boiler and machinery and valuable papers. Coverage shall also include earthquake insurance at a limit of $25,000,000 and flood insurance with a sublimit of not less than $10,000,000. City shall be named a named insured. The Collateral Agent shall be the sole loss payee on the property throughout the entire IFM Period.

During the period of any Renewal Work or other significant capital maintenance or repair work that is not associated with a loss from a covered peril, Principal Project Company shall provide coverage either through a course of construction coverage extension under the property policy or insure through a separately placed Builder's Risk Insurance policy.

The property insurance policy shall also include coverage for:

(a) Foundations and pilings;

(b) Physical damage resulting from machinery accidents or mechanical or electrical breakdown including electrical substations but excluding normal and natural wear and tear, corrosion, erosion, inherent vice, or latent defect in the machinery;

(c) Plans, blueprints, and specifications;

(d) Demolition and debris removal coverage insuring the buildings, structures, machinery, equipment, materials, facilities, fixtures, and all other properties constituting a part of the Project, with a sublimit of no less than $10,000,000;

(e) Increased replacement cost due to any change in applicable Law;

(f) Business interruption/time element coverage, including loss of revenue, including loss of any Availability Payments, expediting and extra expense, with a sublimit in the amount of $_______________; ***[NTD: AMOUNT TO BE DETERMINED BASED ON AP/AGREEMENT BEFORE COMMERCIAL CLOSE]***

(g) Building ordinance compliance, with the building ordinance exclusion deleted;

(h) All buildings, fixtures, improvements, and equipment that are built or placed on the Project Site; and

(i) Coverage at least as broad as coverage provided by the most recent Insurance Services Office commercial property Special Cause of Loss form.

2.6. Other. Any other form of insurance and with such limits, in such form, in amounts and for risks as the City or SFMTA, acting reasonably, may require from time to time. Principal Project Company's compensation shall be adjusted to reflect the cost of any such additionally required insurance.

EXHIBIT 8

FORM OF INTERFACE AGREEMENT

[NOTE TO PNC: TO FOLLOW FROM PNC ONCE FINALIZED]

EXHIBIT 9

CHANGE PROCEDURES

1. City Change Procedures

1.1 The provisions of this Section 1 (City Change Procedures) and of Section 2 (Unilateral Change Orders) shall apply with respect to any City Change.

1.2 If City desires to initiate or evaluate whether to initiate a City Change, then City may issue a proposed Change Order (a "**Proposed Change Order**"). The Proposed Change Order shall state the nature, extent and details of the contemplated City Change.

1.3 Response to Proposed Change Order

1.3.1 As soon as possible, and in any case, within 20 days after City delivers to Principal Project Company a Proposed Change Order, Principal Project Company shall deliver to City a change proposal ("**Change Proposal**") prepared in accordance with this Section 1.3 (Response to Proposed Change Order). Except as expressly set forth in this Section 1.3.1, the obligation of Principal Project Company to provide a Change Proposal is not Extra Work and shall not entitle Principal Project Company to any additional compensation, time extension or other relief. Upon receipt of a Proposed Change Order from City, if Principal Project Company believes it will incur substantial out-of-pocket contracted design costs to prepare a Change Proposal, Principal Project Company, within 7 days of the receipt of the Proposed Change Order, provide Notice to City setting forth the reasonable out-of-pocket contracted design costs that Principal Project Company will incur to prepare such Change Proposal. Failure to provide such Notice within such 7 day period shall forfeit any Claim for payment for such out-of-pocket contracted design costs. Upon delivery of such Notice by Principal Project Company, Principal Project Company shall promptly meet with City, at City's request, to explain and discuss such potential costs and such discussions and negotiations shall occur on an Open Book Basis. City, in its sole discretion, may agree to compensate Principal Project Company for such specified and approved reasonable out-of-pocket contracted design costs as Extra Work Costs, in which case, Principal Project Company shall proceed with the Change Proposal as required in the Contract Documents. Payment of such approved amounts shall be the sole compensation to Principal Project Company and no other compensation, time extension or other relief shall be available or provided. Should City elect, in its sole discretion, to not approve such potential costs, the Proposed Change Order shall be deemed withdrawn. The Parties agree that the foregoing payment of reasonable out-of-pocket contracted design costs for preparation of a Change Proposal shall only apply to unusual circumstances involving substantial design and out-of-pocket contracted design costs.

1.3.2 Each Change Proposal shall include:

(a) a detailed explanation of how the contemplated City Change would impact both the D&C Work and the IFM Services;

(b) if the Proposed Change Order is issued before Substantial Completion, a detailed description of any suggested adjustments to the Project Schedule. This includes changes

to any Contract Deadline that would be necessary because of potential delays caused by implementing the contemplated City Change;

(c) if adjustments to any Contract Deadline are suggested:

(i) a time impact analysis that identifies Critical Path impacts (including activity numbers, durations, predecessor and successor activities, resources, costs and impact, if any, on Float). The time impact analysis must show how schedule changes or disruptions would affect the Contract Deadlines while complying with the requirements of Section 1.2.1 of Division 1 of the Technical Requirements;

(ii) an assessment of the feasibility of accelerating the Work to meet the original deadline or to reduce the total delay period; and

(iii) if acceleration is feasible, an estimate of the cost to accelerate, as well as information about any Extra Work Costs, Financing Delay Costs, and Delay Costs, if any, payable by City if the schedule is not accelerated;

(d) a detailed, itemized estimate of any applicable Extra Work Costs, Financing Delay Costs or Delay Costs claimed; Principal Project Company shall provide all information on an Open Book Basis as specified in Exhibit 13 (Costs Schedule);

(e) an estimate of the cost savings, if any, resulting from the contemplated City Change, including reductions in direct labor, material and equipment, site overhead and home office overhead, operations and maintenance, and financing costs;

(f) the effect (if any) of the contemplated City Change on Principal Project Company's ability to perform the IFM Services stated by Contract Year;

(g) where relief from obligations under the Contract Documents is sought, the effect of the contemplated City Change on Principal Project Company's ability to perform any of its obligations under the Contract Documents that if not performed would result in the accrual of Noncompliance Points, the assessment of Deductions or the occurrence of a PPC Default, in each case including details of the relevant obligations, the effect on each such obligation, the likely duration of that effect and the specific relief sought;

(h) a description of any additional consents or approvals required, including amendments, if any, of any Regulatory Approvals required to implement the contemplated City Change;

(i) a detailed description of the steps Principal Project Company will take to implement the contemplated City Change, including measures that Principal Project Company will take to mitigate the costs, delay and other consequences of the contemplated City Change; and

(j) any other relevant information related to the contemplated City Change.

1.4 Negotiation of Change Order

1.4.1 Following City's receipt of Principal Project Company's Change Proposal and City's further assessment of the cost, schedule and other impacts of the contemplated City Change, City and Principal Project Company, shall engage in good faith negotiations to reach agreement on the terms of a change order, including any Extra Work Costs, Financing Delay Costs or Delay Costs, adjustment of the Contract Deadlines or other relief to which Principal Project Company is entitled, and any net cost savings and schedule savings to which City is entitled.

1.4.2 City may, by written Notice, modify or abandon a contemplated City Change at any time prior to the Parties reaching an agreement on the Change Order. Principal Project Company will, as soon as practicable but in no event more than 10 Business Days after receipt of a modification, provide Notice to City of any subsequent changes to the Change Proposal.

1.4.3 A City Change will become effective upon mutual execution of a written change order (a "**Change Order**"). The Change Order shall be in a form provided by City, and shall specify, as applicable, the timing and method for payment or deduction of any Extra Work Costs, Financing Delay Costs, Delay Costs or Financing Costs, or for realizing any net savings in the cost of the Work.

1.5 Disagreement on Change Proposal

If the Parties do not agree on a Change Proposal, then City may seek to resolve any points of disagreement through the Contract Dispute Procedures without issuing a Unilateral Change Order, or City may issue a Unilateral Change Order.

2. Unilateral Change Orders

2.1 City may, at any time, in its sole discretion, issue a Unilateral Change Order to Principal Project Company regarding any matter for which a Change Order can be issued or, in the event of any Contract Dispute, regarding the scope of the Work or whether Principal Project Company has performed the Work in accordance with the requirements of the Contract Documents (a "**Unilateral Change Order**"). The Unilateral Change Order will state that it is issued under this Section 2 (Unilateral Change Orders), will describe the Work to be performed and will state the basis for determining compensation, if any, and schedule adjustment, if any. The Unilateral Change Order will either: (a) direct Principal Project Company to implement a City Change; or (b) state that disputed Work is within Principal Project Company's original scope of Work or is necessary to comply with the requirements of the Contract Documents.

2.2 If the Unilateral Change Order does not state that the Work constitutes a City Change, Principal Project Company shall proceed with the Work as directed but may assert a Claim that a City Change has occurred under the procedures in Article 12 (City Change Process; Unilateral Change Orders; Deviations) of this Agreement.

2.3 If the Unilateral Change Order provides for the implementation of a City Change, Principal Project Company shall, within 21 Business Days after the issuance of the Unilateral Change Order, deliver to City a Change Proposal in accordance with Section 1.3 (Response to Proposed Change Order) of this Exhibit 9 (Change Procedures), and the Parties shall subsequently follow the procedures and provisions set forth in Section 1.4 (Negotiation of Change Order) of this Exhibit 9 (Change Procedures).

2.4 If the Unilateral Change Order provides for the implementation of a City Change or Principal Project Company intends to assert a Claim under Section 2.2, Principal Project Company shall maintain records for such Work in accordance with Section 2.2.9 of Exhibit 13 (Costs Schedule), pending resolution of the Contract Dispute or execution of a Change Order.

2.5 The fact that a Unilateral Change Order was issued by City shall not be considered evidence that a City Change has occurred. The determination whether a City Change has occurred shall be based on an analysis of the original requirements of the Contract Documents and a determination as to whether the Unilateral Change Order in fact constituted a change in those requirements.

3. Principal Project Company Change Requests

3.1 Principal Project Company may, at any time, request a Change by submitting to City a written request for a Change ("**PPC Change Request**"). PPC Change Requests must comply with the requirements of Section 1.3.2 of this Exhibit 9 (Change Procedures) and be in a form approved by the City.

3.2 City has the sole discretion to accept or reject any PPC Change Request. If the City accepts a PPC Change Request, Principal Project Company shall execute a Change Order and implement the proposed change in accordance with the Change Order, applicable Technical Requirements, the Project Management Plan, Good Industry Practice and all applicable Law. Acceptance is only valid when documented in a written Change Order signed by City's Authorized Representative or their designee appointed in writing.

3.3 If City accepts a PPC Change Request, Principal Project Company shall be solely responsible for bearing any increase in the Extra Work Costs or other costs, and any additional risks that result from the accepted Change, except as may otherwise provided in the Change Order. Principal Project Company shall not be entitled to any extension of the Project Schedule or any Contract Deadline due to delays or other impacts that result from the City accepting the PPC Change Request, except as may otherwise provided in the Change Order.

3.4 If a PPC Change Request accepted by City results in a net cost savings to Principal Project Company, City will be entitled to 50% of such savings. City will obtain its share of the savings in the manner described in Section 1.4.3 and otherwise in accordance with Exhibit 13 (Costs Schedule).

Certain minor changes without significant cost savings may be approved in writing by City as Deviations, and in such event, shall not require a Change Order. Any other change in the requirements of the Contract Documents shall require a Change Order.

EXHIBIT 10

INITIAL DESIGNATION OF AUTHORIZED REPRESENTATIVES

City Representative:]

Chris Lazaro, Project Director
San Francisco Municipal Transportation Agency
1 South Van Ness, 8th Floor
San Francisco, CA 94103
Attn: Chris Lazaro
Email: Chris.Lazaro@sfmta.com
Telephone: 415-549-6572

Principal Project Company Representative:

[NAME], [TITLE]
[ADDRESS]
Email:_______________
Telephone: [___________]

EXHIBIT 11

SUBMITTALS REVIEW PROCESS

1. Submittal Requirements

Each Submittal provided by Principal Project Company to City for information, review and comment, review and acceptance or approval shall:

(a) be accurate, complete and in conformity with the Contract Documents;

(b) include a completed transmittal form in form agreed between City and Principal Project Company; and

(c) include all necessary information and documentation concerning the subject matter and any additional information reasonably requested by City.

2. Submittal Types and Time Periods

2.1 Submittals provided by Principal Project Company to City will consist of the following types:

(a) Submittals for information. Submittals for City information do not include any deadline for City to respond. City may provide comments at any time or not at all.

(b) Submittals for review and comment. For any Submittal subject to review and comment, City may respond at any time or not all. Principal Project Company is only required to resubmit a Submittal if City responds within 14 days. City responses include: (i) reviewed with no comments; (ii) reviewed with comments, resubmittal not required; or (iii) reviewed with comments, resubmittal required. Submittals are subject to City's review and comment unless either the Contract Documents or the City-accepted Submittal Schedule contemplates a different type of review.

(c) Submittals for review and acceptance. For any Submittal subject to City review and acceptance, City will have 21 days to respond. City responses include: (i) reviewed and accepted; (ii) reviewed and accepted with comments, resubmittal not required; or (iii) reviewed and not accepted with comments, resubmittal required.

(d) Submittals for approval. For any Submittal subject to City approval, City will have 21 days to respond. City responses include: (i) approved; (ii) approved with comments, resubmittal not required; or (iii) not approved with comments, resubmittal required.

2.2 If any other provision of the Contract Documents expressly provides a longer or shorter period for City to act in response to a specific Submittal, then such period shall prevail over the time periods set forth in Section 2.1.

2.3 The Parties shall agree in good faith upon any necessary extensions of the review period to accommodate particularly complex or comprehensive Submittals.

2.4 If the number of Submittals delivered simultaneously to City exceeds the limits specified in Section 1.3 of Division 1 of the Technical Requirements, then City may extend the applicable period for it to act with respect to such Submittals to allow City a reasonable period to respond, and no such extension shall constitute a City-Caused Delay Event, a City-Caused Relief Event, or other basis for any Claim. Submittals are considered "delivered simultaneously" if the review time periods available to City under this Article 2 (Submittal Types and Time Periods) for two or more Submittals entirely or partially overlap.

2.5 Whenever City is in receipt of Submittals delivered simultaneously, Principal Project Company may provide Notice to City including a requested order of priority for processing such Submittals. Upon receipt of such Notice, City will use reasonable efforts to accommodate the requested order of priority; provided, however, that City will not be obligated to shorten the review times otherwise applicable under this Article 2 (Submittal Types and Time Periods).

2.6 All time periods for City to act under this Article 2 (Submittal Types and Time Periods) shall be extended by the period of any delay in City's review caused by any Relief Event (other than a City-Caused Delay Event or City-Caused Relief Event) or any PPC Fault.

2.7 During any time that City is entitled to increase the level of its Oversight under Section 15.5 (Persistent PPC Default and Increased Oversight) of this Agreement, the applicable period for City to act on any Submittals received during such time and not related to addressing events that instigated the Section 15.5 (Persistent PPC Default and Increased Oversight) of this Agreement action shall be extended as reasonably needed due to the increased level of Oversight, but not to exceed an additional 10 Business Days per Submittal. No such extension shall constitute a City-Caused Delay Event, City-Caused Relief Event or other basis for any Claim.

2.8 Principal Project Company may, by Notice to City, request expedited action on a specific Submittal. City has no obligation to expedite any Submittal but upon receipt of such a request will use reasonable efforts to accommodate such request within the practical limitations (a) on availability of City personnel relevant to the request or (b) imposed by restrictions upon City's rights under agreements with Third Parties and Utility Owners. However, City's obligation to use reasonable efforts to accommodate such a request shall not apply with respect to the review periods described in Section 2.7.

3. City Actions Relevant to Submittals

If a Submittal is subject to City's acceptance or approval, Principal Project Company may not proceed without receiving City's acceptance or approval, as applicable.

4. City Objection, Rejection Binding

4.1 Any exception, objection, rejection, non-acceptance or disapproval by City shall be deemed reasonable if, among other reasons, the determination is based on any of the following grounds:

(a) the Submittal or subject provision fails to comply, or is inconsistent, with any applicable Standards and Specifications or any covenant, condition, requirement, term or provision of the Contract Documents, Project Management Plan;

(b) the Submittal or subject provision does not at a minimum meet Good Industry Practice;

(c) Principal Project Company has not provided all necessary information and documentation concerning the subject matter and any additional information reasonably requested relating to the Submittal (provided that Principal Project Company may subsequently resubmit the Submittal with the required or reasonably requested content or information); or

(d) adoption of the Submittal or subject provision, or of any course of action proposed in the Submittal, would result in a conflict with or violation of any Law or Regulatory Approval.

4.2 Principal Project Company shall respond in writing to all of City's comments (including any exceptions, objections, rejections and disapprovals) relating to a Submittal, and subject to Sections 2.1(a) and (b), shall make modifications to the Submittal as necessary to fully reflect and resolve all such comments in accordance with the review processes in this Exhibit 11 (Submittals Review Process), prior to executing the Work identified in the Submittal.

4.3 If Principal Project Company does not accommodate or otherwise resolve any City comment, Principal Project Company shall, within 10 Business Days after receipt of City's comments, provide an explanation setting out:

(a) why modifications based on City's comments are not required;

(b) the facts, analyses and reasons that support Principal Project Company's conclusion; and

(c) the basis for any belief that incorporating City's comments or resolving exceptions, objections, rejections or disapprovals that would render the Submittal erroneous, defective or reflective of less than Good Industry Practice.

4.4 Promptly following delivery of Principal Project Company's explanation under Section 4.3, Principal Project Company shall meet with City with the goal of reaching agreement regarding changes to be made to the Submittal. City may at any time issue a Unilateral Change Order, in which case Principal Project Company shall proceed in accordance with City's Unilateral Change Order with the right to seek resolution of the Contract Dispute under the Contract Dispute Procedures.

4.5 If Principal Project Company fails to provide an explanation to City in accordance with Section 4.3, City may deliver to Principal Project Company a Notice setting out comments that have not been addressed and relevant dates for Principal Project Company to respond. If Principal Project Company fails to address such comments by the dates specified by City, Principal Project Company shall make all changes necessary to accommodate and resolve the comment and will be fully responsible for such changes without right to assert a City-Caused

Delay Event, City-Caused Relief Event or other basis for a Claim that City has assumed design or other liability.

EXHIBIT 12

ENERGY MANAGEMENT

1. DEFINITIONS

1.1 Capitalized terms used but not defined herein shall have the meaning given to them in Exhibit 1 of the Agreement.

2. CALCULATION OF ANNUAL ENERGY TARGET

2.1 Annual Energy Target

(a) After the second anniversary of the Final Acceptance Date, Principal Project Company and City shall appoint an Independent Energy Auditor to provide a report inclusive of operating assumptions, current Weather Data and energy model simulation files regarding the Infrastructure Facility's Energy performance and to establish an Annual Energy Target (the "**Annual Energy Target**").

2.2 Program or Variation Adjustments to the Annual Energy Target

2.2.1 At any time commencing after the Energy Performance Commencement Date, City or PPC can apply an adjustment to the Annual Energy Target for the purposes of preparing the Energy Analysis Report to account for:

(a) any Regulated Load change(s) that results from a Change Order;

(b) changes in Infrastructure Facility occupancy;

(c) changes to Core Hours; or

(d) changes in the utilization or other foreseen operating conditions of the Infrastructure Facility which materially differ from those assumed for the purpose of calculating the Annual Energy Target.

For greater certainty, Principal Project Company and City acknowledge that an adjustment to the Annual Energy Target shall be made only as a result of a circumstance specified in Section 2.2.1.

2.2.2 Upon an adjustment to the Annual Energy Target as a result of a circumstance specified in Section 2.2.1, the Parties shall appoint, subject to the other Party's approval (acting reasonably), a complete energy audit to be conducted by an Independent Energy Auditor. The costs associated with the Independent Energy Auditor shall be shared equally between the Parties. Each Party shall cooperate with (including providing any information requested by) the IEA. The IEA shall prepare a report making recommendations regarding adjustments to the Annual Energy Target; the report shall include a detailed computer simulation, or other mutually agreed energy analysis method, of Energy usage by function and a comprehensive evaluation of Energy usage patterns. The

Parties shall work in good faith to have such IEA deliver its report within 30 days of the IEA's appointment. In preparing the report, the IEA shall have access to the most recent Energy Analysis Report. For greater certainty, the recommended adjustments should only apply for that period of time that the circumstance(s) in Section 2.2.1 giving rise to such adjustments occur, continue or impacted. Both City and Principal Project Company, each acting reasonably, shall have 20 days following receipt of such report to provide notice to the other of (i) its agreement to the recommended adjustments to the Annual Energy Target set forth in such report; or (ii) its disagreement with such recommendations, together with its rationale for such disagreement. In the event that either Party provides notice of its disagreement with the IEA's recommendations, then either Party may refer the matter to the Contract Dispute Procedures. If both Parties are in agreement with the recommendations, then the Annual Energy Target shall be adjusted in accordance with such recommendations effective as of the date on which the circumstance(s) in Section 2.2.1 commenced.

3. MEASUREMENT

3.1 Without prejudice to Exhibit 18 – Technical Requirements or anything else in this Exhibit 12, Principal Project Company shall measure the amount of Aggregate Actual Consumption to meet LEED BD+C Measurement and Verification mandatory credits and to meet LEED EBOM reporting requirements for the Infrastructure Facility in respect of each calendar month beginning on the Substantial Completion Date and ending on the earlier of expiry of Term or termination of the Agreement.

3.2 For each Contract Year after the Energy Performance Commencement Date, Principal Project Company shall provide City with a draft Energy Analysis Report within 60 days following the end of each Contract Year, which report shall include copies of all working papers to fully support the draft Energy Analysis Report. The draft Energy Analysis Report shall be consistent with the format and content requirements set out in Section 3.7.

3.3 As soon as practicable and in any event within 30 days after receipt by City of the draft Energy Analysis Report (or on such other date as may be agreed between City and Principal Project Company), Principal Project Company and City shall convene an annual energy review meeting to be attended by the PPC Representative, the City Representative and such other individuals as may be agreed to by the Parties (the "**Annual Energy Review Meeting**"). At the Annual Energy Review Meeting, Principal Project Company shall present the draft Energy Analysis Report to City, and City and Principal Project Company shall discuss the Aggregate Actual Consumption for each discrete Energy Service for the preceding Contract Year.

3.4 Principal Project Company shall assist the City Representative and afford the City Representative such information and access to the Infrastructure Facility, building management system records, Utility meters, and Help Desk (as such services are described in Exhibit 18 – Technical Requirements) and by other means as may reasonably be required for the City Representative to review and confirm the content of the draft Energy Analysis Report provided by Principal Project Company.

3.5 City shall notify Principal Project Company within 21 days after the Annual Energy Review Meeting of the details of any disagreement of all or any aspect of the draft Energy Analysis Report, and the Parties shall then seek to agree to any matters in dispute. Where matters cannot be resolved within 20 days following receipt by Principal Project Company of notification by City of a disagreement (or such other period as may be otherwise agreed between the City Representative and the PPC Representative, acting reasonably), the disagreement shall be dealt with in accordance with the Dispute Resolution Procedure.

3.6 Subject to Section 3.5, within 20 days following each Annual Energy Review Meeting, or within such period as may be otherwise agreed between the City Representative and the PPC Representatives, acting reasonably, City shall confirm its acceptance of all or any aspects of the Energy Analysis Report.

3.7 Content and Format of the Energy Analysis Report

3.7.1 The Energy Analysis Report shall present findings of Aggregate Actual Consumption for each separate Energy Service for the relevant Contract Year and calculation of the Corrected Aggregate Energy Consumption (CAEC) and shall include the following:

3.7.1.1 a summary of (A) actual usage and breakdown by Utility in megajoules and cubic meters, or other Utility rate units; and (B) any exceptional changes in consumption or pattern of use since any previous Energy Analysis Report;

3.7.1.2 accurate and precise consumption data;

3.7.1.3 identification of potential cost savings in respect of Energy usage at the Infrastructure Facility and provide an estimate of potential Energy Service consumption savings broken down by fuel type, implementation costs, and projected savings, along with identifying potential risks associated with each proposed cost savings measure;

(i) presentation of Aggregate Actual Consumption for each individual Energy Service;

(ii) presentation of correlated energy Weather Data for the relevant Contract Year;

(iii) detailed analysis of all sub metered end-uses; and

(iv) calculation of the Corrected Aggregate Energy Consumption for each individual Energy Service;

3.7.1.4 outline of any outstanding issues from any previous Energy Analysis Report; and,

3.7.1.5 summary of adjustments to the Annual Energy Target, if any, as agreed upon in accordance with Section 2.2.

3.8 Principal Project Company shall deliver a Monthly Energy Report to City, following Substantial Completion, five business days following the end of each Contract Month.

3.9 Content and Format of the Monthly Energy Report

3.9.1.1 The Energy Analysis Report shall show monthly Aggregate Actual Consumption and monthly Corrected Aggregate Energy Consumption data for each individual Energy Service

3.9.1.2 For the monthly Corrected Aggregate Energy Consumption:

(i) A comparison against the previous month's value, as well as supporting narrative articulating reasons for any variance

(ii) A comparison against the value of the same month of the previous Contract Year, as well as supporting narrative articulating reasons for any variance

(iii) A comparison of current rolling 12-month average against the previous month's rolling 12-month average, as well as supporting narrative articulating reasons for any variance

4. COMPARING CORRECTED AGGREGATE CONSUMPTION WITH ADJUSTED ANNUAL ENERGY TARGET

4.1 After the acceptance of the Energy Analysis Report as described in Section 3.6 for each Contract Year, the CAEC for each Energy Service shall be compared to the Annual Energy Target or Adjusted Annual Energy Target for each Energy Service, and:

4.1.1 if the CAEC in respect of any discrete Energy Service is greater than 115% of the AET or AAET in respect of such Energy Service, then City may request that the Principal Project Company prepare and submit an Energy Performance Action Plan ('EPAP'). For the purposes of an Energy Performance Action Plan in respect of this Section 4.1.1, the PAP will be due no later than 30 days after acceptance of the Energy Analysis Report; and

4.1.2 if the CAEC in respect of any Energy Service is less than 115% of the AET or AAET in respect of such Energy Service, no further action is required.

4.2 If an EPAP is required pursuant to Section 4.1.1, the Energy Performance Action Plan will, at a minimum;

(a) identify the variances between the CAEC and the AET or AAET;

(b) summarize potential issues giving rise to the variances;

(c) include a root cause analysis, where possible, or a plan to develop root cause analysis if it cannot be established prior to issuance of the PAP; and

(d) the steps or actions that will be undertaken by Principal Project Company to address the issues and specific and reasonable timeframes for such steps.

4.3 If an EPAP is required pursuant to Section 4.1.1, any missed submittals of Energy Performance Action Plans or failure to implement particular steps or actions of such EPAPs shall be addressed in accordance with Section 6.2.2 of Exhibit 4 (Payment Mechanism).

5. EXTERNAL ENERGY AUDITOR

5.1 In accordance with Section 8.9.2 of the Agreement, City has the right to procure an External Energy Auditor to provide Infrastructure Facility operations and energy usage and consumption advice. This review would likely also include recommendations that cover PPC IFM Services and SFMTA O&M Services scope.

5.2 Similar to Section 4.1.1, if the CAEC is greater than 115% of the AET or AAET, then Principal Project Company will be required to comply with the recommendations of the External Energy Auditor, if procured, at its own cost. Such recommendations may include operational and maintenance recommendations, but may not require Principal Project Company to replace any material equipment or incur any material capital expenditure. Any requirement to replace material equipment or incur material capital expenditures shall be addressed in accordance with Section 12 of the Agreement. Additionally, Principal Project Company would not be required to comply with any recommendations that contradict specific advice provided by equipment manufacturers.

EXHIBIT 13

COSTS SCHEDULE

1.0 Overview and General Principles

1.1 This Exhibit 13 (Costs Schedule) describes the methods for calculating:

(A) Extra Work Costs, Delay Costs, and Financing Delay Costs owing from City to Principal Project Company pursuant to Article 12 (City Change Process; Unilateral Change Orders; Deviations) and Article 14 (Compensation and Other Relief for Delay Events and Relief Events) of this Agreement; and

(B) Any other amount expressly payable by City or Principal Project Company under this Agreement.

1.2 The following general principles apply to Extra Work Costs, Delay Costs, and Financing Delay Costs calculated under this Exhibit 13 (Costs Schedule):

(A) Principal Project Company shall provide all information referred to in this Exhibit 13 (Costs Schedule) or Exhibit 9 (Change Procedures) on an Open Book Basis;

(B) All payments or deductions made by City to Principal Project Company in accordance with this Exhibit 13 (Costs Schedule) will be made as and when incurred or in arrears in accordance with Section 7.0 (Form of Timing of Compensation) or as otherwise expressly provided under this Agreement;

(C) In calculating Extra Work Costs, Delay Costs, and Financing Costs, the time value of money and timing of cash flows shall be accounted for. This means cash flows, whether they are costs incurred or payments received, shall be discounted or inflated to reflect when they occur (if applicable);

(D) Extra Work Costs shall not include Delay Costs or Financing Delay Costs; and

(E) No amounts shall be double counted.

1.3 Principal Project Company's recovery for any Extra Work Costs, Delay Costs, and Financing Delay Costs under this Exhibit 13 (Costs Schedule) is subject to Principal Project Company complying with the timeframes specified in Article 14 (Compensation and Other Relief for Delay Events and Relief Events), and Exhibit 9 (Change Procedures) as applicable, and otherwise in accordance with this Agreement.

2.0 Extra Work Costs

2.1 Methods of Determining Extra Work Costs

Extra Work Costs, payable in accordance with Article 14 (Compensation and Other Relief for Delay Events and Relief Events) or Exhibit 9 (Change Procedures) of this Agreement, shall be determined using the following methods:

(A) negotiated lump sum;

(B) unit prices; or

(C) Force Account.

Each method is described below.

2.2 Negotiated Lump Sum

If the City determines in its good faith discretion, Extra Work Costs will be determined on a negotiated lump sum basis. Subject to the City's right to issue a Unilateral Change Order, lump sum costs of Extra Work, negotiated and agreed with Principal Project Company shall be based on the direct costs to perform the Extra Work, as follows:

2.2.1 Direct Costs. The City will pay Principal Project Company the sum of the direct costs of labor, materials, and equipment used to perform Extra Work as follows:

(A) Labor. The directs costs of labor for workers that actually perform Extra Work. Such workers include superintendents and supervisory foremen only if they are at the Project Site planning, coordinating, or overseeing Extra Work. All other supervision costs shall be included in the markup defined in Section 2.2.3 (Markup for Overhead and Profit). Whether the employer is Principal Project Company, a Contractor, a lower tier Contactor, or other forces, the direct cost of labor is the sum of the following:

(1) Actual Wages. The actual wages paid, including any actual payments by the employer for its workers' health and welfare, pension, vacation, training, and similar purposes.

(2) Labor Surcharge. The applicable labor surcharges in the California Department of Transportation's Labor Surcharge and Equipment Rental Rates publication in effect on the date the Extra Work is completed. These labor surcharges shall constitute full compensation for employer's payment of workers' compensation insurance, Social Security, Medicare, state and federal unemployment insurance, and state training taxes. City will not pay any other fixed labor burdens unless approved in writing by the City.

(3) Subsistence and Travel Allowance. The actual allowance paid to workers for subsistence and travel.

(B) Materials. The direct costs of materials required and furnished specifically for Extra Work. This includes only the direct expenditure, including sales tax, borne by the purchaser from the Supplier and any transportation expenses (e.g., shipping fees, freight charges), except delivery charges unless specifically required for the Extra Work. If a genuine Supplier offers a trade discount to purchaser, Principal Project Company shall credit the City with this discount, even if the discount was not originally taken. If materials originate from a Supplier wholly or partially owned by a PPC-Related Entity, the City's payment therefor shall not exceed the current wholesale price, as determined by the City. The term "trade discount" includes the concept of cash discounting.

(C) Equipment. The direct costs of equipment are the applicable rental rates for equipment in the California Department of Transportation's Labor Surcharge & Equipment Rental Rate Book (including its supplement Miscellaneous Equipment Rental Rates) in effect on the date the Extra Work is completed.

(1) As deemed appropriate, the City may adjust such rental rates and use them to compute payments for equipment, regardless of whether the equipment is under the control of a PPC-Related Entity through direct ownership, leasing, renting, or other method of acquisition; except that, for equipment rented or leased in arm's length transactions with outside vendors, the City will reimburse Principal Project Company at the actual rental or leased invoice rates when such rates are reasonably in line with the applicable rates specified in the Labor Surcharge & Equipment Rental Rate Book (including its supplement Miscellaneous Equipment Rental Rates) as determined by the City. Arm's length rental or lease transactions are those in which the firm involved in the rental or lease of such equipment is not associated with, owned by, have common management, directorship, facilities, or stockholders with the firm renting the equipment. Principal Project Company has the burden of proof to demonstrate that a rental or lease transaction was an arm's length transaction. Principal Project Company shall submit copies of all rental or lease invoices, and other information as requested by the City, if any, as supporting documentation with each Proposed Change Order cost proposal.

(2) For equipment that is not listed in the Labor Surcharge & Equipment Rental Rate Book, Principal Project Company shall provide to the City three separate quotes for rental of the applicable equipment for City's consideration.

(3) The City will pay for equipment based on daily, weekly, or monthly rates, whichever are lowest. The City will not pay for equipment based on hourly rates including operator. Unless otherwise specified, Principal Project Company shall use manufacturer's ratings and manufacturer-approved modifications to classify equipment for determination of applicable rental rates. If, however, equipment of unwarranted size or type and cost is used, Principal Project Company shall calculate the cost at the rental rate for equipment of proper size and type.

(4) The City will pay for equipment only for the time the equipment is in productive operation on the Extra Work. The City will not pay for equipment while inoperative due to breakdown or for non-work days. In addition, the City will not pay for any equipment rental time required to move the equipment to and from the Project Site. The City will pay for equipment loading and transportation costs, in lieu of rental time, only if the equipment does not move under its own power and is utilized solely for the Extra Work. The City will not pay for mobilization or demobilization of equipment already on the Project Site. The City will reimburse Principal Project Company for equipment that is idle, non-operating, or in standby mode at the lesser of Caltrans' rates, as adjusted by Caltrans Delay Factor (defined in the Labor Surcharge & Equipment Rental Rate Book), as adjusted by its standby calculation, unless such equipment is rented or leased as provided above.

(5) Individual pieces of equipment having a replacement value of $1,000 or less are considered small tools or small equipment; City will not pay for such tools and equipment since the costs of these tools and equipment are included as part of markups for overhead and profit as defined in Section 2.2.3 (Markup for Overhead and Profit).

(6) Payment to Principal Project Company for the use of equipment as set forth in this Exhibit 13 (Costs Schedule) shall constitute full compensation to Principal Project Company for the cost of fuel, power, oil, lubricants, supplies, small equipment, necessary attachments, repairs and maintenance of any kind, depreciation, storage, insurance, labor (except for equipment operators), and any and all costs to Principal Project Company incidental to the use of the equipment.

2.2.2 Costs Included as Part of Markup for Overhead and Profit. To the total of the direct costs of labor, materials, and equipment computed as provided in Section 2.2.1 (Direct Costs), the City will pay Principal Project Company markups for overhead and profit, as specified in Section 2.2.3 (Markup for Overhead and Profit). These markups shall constitute full compensation for all direct and indirect overhead costs and profit, which shall be deemed to include all items of expense not specifically listed in Section 2.2.1 (Direct Costs) as direct costs. The City shall not be obligated to pay for any separate allowance or itemization for any overhead costs. The following is a list, not intended to be comprehensive, of the types of costs that are included in the markups for overhead and profit for all Extra Work:

(A) Home office and field personnel including, principals, project managers, superintendents and supervisory foremen (unless they are at the Project Site planning, coordinating, or overseeing Extra Work), estimators, project engineers, detailers, draftspersons, schedulers, consultants, watchpersons, payroll clerks, administrative assistants, and secretaries.

(B) All field and home office expenses, including: field trailers; parking; storage sheds; office equipment and supplies; telephone service at the Project Site; long-distance telephone calls; fax machines; computers and software; internet and e-mail services; temporary utilities; sanitary facilities and services; janitorial

services; small tools and equipment with a cost under $1,000 each; portable scaffolding; blocking; shores; appliances; job vehicles; security and fencing; conformance to all regulatory requirements including compliance with safety regulations, safety programs, and safety meetings; cartage; warranties; record documents; and all related maintenance costs.

(C) Administrative functions, including reviewing, coordinating, distributing, processing, posting, recording, estimating, negotiating, scheduling, schedule updating and revising, expediting, surveying, engineering, drawing, detailing, revising shop drawings, preparing record drawings, carting, cleaning, protecting the Work, and other incidental Work related to the Change Order.

(D) Bond and insurance costs.

(E) All other costs and taxes required to be paid, but not included under direct costs as defined in Section 2.2.1 (Direct Costs).

2.2.3 Markup for Overhead and Profit. To the actual total direct costs of labor, material, and equipment used to perform Extra Work, the City will apply the following markups for overhead and profit:

(A) Initial Markup. An initial maximum markup for the PPC-Related Entity that performs the Extra Work based on the direct cost categories, as follows:

Direct Cost Categories	Maximum Markup
Principal Project Company – labor *	10%
Principal Project Company – materials*	10%
Principal Project Company – equipment*	10%
Prime Contractor/Subcontractor (of any tier) – labor	10%
Prime Contractor/Subcontractor (of any tier) – materials	10%
Prime Contractor/Subcontractor (of any tier) – equipment	10%

* Extra Work self-performed by Principal Project Company.

(B) Additional Markup. An additional maximum markup for the administration of Extra Work performed by a Contractor, as follows:

(1) Prime Contractor. For Extra Work performed by a Prime Contractor, an additional maximum markup of 5% for Principal Project Company's administration of the Extra Work.

(2) Subcontractor. For Extra Work performed by a Subcontractor, additional maximum markups of 5% each for Principal Project Company, Prime Contractor, and, if applicable, the higher-tier Subcontractor(s) for their respective administration of the Extra Work. The total of these additional markups shall not exceed 10% regardless of the number of Subcontractor tiers involved with the Extra Work.

2.2.4 Adjustments and Considerations for Extra Work Costs.

(A) When both additions and credits are involved in any one Change Order, Principal Project Company's markup for direct costs shall be computed on the basis of its direct costs and labor productivity for the net change in the quantity of the Extra Work. For example, if a Change Order adds 14 units on one drawing and deletes 5 units on another drawing, the markup shall be based on the net addition of 9 units. No markup will be allowed if the deductive cost exceeds the additive cost.

(B) If the City issues written notice of deletion of a portion of Extra Work after the commencement of such Extra Work or after Principal Project Company has ordered acceptable materials for such Work which cannot be cancelled, or if part or all of such Extra Work is not performed by Principal Project Company because it is unnecessary due to actual Project Site conditions, City will pay Principal Project Company for direct costs of such Work actually performed plus markup for overhead and profit as provided in Section 2.2.3 (Markup for Overhead and Profit).

(C) The City shall not be obligated to compensate Principal Project Company for costs incurred after Principal Project Company receives the City's written notice deleting the portion of Extra Work.

(D) Materials ordered by Principal Project Company prior to the City's issuance of a notice of deletion and paid for by the City shall become the property of the City, and the City will pay for the actual cost of any further handling of such material. If the material is returnable to the vendor, and if the City so directs, Principal Project Company shall return the material and the City will pay Principal Project Company only for the actual charges made by the vendor for returning the material including restocking charges.

(E) Principal Project Company shall be solely responsible for determining which of its Contractors and Suppliers are assigned Change Orders. The City will not provide additional compensation to Principal Project Company for the cost of its Contractors and Suppliers to review, post, coordinate, or perform related tasks to administer Change Orders.

2.2.5 Records. Principal Project Company shall maintain its records in such a manner as to provide a clear distinction between the direct costs of Change Orders and the cost of original Work. This requirement pertains to all types of Change Orders, as well as the additions, deletions, revisions, and Claims initiated by Principal Project Company.

2.3 Unit Prices

If mutually agreed by the Parties or specified in the Contract Documents, the cost of Extra Work will be determined on a unit-cost basis.

2.3.1 Initial Estimate. The City will calculate an initial cost estimate by multiplying the pre-agreed unit prices by the estimated quantities indicated in the corresponding Change Order.

2.3.2 Final Cost Calculation. The actual cost payable to Principal Project Company for the Extra Work will be based on the real quantities of work completed, not the initial estimates.

2.3.3 Overhead and Profit. Unit prices must include any overhead and profit, the calculation of which shall follow the guidelines provided in this Exhibit 13 (Costs Schedule).

2.4 Force Account

If the City determines in its good faith discretion, Extra Work Costs will be determined on a Force Account basis. In such a case, the City will direct Principal Project Company to proceed with the Extra Work on a Force Account basis, subject to a "not to exceed" budget established by the City.

2.4.1 General. When the City pays Extra Work on a Force Account basis, all direct costs itemized in accordance with Section 2.2.1 (Direct Costs) shall be subject to the approval of the City and compensation will be determined as set forth in this Exhibit 13 (Costs Schedule).

(A) All requirements for direct costs and markup for overhead and profit provided in Section 2.2.3 (Markup for Overhead and Profit) shall apply to Force Account Work. However, the City will pay only the actual necessary costs verified in the field by the City on a daily basis.

(B) Principal Project Company shall be responsible for all costs related to the documentation, data preparation, and administration of Force Account Work. Compensation for these costs shall be fully covered by the markup for overhead and profit markup as provided in Section 2.3 (Unit Prices).

(C) Notification and Verification. Before commencing any Force Account Work, Principal Project Company shall provide written notice to the City at least 24 hours before the scheduled Work. The Force Account Work must be witnessed, documented, and approved in writing by the City on the day the Work is performed. Failure by the Principal Project Company to provide timely notice to the City before initiating Force Account Work shall result in the City not being obligated to compensate for such Work.

In addition, Principal Project Company shall notify the City when the cumulative costs incurred by Principal Project Company for the Force Account Work equal 80% of the budget pre-established by the City. The City shall not be obligated to compensate Principal Project Company for Force Account Work exceeding the “not to exceed” budget amount if Principal Project Company fails to provide the required notice before exceeding 80% of the Force Account budget.

(D) Reports. Principal Project Company shall diligently proceed with City-directed Force Account Work and shall submit to the City no later than 12:00 p.m. of the day following performance of Force Account Work a daily Force Account Work report on a form obtained from the City. The report shall provide an itemized, detailed account of the daily Force Account labor, material, and equipment, including names of the individuals and the specific pieces of equipment identified by manufacturer's model type and serial number. Principal Project Company's authorized representative shall complete and sign the report. The City shall not be obligated to compensate Principal Project Company for Force Account Work for which Principal Project Company does not timely complete and submit the aforementioned report to the City.

(E) Agreement. If Principal Project Company and the City reach a negotiated, signed agreement on the cost of a Change Order while the Extra Work is proceeding on a Force Account basis, Principal Project Company's signed written reports shall be discontinued and all previously signed reports shall become invalid.

3.0 Delay Costs

(A) General. In the event of a City-Caused Delay Event, the City will pay Principal Project Company for incurred Delay Costs as specified in this Section 3.0 (Delay Costs) to the extent (i) expressly allowed under Section 14.1.4(b) of this Agreement, and (ii) such costs have not been previously paid as allowed under Section 2.4 (Force Account). Such payment constitutes full compensation for incurred Delay Costs.

(B) The City will not pay for Delay Costs until Principal Project Company submits an itemized statement of those costs; Principal Project Company must provide the content specified in Section 2.4 (Force Account), for the applicable items in this statement and as follows:

(1) Proof of cost of superintendent, or other project staff salaries, wages, and payroll taxes and insurance;

(2) Proof of cost of office rent, utilities, land rent, and office supplies;

(3) Proof of escalated cost for labor, equipment, and material;

(4) Proof of material storage costs; and

(5) Proof of other increased Delay Costs consistent with this Section 3.0 (Delay Costs).

(C) Allowable Delay Costs. Increases in cost for labor, equipment, and materials will be calculated as follows:

(1) Idle Labor. Labor costs during delays must be calculated as specified in Section 2.2.1(A) for all non-salaried personnel remaining on the Project as required under collective bargaining agreements or for City-approved reasons.

(2) Escalated Labor. Payments authorized for increases in labor costs will be based on (i) the difference between old and new labor rates established by a State or federal agency, or (ii) a project labor agreement or other agreement between the employee's and Principal Project Company's bargaining agency, which is accepted by City. Payment will be based on certified payrolls. Payment will also include the increases in fringe benefit rates and increases in payroll taxes that Principal Project Company is required to pay.

(3) Idle Equipment. Payment may be allowed on a rental basis for the idled equipment if any of the following criteria is met:

a. The equipment is on the Project Site at the time of the delay, is required for the controlling operation, and cannot be used at other locations on the Project Site.

b. The equipment is specialized and directly related to the controlling operation, whether on or off the Project Site. This must be certified by Principal Project Company and verified by the City.

c. The rental rate for idled leased or rented equipment will be the leased or rented rate established in Section 2.2.1(C). However, the City may direct Principal Project Company to return equipment and take it off rental.

d. The rental rate for idled equipment owned by PPC-Related Entities will be one-half the rate established in Section 2.2.1(C). No payment will be allowed for operating costs.

e. Payment will be limited to the difference between the hours used and 8 hours in any one day and to the difference between the hours used and 40 hours in any one week. No additional compensation for overhead will be allowed.

f. Equipment demobilization and remobilization, if directed by City, will be paid in accordance with Section 2.0 (Extra Work Costs).

(4) Material Escalation or Material Storage. Payment for increased cost of materials will be based on differences in the invoice costs before and after the delay period. When requesting an increase in cost of materials, Principal Project Company shall document the increased costs due to the delay. The cost of materials storage during the delay will be the invoiced storage cost.

4.0 Financing Delay Costs

Financing Delay Costs, when allowed under this Agreement, will be paid in the form and timing as described in Section 7.0 (Form and Timing of Compensation).

5.0 Directed Acceleration

If the City orders Principal Project Company to accelerate the D&C Work in accordance with Section 1.3.2(c) of Exhibit 9 (Change Procedures), and in the absence of agreed upon compensation, the City will compensate Principal Project Company for performance of the accelerated work in accordance with Section 2.4 (Force Account).

6.0 Unrecoverable Costs

Principal Project Company is not entitled to compensation for the following costs:

(A) Loss of anticipated profit.

(B) Consequential damages, including loss of bonding capacity, loss of bidding opportunities, insolvency, and the effects of force account work on other projects, or business interruption.

(C) Indirect costs.

(D) Attorneys' fees, claim preparation expenses, and the costs of litigation.

(E) Unabsorbed or extended field or home office overhead or any damages using an Eichleay or similar equation, except as otherwise provided in the mark ups specified in Section 2.2.2 (Costs Included as Part of Markup for Overhead and Profit).

(F) The cost of project management services provided by Principal Project Company.

The following do not constitute cause for a Claim for Extra Work Costs or Delay Costs:

(1) The inability to secure satisfactory materials, for reasons beyond Principal Project Company's control, from the source upon which the proposal was based, unless project specific single source Suppliers are specified by City; or

(2) Changes in carrier rates or the alteration of transportation facilities for these materials during the Term.

7.0 Form and Timing of Compensation

7.1 Payments or Deductions of Extra Work Costs, Delay Costs and Financing Delay Costs

If a Delay Event or Relief Event:

(A) results in an amount owing from Principal Project Company to City in accordance with this Agreement, City will deduct such amount from the Milestone Payment (only to the extent that such Delay Event or Relief Event affects the (1) D&C Work or (2) IFM Services prior to the Substantial Completion Date) or Availability Payments payable to Principal Project Company after the Delay Event or Relief

Event, or if no subsequent Milestone Payment or Availability Payments are payable to Principal Project Company, such amount will be a debt due and payable by Principal Project Company to City;

(B) results in an amount owing from City to Principal Project Company that is not financed by Principal Project Company in accordance with Section 7.2 (Additional Funding), City will compensate Principal Project Company as follows:

(1) subject to Sections 7.1(B)(2) and 7.1(B)(3) in the form of:

a. an adjustment to the Milestone Payment or Availability Payments over the Term;

b. a lump sum payment;

c. progress or other periodic payments invoiced as Extra Work is completed or as other multiple payments over the Term; or

d. any combination of the above,

in accordance with the payment arrangements set out in the Change Order or Unilateral Change Order or otherwise as determined by the City in its sole discretion;

(2) in respect of Extra Work Costs or Delay Costs, within 1 calendar month after the date of the receipt from Principal Project Company of the Change Order except to the extent that any Extra Work Costs or Delay Costs are disputed by City and referred for dispute resolution in accordance with Article 18 (Contract Dispute Procedures); and

(3) in respect of Financing Delay Costs, on the date which City would have paid the Milestone Payment or Availability Payment relating to those days of delay had Substantial Completion not been delayed by the relevant Compensable Delay Event; or

(C) results in an amount owing from City to Principal Project Company that is financed by Principal Project Company in accordance with Section 7.2 (Additional Funding), City will pay such amount to Principal Project Company in the same manner as Section 7.1(B).

7.2 Additional Funding

Where City requests Principal Project Company obtain funding for a Delay Event or Relief Event, Principal Project Company shall use all reasonable endeavors to obtain such funding, including by:

(A) using any savings resulting from other Delay Events or Relief Events which have resulted in amounts being available under the Financing Documents;

(B) utilizing any standby facility that may be available to Principal Project Company;

(C) arranging for additional funding under the Financing Documents and from other sources (if permitted under the Financing Documents); and

(D) arranging other funding obtained on commercial terms for Principal Project Company by City (without any obligation on City to make any such arrangements).

To the extent Principal Project Company is able to obtain funding, the cost of the funding will be taken into consideration by the parties in the compensating Principal Project Company for the Delay Event or Relief Event in accordance with Section 7.1 (Payments or Deductions of Extra Work Costs, Delay Costs and Financing Delay Costs). City shall pay Principal Project Company an amount equal to the reasonable out-of-pocket expenses incurred by Principal Project Company in seeking such financing, provided that City approved such expenses prior to Principal Project Company incurring them.

Where, having used all reasonable endeavors, Principal Project Company is unable to obtain funding or funding is on terms which are not satisfactory to City, City will, without limiting its rights under Exhibit 9 (Change Procedures), compensate Principal Project Company in accordance with Section 7.1(A)-(C).

EXHIBIT 14

KEY CONTRACT PROVISIONS

I. Key Contracts

Each Key Contract shall:

(a) Include a covenant to maintain all licenses required by applicable Law;

(b) Require the Key Contractor to carry out its scope of work in accordance with applicable requirements of the Contract Documents, the Regulatory Approvals, applicable Law, and plans, systems and manuals developed and used by Principal Project Company under the Contract Documents;

(c) Set forth representations, warranties, guaranties and liability provisions of the Key Contractor appropriate for work of a similar scope and scale;

(d) Expressly state that all warranties and guaranties remaining in effect upon the expiration of the Term or earlier termination of this Agreement, whether express or implied, shall inure to the benefit of City, its successors and assigns, and any Third Parties for whom Work is being performed;

(e) Set forth a standard of professional responsibility or a standard for commercial practice (as applicable) equal to or better than the requirements of the Contract Documents and in accordance with Good Industry Practice for work of similar scope and scale;

(f) To the extent applicable, if not obtained by Principal Project Company, require the Key Contractor to provide Payment Bond(s) and Performance Bond(s) as required under Section 10.2 (Performance Security) of this Agreement before commencement of any work by or on behalf of the Key Contractor, and expressly require such Key Contractor to provide any surety Notices of loss or potential loss to Principal Project Company and City;

(g) Preclude suspension of performance or demobilization by the Key Contractor unless and until it delivers to City Notice of the other contracting party's breach or default under such Key Contract and allows City the reasonable opportunity to cure such breach or default;

(h) Not be assignable by the Key Contractor without Principal Project Company's and City's prior consent, provided that this provision shall not prohibit subcontracting of portions of the Work to qualified Subcontractors;

(i) Include the requirements and provisions in this Agreement applicable to Contractors regarding title to and other Intellectual Property rights and licenses;

(j) Require the Key Contractor to participate in meetings between Principal Project Company and City concerning matters pertaining to such Key Contractor, its work or the coordination of its work with Other Contractors in accordance with direction to such Key

Contractor provided by Principal Project Company or other party to the Key Contract, provided that City retains authority to give such direction or take such action as in its opinion is necessary to remove an immediate and present threat to the safety of life or property;

(k) Require the Key Contractor to participate in, be subject to and give evidence in any dispute resolution proceeding under Article 18 (Contract Dispute Procedures) of this Agreement, if such participation is requested by either City or Principal Project Company;

(l) Without cost to Principal Project Company or City, and subject to the rights of the Collateral Agent under any Direct Agreement, permit assignment to City or its successors, assigns or designees of all Principal Project Company's or other contracting party's rights under the Key Contract (with such assignment to include the benefit of all Key Contractor warranties, indemnities, guarantees and professional responsibility), contingent only upon delivery of Notice from City following the Termination Date, allowing City or its successor, assign or designee to obtain the benefit of Principal Project Company's or other contracting party's rights with liability only for those remaining obligations of Principal Project Company or the other contracting party accruing after the date of delivery of said Notice from City, without extinguishing existing claims of the Key Contractor against Principal Project Company or the corresponding Claims of Principal Project Company against City;

(m) Expressly state that any acceptance of assignment of the Key Contract by City, the Collateral Agent or either or their respective successors, assigns or designees shall not operate to make the assignee responsible or liable for any breach of the Key Contract by Principal Project Company or for any amounts due and owing under the Key Contract for work or services rendered before acceptance of the assignment;

(n) Expressly include the Indemnitees as indemnitees, with direct right of enforcement, in any indemnity given by the Key Contractor under the Key Contract;

(o) Expressly include an acknowledgement that, except to the extent of stop notice rights under State law, the Key Contractor has no right or claim to any lien or encumbrance upon the Project and Project Site for failure of the other contracting party to pay amounts due the Key Contractor, and a waiver of any such right or claim that may exist at Law or in equity;

(p) Expressly include the right of Principal Project Company to terminate the Key Contract in whole or in part upon any termination of this Agreement without liability of Principal Project Company or City for the Key Contractor's lost profits or business opportunity;

(q) Not contain any terms that do not comply or are inconsistent with the terms of the Contract Documents;

(r) Include:

  (i) a covenant acknowledging that, subject to the rights of the Collateral Agent under any Direct Agreement, upon receipt of written Notice from City, City is entitled to exercise step-in rights with respect to the Key Contract (where City is also

exercising its step-in rights under Section 16.2.5 (City Step-in Rights) of this Agreement), without any necessity for a consent or approval from Principal Project Company or the making of a determination whether City validly exercised its step-in rights; and

(ii) a waiver and release by Principal Project Company of any claim or cause of action against the Key Contractor arising out of, relating to or resulting from its recognition of City's step-in rights in reliance on any such written Notice from City;

(s) Include a covenant that will survive termination of the Key Contract obligating the Key Contractor to promptly execute and deliver to City or its successor, assign or designee a new contract between the Key Contractor and City or its successor, assign or designee on the same terms as the Key Contract, if (i) the Key Contract is rejected by Principal Project Company in bankruptcy or is wrongfully terminated by Principal Project Company and (ii) City delivers a request for such new contract within 60 days following termination or expiration of this Agreement;

(t) Include a covenant that will survive termination of the Key Contract to the effect that if the Key Contractor was a party to an escrow agreement for an IP Escrow and Principal Project Company terminates it, then the Key Contractor also shall execute and deliver to City, concurrently with such new contract, a new escrow agreement on the same terms as the terminated escrow agreement, and shall concurrently make the same deposits to the new IP Escrow as made or provided under the terminated escrow agreement. The obligation to include the same terms in each such new contract (including new IP Escrows) is subject to the following exceptions: (i) terms of a Key Contract or IP Escrow agreement rendered moot or inapplicable solely due to change in the identity of the contracting party; and (ii) terms of a Key Contract that must be adjusted due to schedule delay caused solely by Principal Project Company's rejection in bankruptcy or wrongful termination;

(u) Require the Key Contractor to (i) maintain usual and customary Books and Records for the type and scope of operations of business in which it is engaged and retain such Books and Records for the period stated in Section 21.1.1(e) of this Agreement or other applicable period specified in the Contract Documents, (ii) permit audit of Books and Records by City and (iii) provide progress reports to Principal Project Company appropriate for the type of work it is performing sufficient to enable Principal Project Company to furnish reports required under this Agreement;

(v) Include a right of inspection for City, or City's designee(s), consistent with City's inspection rights under the Contract Documents;

(w) Include provisions for Renewal Work during the last two years of the Term ensuring that warranties and guaranties under each Key Contract inure to the benefit of both City and Principal Project Company; and

(x) Provide that any purported amendment contrary to the requirements of this Exhibit 14 (Key Contract Provisions), without the prior written consent of City, shall be null and void.

II. D&C Contract

Each D&C Contract shall:

(b) Ensure D&C Contractor participation in and compliance with commissioning tasks, including the requirements under Division 6 (Testing & Commissioning and Operational Readiness) of the Technical Requirements, to provide a properly functioning building that includes fundamental commissioning requirements; and

(c) At a minimum, outlining the following commissioning requirements, in accordance with Division 6 (Testing & Commissioning and Operational Readiness) of the Technical Requirements:

(i) Commissioning team roles and responsibilities;

(ii) Requirements for a communication protocol between Principal Project Company, D&C Contractor, and the Commissioning Provider;

(iii) Submittal requirements and review procedures;

(iv) Operation and maintenance documentation requirements;

(v) Meetings;

(vi) Construction verification procedures;

(vii) Cost of retesting;

(viii) Start-up, testing, adjusting and balancing documentation and verification;

(ix) Functional performance testing requirements;

(x) Systems Manual requirements;

(xi) Training of IFM Provider and City personnel;

(xii) Schedule and contractual milestones;

(xiii) End of warranty site visit; and

(xiv) Commissioning specifications are to be provided to the D&C Contractor.

EXHIBIT 15

CONDITIONS PRECEDENT

Exhibit 15A: Conditions to NTP 1 - Commencement of Non-Construction Work

Exhibit 15B: Conditions to NTP 2 - Commencement of Construction Work

Exhibit 15C: Conditions to Substantial Completion

Exhibit 15D: Conditions to Final Acceptance

EXHIBIT 15A

CONDITIONS TO NTP1 - COMMENCEMENT OF NON-CONSTRUCTION WORK

The conditions to NTP 1 are:

(a) Financial Close has occurred;

(b) City has accepted the following elements of the Project Management Plan: (i) the Design Management Plan; and (ii) the Quality Management Plan (Design);

(c) all Insurance Policies required to be in effect at NTP 1 pursuant to Exhibit 7 (Insurance Requirements) have been obtained and are in full force and effect and Principal Project Company has delivered to City verification thereof as required under Section 10.1.2.4(a) of this Agreement;

(d) Principal Project Company has certified to City that all personnel who will perform D&C Work either hold all licenses, certifications, registrations, permits or approvals necessary for performance of the D&C Work or will obtain them before starting work;

(e) Principal Project Company is not then in receipt of any Notice of PPC Default from City unless any such default has been cured or waived in writing by City;

(f) Principal Project Company is not then in receipt of any Notice of default delivered pursuant to the Financing Documents unless any such default has been cured, and no Lender has otherwise indicated that it is unwilling or unable to presently fund Principal Project Company's costs of the Work; and

(g) All representations and warranties of Principal Project Company in Section 19.1 (Principal Project Company Representations and Warranties) of this Agreement shall be and remain true and correct in all material respects, and Principal Project Company has delivered to City a certificate certifying to the same.

EXHIBIT 15B

CONDITIONS TO NTP 2 - COMMENCEMENT OF CONSTRUCTION WORK

The conditions to NTP 2 are:

(a) City has issued NTP 1;

(b) City has accepted the Project Schedule;

(c) City has accepted the Project Management Plan;

(d) City's has accepted the Health and Safety Plan required pursuant to Section 01 35 45 of Division 10 of the Technical Requirements;

(e) all Insurance Policies required to be in effect at NTP 1 pursuant to Exhibit 7 (Insurance Requirements) remain in full force and effect, and Principal Project Company has delivered to City verification thereof as required under Section 10.1.2.4(a) of this Agreement;

(f) all Regulatory Approvals necessary to begin the applicable portions of the Construction Work have been obtained and Principal Project Company has furnished to City fully executed copies of such Regulatory Approvals other than the CEQA Approval;

(g) the Access Date has occurred and all rights of access necessary for commencement of Construction Work on the applicable portion of the Project Site have been obtained;

(h) all applicable pre-construction requirements, as set forth in the final MMRP contained in Section 01 35 50 (Appendix A) of Division 10 of the Technical Requirements and contained in Section 01 35 43, Section 01 35 50, Section 02 80 13, and Section 02 81 10 of Division 10 of the Technical Requirements, have been reviewed and confirmed to be completed by City in its regulatory capacity;

(i) all applicable pre-construction requirements contained in any Regulatory Approvals, in each case for the applicable portion of the Construction Work, have been satisfied;

(j) All Utility Adjustments have been completed and Principal Project Company certifies that, other than Utility Adjustments arising out of any Unidentified Utilities found after the Setting Date, no further Utility conflicts exist with respect to the Project;

(k) Principal Project Company has obtained approvals from Authorities Having Jurisdiction required for, as well as City approval of, any proposed lane closures, and has taken other appropriate measures to ensure maintenance of traffic in the area affected by the Work;

(l) Principal Project Company has delivered to City, and City has accepted or approved (as applicable), all Submittals relating to the applicable portion of the Construction Work required by the Project Management Plan and the Contract Documents to be accepted or

approved, in the form and content required by the Project Management Plan or Contract Documents;

(m) Principal Project Company has delivered to City, and City has approved, the Final Commissioning Plan;

(n) Principal Project Company has obtained City approval of the Release for Construction Documents for the affected Construction Work in accordance with Section 1.8.6 of Division 1 of the Technical Requirements;

(o) the guarantees in favor of City, if any, required under Section 10.5 (Guarantees) of this Agreement have been executed, obtained and delivered to, and received by, City and are in full force and effect;

(p) Principal Project Company is not then in receipt of any Notice of PPC Default from City unless any such default has been cured or waived in writing by City;

(q) Principal Project Company is not then in receipt of any Notice of default delivered pursuant to the Financing Documents unless any such default has been cured, and no Lender has otherwise indicated that it is unwilling or unable to presently fund Principal Project Company's costs of the Work; and

(r) All representations and warranties of Principal Project Company in Section 19.1 (Principal Project Company Representations and Warranties) of this Agreement shall be and remain true and correct in all material respects, and Principal Project Company has delivered to City a certificate certifying to the same.

EXHIBIT 15C

CONDITIONS TO SUBSTANTIAL COMPLETION

The conditions to Substantial Completion are:

(a) Principal Project Company has completed all D&C Work in accordance with the requirements of this Agreement and the Infrastructure Facility can be utilized safely for its intended purpose, including (i) full access to all points of entry and exit and (ii) completion of all Construction Work other than Punch List items approved by City;

(b) each Authority Having Jurisdiction has issued a temporary certificate of occupancy for the Infrastructure Facility, to the extent such certificate is required by applicable Law, or has accepted the Infrastructure Facility, as applicable;

(c) Principal Project Company has accepted the updated IFM Management Plan;

(d) the Infrastructure Facility is in a condition of full operational functionality and operational readiness to allow the SFMTA's transit operations to relocate to the Infrastructure Facility as required in Section 01 77 00 of Division 10 and Division 6 of the Technical Requirements, respectively including with all emergency testing and commissioning activities successfully completed, and with the Help Desk established and operating;

(e) Principal Project Company has:

(i) completed training of Principal Project Company's IFM Services personnel in accordance with Section 1.7 of Division 1 of the Technical Requirements;

(ii) completed training of City's SFMTA O&M Services personnel in accordance with Section 1.7 of Division 1 of the Technical Requirements;

(iii) delivered to City a certificate, in form acceptable to City, executed by Principal Project Company that it and its Contractors are fully staffed with such trained personnel and are ready, willing and able to operate and maintain the Infrastructure Facility in accordance with the terms of the Contract Documents including the approved Project Management Plan;

(iv) delivered to City training records evidencing compliance with training requirements for both Principal Project Company's IFM Services personnel and City's SFMTA O&M Services personnel, including copies of course completion certificates issued to each of the subject personnel, and including SFMTA O&M Services training manuals and video recordings of training sessions;

(v) completed and documented completion of all training required to allow full access to the Project Site to those individuals designated by City in accordance Section 1.7 of Division 1 of the Technical Requirements; and

(vi) satisfactorily demonstrated integrated operational functionality through "live" coordinated responses (in conjunction with City staff including emergency response

personnel) to failure management and other emergency events during the operations of the Infrastructure Facility in accordance with Division 6 of the Technical Requirements;

(f) the relevant systems and equipment have passed all required tests and Principal Project Company has delivered to City all reports, data, and documentation relating to such tests;

(g) Principal Project Company has delivered to City, and City has approved, the Systems Manual;

(h) Principal Project Company has, in accordance with Section 21.4 (Intellectual Property), granted to City all Base License Rights to PPC IP and Third Party IP, delivered to City all Developed IP, delivered to City all IP Materials, and made all deposits to the IP Escrow required with respect to the D&C Work;

(i) Principal Project Company has prepared and submitted a Punch List in accordance with the Contract Documents and City has accepted such list;

(j) Principal Project Company is not then in receipt of any Default Notice from City unless any such default has been cured or waived in writing by City;

(k) Principal Project Company is not then in receipt of any Notice of default delivered pursuant to the Financing Documents unless any such default has been cured;

(l) Principal Project Company has delivered to City (i) all manufacturers' warranties required under, and in the form and content specified by the Technical Requirements (including Division 3 of the Technical Requirements and Section 01 78 36 of Division 10 of the Technical Requirements) and (ii) all documents and other evidence of warranties under Sections 7.9 (Final Acceptance) and 6.11 (Warranties) of this Agreement;

(m) all Insurance Policies required to be in effect for the IFM Period pursuant to Exhibit 7 (Insurance Requirements) have been obtained and are in full force and effect and Principal Project Company has delivered to City verification thereof as required under Section 10.1.2.4(a) of this Agreement; and

(n) all Submittals required by the Project Management Plan or Contract Documents to be submitted, accepted and/or approved by City have been submitted to and accepted or approved by City, as applicable.

EXHIBIT 15D

CONDITIONS TO FINAL ACCEPTANCE

The conditions to Final Acceptance are:

(a) Principal Project Company has completed all D&C Work in accordance with this Agreement;

(b) City has issued a Certificate of Substantial Completion for the Infrastructure Facility;

(c) all Punch List items have been completed to the reasonable satisfaction of City;

(d) Principal Project Company has delivered to City a reasonable inventory of all spare parts, spare components, spare equipment, special tools, materials, expendables and consumables necessary for the operation and maintenance of the Infrastructure Facility;

(e) all Submittals that Principal Project Company is required by the Contract Documents to submit upon Final Acceptance have been submitted to City;

(f) each Authority Having Jurisdiction has issued a certificate of occupancy, to the extent such certificate is required by applicable Law, and/or has provided other approvals required for operation of the Infrastructure Facility, as applicable;

(g) City has received a complete set of the As-Built Documents and documentation for the Infrastructure Facility;

(h) Principal Project Company has, in accordance with Section 21.4 (Intellectual Property), granted to City all Base License Rights to PPC IP and Third Party IP, delivered to City all Developed IP, delivered to City all IP Materials, and made all deposits to the IP Escrow required at or prior to Final Acceptance;

(i) all Insurance Policies required to be in effect for the IFM Period pursuant to Exhibit 7 (Insurance Requirements) have been obtained and are in full force and effect and Principal Project Company has delivered to City verification thereof as required under Section 10.1.2.4(a) of this Agreement;

(j) Principal Project Company has completed the Move-In, in accordance with Section 7.13 (Move-In) of this Agreement.

(k) Principal Project Company is not then in receipt of any Notice of PPC Default from City unless any such default has been cured or waived in writing by City; and

(l) Principal Project Company is not then in receipt of any Notice of default delivered pursuant to the Financing Documents unless any such default has been cured.

EXHIBIT 16

FEDERAL, STATE AND CITY REQUIREMENTS

Exhibit 16A: Federal Requirements

Exhibit 16B: State Requirements

Exhibit 16C: City Requirements

Exhibit 16D: SFMTA's Surveillance Technology Policy

EXHIBIT 16A

FEDERAL REQUIREMENTS

[NOTE TO PNC: FEDERAL PROVISIONS UNDER DEVELOPMENT AND SUBJECT TO ADDITIONAL REVISION]

1. NO FEDERAL GOVERNMENT OBLIGATIONS TO THIRD PARTIES

Principal Project Company and City acknowledge and agree that, notwithstanding any concurrence by the federal government in, or approval of, the solicitation or award of this Agreement, absent the express written consent by the federal government, the federal government is not a party to this Agreement and shall not be subject to any obligations or liabilities to City, Principal Project Company or any other party pertaining to any matter resulting from this Agreement. Principal Project Company agrees to include the above clause in each Contract financed in whole or in part with federal assistance provided by the FTA. It is further agreed that the clause shall not be modified, except to identify the Contractor who will be subject to its provisions.

2. FALSE STATEMENTS OR CLAIMS – CIVIL OR CRIMINAL FRAUD

49 U.S.C. § 5323(l)(1)
31 U.S.C. §§ 3801-3812
18 U.S.C. § 1001
49 C.F.R. part 31

Principal Project Company acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. part 31, apply to its actions pertaining to the Project. Upon execution of this Agreement, Principal Project Company certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to this Agreement or the Project. In addition to other penalties that may be applicable, Principal Project Company further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the federal government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on Principal Project Company to the extent the federal government deems appropriate. Principal Project Company also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the federal government under a contract connected with a project that is financed in whole or in part with federal assistance originally awarded by FTA under authority of 49 U.S.C. chapter 53, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5323(l) on Principal Project Company, to the extent the federal government deems appropriate. Principal Project Company agrees to include the above two clauses in each Contract financed in whole or in part with federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the Contractor who will be subject to the provisions.

3. ACCESS TO THIRD PARTY CONTRACT RECORDS

49 U.S.C. § 5325(g)
2 C.F.R. § 200.333
49 C.F.R. part 633

(a) **Record Retention.** Principal Project Company will retain, and will require its Contractors of all tiers to retain, complete and readily accessible records related in whole or in part to this Agreement, including, but not limited to, data, documents, reports, statistics, sub-agreements, leases, subcontracts, arrangements, other third party agreements of any type, and supporting materials related to those records.

(b) **Retention Period.** Principal Project Company agrees to comply with the record retention requirements in accordance with 2 C.F.R. § 200.333. Principal Project Company shall maintain all books, records, accounts and reports required under this Agreement for a period of at not less than three (3) years after the date of termination or expiration of this Agreement, except in the event of litigation or settlement of claims arising from the performance of this Agreement, in which case records shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto.

(c) **Access to Records.** Principal Project Company agrees to provide sufficient access to FTA and its contractors to inspect and audit records and information related to performance of this Agreement as reasonably may be required and to the U.S. Secretary of Transportation and the Comptroller General of the United states, the state, or their duly authorized representatives, access to all third party contract records (at any tier) as required under 49 U.S.C. § 5325(g).

(d) **Access to the Sites of Performance.** Principal Project Company agrees to permit FTA and its contractors access to the sites of performance under this Agreement as reasonably may be required.

4. CHANGES TO FEDERAL REQUIREMENTS

(a) Principal Project Company shall at all times comply with all applicable FTA regulations, policies, procedures and directives, as these regulations, policies, procedures, and directives may be amended from time to time, including those listed directly or by reference in any Master Agreement between City and FTA. Principal Project Company's failure to so comply shall constitute a material breach of this Agreement.

(b) Federal requirements that apply to City or the award, this Agreement, and any amendments thereto may change due to changes in federal law, regulation, other requirements, or guidance, or changes in the City's underlying agreement including any information incorporated by reference and made part of that underlying agreement.

(c) Applicable changes to those federal requirements will apply to this Agreement and Parties thereto at any tier.

5. TERMINATION

2 C.F.R. § 200.339
2 C.F.R. App. II(B) to part 200

See Article 17 (Termination) of this Agreement.

6. CIVIL RIGHTS

Principal Project Company is an Equal Opportunity Employer. As such, Principal Project Company agrees to comply with all applicable federal civil rights laws and implementing regulations. Apart from inconsistent requirements imposed by federal laws or regulations, Principal Project Company agrees to comply with the requirements of 49 U.S.C. § 5323(h)(3) by not using any federal assistance awarded by FTA to support procurements using exclusionary or discriminatory specifications. Under this Agreement, Principal Project Company shall at all times comply with the following requirements and shall include these requirements in each Contract entered into as part thereof.

(a) **Nondiscrimination**. In accordance with federal transit law at 49 U.S.C. § 5332, Principal Project Company agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex, disability, or age; and that the Principal Project Company and each Contractor maintains no employee facilities segregated on the basis of race, color, religion or national origin. In addition, Principal Project Company agrees to comply with applicable federal implementing regulations and other implementing requirements FTA may issue.

(b) **Race, Color, Religion, National Origin, Sex**. In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e et seq., and federal transit laws at 49 U.S.C. § 5332, Principal Project Company agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. chapter 60, and Executive Order No. 11246, "Equal Employment Opportunity in Federal Employment," September 24, 1965, 42 U.S.C. § 2000e note, as amended by any later Executive Order that amends or supersedes it, referenced in 42 U.S.C. § 2000e note. Principal Project Company agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, national origin, or sex (including sexual orientation and gender identity). Such action shall include, but not be limited to, the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, Principal Project Company agrees to comply with any implementing requirements FTA may issue.

(c) **Nondiscrimination – Title VI of the Civil Rights Act.** Principal Project Company will:

(i) prohibit discrimination based on race, color, or national origin;

(ii) comply with: (A) Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d, et seq.; (B) U.S. DOT regulations, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act of 1964," 49 C.F.R. Part 21; and (C) Federal transit law, specifically 49 U.S.C. § 5332; and

(iii) follow: (A) The most recent edition of FTA Circular 4702.1, "Title VI Requirements and Guidelines for Federal Transit Administration Recipients," to the extent consistent with applicable federal laws, regulations, requirements, and guidance; (B) U.S. DOJ, "Guidelines for the enforcement of Title VI, Civil Rights Act of 1964," 28 C.F.R. § 50.3; and (C) All other applicable federal guidance that may be issued.

For more information on Title VI of the Civil Rights Act requirements, Principal Project Company shall review City's Title VI Program developed for the Project to comply with Title VI of the Civil Rights Act of 1964.

(d) **Age**. In accordance with the Age Discrimination in Employment Act, 29 U.S.C. §§ 621- 634, U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 et seq., U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. part 90, and Federal transit law at 49 U.S.C. § 5332, Principal Project Company agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, Principal Project Company agrees to comply with any implementing requirements FTA may issue.

(e) **Disabilities**. In accordance with section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101 et seq., the Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 et seq., and Federal transit law at 49 U.S.C. § 5332, Principal Project Company agrees that it will not discriminate against individuals on the basis of disability. In addition, Principal Project Company agrees to comply with any implementing requirements FTA may issue.

(f) **Department of Transportation Funding Requirements**. To ensure compliance with requirements applicable to agreements funded in whole or in part by USDOT funds the following requirements shall apply to this Agreement:

(i) Principal Project Company and each Contractor shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of this Agreement.

(ii) Principal Project Company and each Contractor shall carry out applicable requirements of 49 C.F.R. Part 26, and shall take all necessary and reasonable steps under 49 C.F.R. Part 26 to ensure nondiscrimination in the award and administration of USDOT-assisted Contracts.

(iii) Failure by Principal Project Company and any of its Contractors to carry out the requirements of this Section 6(f) (Department of Transportation Funding Requirements) is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as the City deems appropriate, which may include but which are not limited to: withholding of monthly payments, assessment of sanctions, liquidated damages, and/or disqualifying Principal Project Company from future work as non-responsible.

7. SPECIAL DEPARTMENT OF LABOR EQUAL EMPLOYMENT OPPORTUNITY CLAUSE FOR CONSTRUCTION PROJECTS

During the performance of this Agreement, Principal Project Company agrees as follows:

(a) Principal Project Company will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. Principal Project Company will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. 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; and selection for training, including apprenticeship. Principal Project Company agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(b) Principal Project Company will, in all solicitations or advertisements for employees placed by or on behalf of Principal Project Company, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(c) Principal Project Company will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with Principal Project Company's legal duty to furnish information.

(d) Principal Project Company will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of Principal Project Company's commitments under this section,

and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(e) Principal Project Company will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(f) Principal Project Company will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(g) In the event of Principal Project Company's noncompliance with the nondiscrimination clauses of this Agreement or with any of the said rules, regulations, or orders, this Agreement may be canceled, terminated, or suspended in whole or in part and Principal Project Company may be declared ineligible for further government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(h) Principal Project Company will include the portion of the sentence immediately preceding paragraph (a) and the provisions of paragraphs (a) through (h) in every Contract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each Contractor or vendor. Principal Project Company will take such action with respect to any Contract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: *Provided,* however, that in the event Principal Project Company becomes involved in, or is threatened with, litigation with a Contractor or vendor as a result of such direction by the administering agency, Principal Project Company may request the United States to enter into such litigation to protect the interests of the United States.

8. DISADVANTAGED BUSINESS ENTERPRISES (DBES)

49 C.F.R. part 26

(a) **DBE Goals**. City will establish a DBE Program and DBE Program goals for the Project, and will be required to report on DBE participation on a semi-annual basis so that its attainment efforts may be evaluated. Such requirements are in addition to all other equal opportunity employment requirements of this Agreement. Principal Project Company shall comply with the DBE goals that City establishes for the Project and this Agreement.

(b) **Post-Award Compliance Monitoring.** City will conduct post-award monitoring of Principal Project Company's compliance with the DBE provisions of this

Agreement. Principal Project Company shall cooperate with City requests for assistance with post-award monitoring. Principal Project Company shall maintain records sufficient to document, on an ongoing basis, name of each DBE Contractor, work assignment of each DBE Contractor, DBE commitments, amounts paid to each DBE Contractor during the reporting period, amounts paid to each DBE Contractor as a percentage of the total commitment to each DBE Contractor, etc., among other information. Principal Project Company will be required to submit supplemental reports on a monthly basis including a monthly DBE report and forecast chart showing planned and actual attainment of DBE Contractors.

(c) **California Unified Certification Program**. Principal Project Company shall only use, and City shall only accept the use of, DBEs that are certified through the California Unified Certification Program.

(d) **Listed DBEs**. Principal Project Company shall utilize the specific DBEs listed in this Agreement unless Principal Project Company obtains City's written consent to terminate or substitute a DBE Contractor. Unless City's consent is provided, Principal Project Company shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE.

(e) **Access to Records**. City will require Principal Project Company and its Contractors to maintain records and documents of payments to DBEs for three years following the performance of the contract. These records will be made available for inspection upon request by any authorized representative of City or the USDOT. This reporting requirement also extends to any certified DBE Contractor. The authorized representative(s) of City, the USDOT, the Comptroller General of the United States, shall have the right to inspect and audit all data and records of Principal Project Company relating to its performance under this Article 8 (Disadvantaged Business Enterprises (DBEs)).

(f) **Special Requirements for a Transit Vehicle Manufacturer**. The transit vehicle manufacturer, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, must certify that it has complied with the requirements of 49 C.F.R. part 26.

(g) **No Discrimination**. Principal Project Company and its Contractors shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. Principal Project Company shall carry out applicable requirements of 49 C.F.R. Part 26 in the award and administration of USDOT-assisted contracts. Failure by Principal Project Company to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as City deems appropriate, which may include, but is not limited to:

(i) Withholding monthly progress payments;

(ii) Assessing sanction;

(iii) Liquidated damages; and/or

(iv) Disqualifying Principal Project Company from future bidding as non-responsible (49 C.F.R. § 26.13(b).

9. INCORPORATION OF FTA TERMS

This Agreement includes, in part, certain standard terms and conditions required by the USDOT and FTA, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by the USDOT, as set forth in FTA Circular 4220.1F, dated November 1, 2008, as revised by Rev. 1, dated April 14, 2009, Rev. 2, dated July 1, 2010, Rev. 3, dated February 14, 2011, and Rev. 4, dated March 18, 2013, as may be amended, are hereby incorporated by reference. Principal Project Company shall comply with all applicable FTA regulations, policies, procedures and directives, including those listed directly in or referred to in the current FTA Master Agreement. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. Principal Project Company shall not perform any act, fail to perform any act, or refuse to comply with any City requests which would cause the City to be in violation of FTA terms and conditions. Principal Project Company will include these requirements in all Contracts issued pursuant to this Agreement.

10. DEBARMENT AND SUSPENSION

2 C.F.R. part 180
2 C.F.R part 1200
2 C.F.R. § 200.213
2 C.F.R. part 200 Appendix II (I)
Executive Order 12549
Executive Order 12689

Principal Project Company shall comply and facilitate compliance with USDOT regulations, "Non-procurement Suspension and Debarment," 2 C.F.R. part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Government wide Debarment and Suspension (Non-procurement)," 2 C.F.R. part 180. These provisions apply to each contract at any tier of $25,000 or more, and to each contract at any tier for a federally required audit (irrespective of the contract amount), and to each contract at any tier that must be approved by an FTA official irrespective of the contract amount. As such, Principal Project Company shall verify that its principals, Affiliates, and Contractors are eligible to participate in this federally funded contract and are not presently declared by any federal department or agency to be:

(i) debarred from participation in any federally assisted award;

(ii) suspended from participation in any federally assisted award;

(iii) proposed for debarment from participation in any federally assisted award;

(iv) declared ineligible to participate in any federally assisted award;

(v) voluntarily excluded from participation in any federally assisted award; or

(vi) disqualified from participation in ay federally assisted award.

The certification in this clause is a material representation of fact relied upon by City. If it is later determined by City that Principal Project Company knowingly rendered an erroneous certification, in addition to remedies available to City, the federal government may pursue available remedies, including but not limited to suspension and/or debarment. Principal Project Company agrees to comply with the requirements of 2 C.F.R. part 180, subpart C, as supplemented by 2 C.F.R. part 1200 throughout the period of any contract that may arise from this Agreement or the Project. Principal Project Company further agrees to include a provision requiring such compliance in its lower tier covered transactions and agreements.

11. BUY AMERICA

49 U.S.C. 5323(j)
49 C.F.R. part 661
Pub. L. No. 117-58, §§ 70901-17

Principal Project Company agrees to comply with 49 U.S.C. 5323(j), 49 C.F.R. part 661 and Pub. L. No. 117-58, §§ 70901-17, which provide that federal funds may not be obligated unless all steel, iron, and manufactured products used in FTA funded projects are produced in the United States and designated construction materials are manufactured in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. § 661.7. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. § 661.11.

The Buy America requirements flow down from the City to Principal Project Company, which is responsible for ensuring that lower tier Contractors are in compliance.

In accordance with 49 C.F.R. § 661.6, for the procurement of steel, iron, manufactured products or construction materials, use the certifications below.

Certificate of Compliance with Buy America Requirements

The bidder or offeror hereby certifies that it will comply with the requirements of 49 U.S.C. 5323(j)(1), the applicable regulations in 49 C.F.R. part 661 and Pub. L. No. 117-58, §§ 70901-17.

Date: ____________________

Signature: ____________________

Company: ____________________

Name: ____________________

Title: ____________________

Certificate of Non-Compliance with Buy America Requirements

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j), but it may qualify for an exception to the requirement pursuant to 49 U.S.C. 5323(j)(2),

as amended, the applicable regulations in 49 C.F.R. § 661.7 and Pub. L. No. 117-58, §§ 70901-17.

Date: ______________________________

Signature: ______________________________

Company: ______________________________

Name: ______________________________

Title: ______________________________

In accordance with 49 C.F.R. § 661.12, for the procurement of rolling stock (including train control, communication, and traction power equipment), use the certifications below.

Certificate of Compliance with Buy America Rolling Stock Requirements

The bidder or offeror hereby certifies that it will comply with the requirements of 49 U.S.C. 5323(j), and the applicable regulations in 49 C.F.R. § 661.11.

Date: ______________________________

Signature: ______________________________

Company: ______________________________

Name: ______________________________

Title: ______________________________

Certificate of Non-Compliance with Buy America Rolling Stock Requirements

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j), but it may qualify for an exception to the requirement pursuant to 49 U.S.C. 5323(j)(2)(C), as amended, and the applicable regulations in 49 C.F.R. § 661.7.

Date: ______________________________

Signature: ______________________________

Company: ______________________________

Name: ______________________________

Title: ______________________________

12. RESOLUTION OF DISPUTES, BREACHES, OR OTHER LITIGATION

See Article 18 (Contract Dispute Procedures) of this Agreement.

13. LOBBYING RESTRICTIONS

31 U.S.C. § 1352
2 C.F.R. § 200.450
2 C.F.R. part 200 appendix II (J)
49 C.F.R. part 20

Principal Project Company certifies, to the best of its knowledge and belief, that:

(a) no federally appropriated funds have been paid or will be paid, by or on behalf of Principal Project Company, to any person for influencing or attempting to influence an officer or employee of an 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.

(b) 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, Principal Project Company shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(c) Principal Project Company shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including Contracts, sub-grants, and Subcontracts under grants, loans, and cooperative agreements) and that all sub recipients shall certify and disclose accordingly.

This 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 by 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 each such failure.

14. CLEAN AIR ACT AND CLEAN WATER ACT

42 U.S.C. §§ 7401 – 7671q
33 U.S.C. §§ 1251-1387
2 C.F.R. part 200, Appendix II (G)

The Clean Air and Federal Water Pollution Control Act requirements apply to each contract and subcontract exceeding $150,000.

Principal Project Company agrees:

(a) it will not use any violating facilities;

(b) it will report the use of facilities placed on or likely to be placed on the U.S. EPA "List of Violating Facilities";

(c) it will report violations of use of prohibited facilities to the FTA; and

(d) it will comply with the inspection and other requirements of the Clean Air Act, as amended, (42 U.S.C. §§ 7401 – 7671q) and the Federal Water Pollution Control Act, as amended, (33 U.S.C. §§ 1251-1387).

15. FLY AMERICA

49 U.S.C. § 40118
41 C.F.R. part 301-10
48 C.F.R. part 47.4

(a) As used in this clause "international air transportation" means transportation by air between a place in the United States and a place outside the United States or between two places both of which are outside the United States. "United States" means the 50 States, the District of Columbia, and outlying areas. "U.S.-flag air carrier" means an air carrier holding a certificate under 49 U.S.C. Chapter 411.

(b) When federal funds are used to fund travel, Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118) (Fly America Act) requires contractors, recipients, and others use U.S.-flag air carriers for U.S. government-financed international air transportation of personnel (and their personal effects) or property, to the extent that service by those carriers is available. It requires the Comptroller General of the United States, in the absence of satisfactory proof of the necessity for foreign-flag air transportation, to disallow expenditures from funds, appropriated or otherwise established for the account of the United States, for international air transportation secured aboard a foreign-flag air carrier if a U.S.-flag air carrier is available to provide such services.

(c) if available, Principal Project Company, in performing work under this Agreement, shall use U.S.-flag carriers for international air transportation of personnel (and their personal effects) or property.

(d) In the event that Principal Project Company selects a carrier other than a U.S.-flag air carrier for international air transportation, Principal Project Company shall include a statement on vouchers involving such transportation essentially as follows:

Statement of Unavailability of U.S.-Flag Air Carriers

International air transportation of persons (and their personal effects) or property by U.S.-flag air carrier was not available or it was necessary to use foreign-flag air carrier service for the following reasons. See FAR § 47.403.

[State reasons]: ____

(End of statement)

(e) Principal Project Company shall include the substance of this clause, including this paragraph (e), in each Contract or purchase under this Agreement that may involve international air transportation.

16. EMPLOYEE PROTECTIONS

49 U.S.C. § 5333(a)
40 U.S.C. §§ 3141-3148
29 C.F.R. part 5
18 U.S.C. § 847
29 C.F.R. part 3
40 U.S.C. §§ 3701-3708
29 C.F.R. part 1926

16.1 PREVAILING WAGE AND COPELAND ANTI-KICKBACK ACT

For all prime construction, alteration or repair contracts in excess of $2,000 awarded by FTA, Principal Project Company shall comply with the Davis-Bacon Act and the Copeland “Anti-Kickback” Act. Under 49 U.S.C. § 5333(a), prevailing wage protections apply to laborers and mechanics employed on FTA assisted construction, alteration, or repair projects. Principal Project Company will comply with the Davis-Bacon Act, 40 U.S.C. §§ 3141-3144, and 3146-3148 as supplemented by DOL regulations at 29 C.F.R. part 5, “Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction.” In accordance with the statute, Principal Project Company shall pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, Principal Project Company agrees to pay wages not less than once a week. Principal Project Company shall also comply with the Copeland “Anti-Kickback” Act (40 U.S.C. § 3145), as supplemented by DOL regulations at 29 C.F.R. part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States.” Principal Project Company is prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled.

16.2 CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

For all contracts in excess of $100,000 that involve the employment of mechanics or laborers, Principal Project Company shall comply with the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 3701-3708), as supplemented by the DOL regulations at 29 C.F.R. part 5. Under 40 U.S.C. § 3702 of the Act, Principal Project Company shall compute the wages of every mechanic and laborer, including watchmen and guards, on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. § 3704 and DOL regulations, “Recording and Reporting Occupational Injuries and Illnesses,” 29 C.F.R. part 1904; “Occupational Safety and Health Standards,” 29 C.F.R. part 1910; and “Safety and Health Regulations for Construction,” 29 C.F.R. part 1926 are applicable to construction work and provide that no laborer or mechanic be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchase of supplies or materials or articles ordinarily available on the open market, or to contracts for transportation or transmission of intelligence.

In the event of any violation of the clause set forth herein, Principal Project Company and any Contractor responsible therefor shall be liable for the unpaid wages. In addition, Principal Project Company and Contractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of this clause in the sum of $10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by this clause.

The FTA shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by Principal Project Company or any Contractor under this Agreement or any Contract entered into in furtherance thereof or any other federal contract with Principal Project Company, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by Principal Project Company, such sums as may be determined to be necessary to satisfy any liabilities of Principal Project Company or any Contractor for unpaid wages and liquidated damages as provided in this section.

Principal Project Company or any Contractor shall insert in any Contracts the clauses set forth in this section and also a clause requiring the Contractors to include these clauses in any lower tier Contracts. Principal Project Company shall be responsible for compliance by any Contractor or lower tier Contractor with the clauses set forth in this Agreement.

Contract Work Hours and Safety Standards for Awards Not Involving Construction

Principal Project Company shall comply with all federal laws, regulations, and requirements providing wage and hour protections for non-construction employees, in accordance with 40 U.S.C. § 3702, Contract Work Hours and Safety Standards Act, and other relevant parts of that Act, 40 U.S.C. § 3701 *et seq.*, and U.S. DOL regulations, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Non-construction Contracts Subject to the Contract Work Hours and Safety Standards Act),” 29 C.F.R. part 5.

Principal Project Company shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three (3) years from the completion of this Agreement for all laborers and mechanics, including guards and watchmen, working on this Agreement. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid.

Such records maintained under this paragraph shall be made available by Principal Project Company for inspection, copying, or transcription by authorized representatives of the FTA and the Department of Labor, and Principal Project Company will permit such representatives to interview employees during working hours on the job.

Principal Project Company shall require the inclusion of the language of this clause within Contracts of all tiers.

16.3 AWARDS INVOLVING COMMERCE

Principal Project Company agrees to comply with the Fair Labor Standards Act (FLSA), 29 U.S.C. § 201 *et seq.* to the extent that the FLSA applies to employees performing work involving commerce, and as the federal government otherwise determines applicable.

17. BONDING REQUIREMENTS

2 C.F.R. 200.326

See Section 10.2 (Performance Security) of this Agreement.

18. SEISMIC SAFETY

42 U.S.C. 7701 *et seq.*
49 C.F.R. part 41
Executive Order (E.O.) 12699

Principal Project Company agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for seismic safety required in Department of Transportation (DOT) seismic safety regulations 49 C.F.R. part 41 and will certify to compliance to the extent required by the regulation. Principal Project Company also agrees to ensure that all work performed under this Agreement, including work performed by a Contractor, is in compliance with the standards required by the seismic safety regulations and the certification of compliance issued on the project.

19. ENERGY CONSERVATION

42 U.S.C. 6321 et seq.
49 C.F.R. part 622, subpart C

These requirements apply to Principal Project Company and extend to all third-party contractors and their contracts at every tier and sub-recipients and their subcontracts at every tier.

Principal Project Company agrees to comply with mandatory standards and policies relating to energy efficiency, which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

20. RECYCLED PRODUCTS

42 U.S.C. § 6962
40 C.F.R. part 247
2 C.F.R. part § 200.322

These requirements apply to Principal Project Company and extend to all third-party contractors and their contracts and subcontracts at every tier where the value of an EPA designated item exceeds $10,000.

Principal Project Company agrees to provide a preference for those products and services that conserve natural resources, protect the environment, and are energy efficient by complying with

and facilitating compliance with Section 6002 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6962, and U.S. Environmental Protection Agency (U.S. EPA), "Comprehensive Procurement Guideline for Products Containing Recovered Materials," 40 C.F.R. part 247.

21. ADA ACCESS

Federal Protections for Individuals with Disabilities. The Americans with Disabilities Act of 1990, as amended (ADA), 42 U.S.C. Sections 12101 *et seq.*, prohibits discrimination against qualified individuals with disabilities in programs, activities, and services, and imposes specific requirements on public and private entities. Principal Project Company must comply with its responsibilities under Titles I, II, III, IV, and V of the ADA in employment, public services, public accommodations, telecommunications, and other provisions, many of which are subject to regulations issued by other federal agencies.

22. SAFE OPERATION OF MOTOR VEHICLES

23 U.S.C. part 402
Executive Order No. 13043
Executive Order No. 13513
U.S. DOT Order No. 3902.10

The Safe Operation of Motor Vehicles requirements shall apply to Principal Project Company and all Contractors at every tier.

(a) **Seat Belt Use**. Principal Project Company is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company-rented vehicles, or personally operated vehicles. The terms "company-owned" and "company-leased" refer to vehicles owned or leased either by Principal Project Company or City.

(b) **Distracted Driving**. Principal Project Company agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Principal Project Company or Contactor owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the work performed under this Agreement.

23. ENVIRONMENTAL PROTECTIONS

(a) **General**. Principal Project Company will comply with all applicable environmental and resource use laws, regulations, and requirements, and follow applicable guidance, now in effect or that may become effective in the future, including state and local laws, ordinances, regulations, and requirements and follow applicable guidance.

(b) **National Environmental Policy Act**. An award of federal assistance requires the full compliance with applicable environmental laws, regulations, and requirements. Accordingly, Principal Project Company shall:

(i) comply and facilitate compliance with federal laws, regulations, and requirements, including, but not limited to: (A) federal transit laws, such as 49 U.S.C. § 5323(c)(2), and 23 U.S.C. § 139; (B) the National Environmental Policy Act of 1969 (NEPA), as amended, 42 U.S.C. §§ 4321, et seq., as limited by 42 U.S.C. § 5159, and CEQ's implementing regulations 40 C.F.R. Part 1500 – 1508; (C) Joint FHWA and FTA regulations, "Environmental Impact and Related Procedures," 23 C.F.R. Part 771 and 49 C.F.R. Part 622; (D) Executive Order No. 11514, as amended, "Protection and Enhancement of Environmental Quality," March 5, 1970, 42 U.S.C. § 4321 note (35 Fed. Reg. 4247); and (E) other federal environmental protection laws, regulations, and requirements applicable to City or the Project.

(ii) follow the federal guidance identified herein to the extent that the guidance is consistent with applicable authorizing legislation: (A) Joint FHWA and FTA final guidance, "Interim Guidance on MAP-21 Section 1319, Accelerated Decision-making in Environmental Reviews," January 14, 2013; (B) Joint FHWA and FTA final guidance, "SAFETEA-LU Environmental Review Process (Public Law 109-59)," 71 Fed. Reg. 66576, November 15, 2006; and (C) other federal environmental guidance applicable to the Project.

(c) **Environmental Justice**. Principal Project Company will promote environmental justice by following:

(i) Executive Order No. 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," February 11, 1994, 42 U.S.C. § 4321 note, (59 Fed. Reg. 7629, 3 C.F.R. 1994 Comp., p. 859) as well as facilitating compliance with that Executive Order;

(ii) U.S. DOT Order 5610.2(a), "Department of Transportation Updated Environmental Justice Order," 77 Fed. Reg. 27534, November 8, 2012; and

(iii) the most recent edition of FTA Circular 4703.1, "Environmental Justice Policy Guidance for Federal Transit Administration Recipients," August 15, 2012, to the extent consistent with applicable federal laws, regulations, requirements, and guidance.

(d) **Other Environmental Federal Laws**. Principal Project Company will comply or facilitate compliance with all applicable federal laws, regulations, and requirements, and will follow applicable guidance, including, but not limited to, the Clean Air Act, Clean Water Act, Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271-1287), Coastal Zone Management Act of 1972, the Endangered Species Act of 1973, Magnuson Stevens Fishery Conservation and Management Act, Resource Conservation and Recovery Act, Comprehensive Environmental Response, Compensation, and Liability Act, Executive Order No. 11990 relating to "Protection of Wetlands," and Executive Order No. 11988, as amended, "Floodplain Management."

(e) **Use of Certain Public Lands.** Principal Project Company will comply with USDOT laws, specifically 49 U.S.C. § 303 (often referred to as "section 4(f)"), and joint FHWA and FTA regulations, "Parks, Recreation Areas, Wildlife and Waterfowl Refuges, and Historic Sites," 23 C.F.R. Part 774, and referenced in 49 C.F.R. Part 622.

(f) **Historic Preservation.** Principal Project Company will:

(i) comply with USDOT laws, including 49 U.S.C. § 303 (often referred to as "section 4(f)"), which requires certain findings be made before an award may be undertaken if it involves the use of any land from a historic site that is on or eligible for inclusion on the National Register of Historic Places;

(ii) encourage compliance with the federal historic and archaeological preservation requirements of section 106 of the National Historic Preservation Act, as amended, 54 U.S.C. § 306108;

(iii) comply with the Archeological and Historic Preservation Act of 1974, as amended, 54 U.S.C. § 312501, et seq.;

(iv) comply with U.S. Advisory Council on Historic Preservation regulations, "Protection of Historic Properties," 36 C.F.R. Part 800; and

(v) comply with federal requirements and follow federal guidance to avoid or mitigate adverse effects on historic properties.

(g) **Indian Sacred Sites.** Principal Project Company will facilitate compliance with federal efforts to promote the preservation of places and objects of religious importance to American Indians, Eskimos, Aleuts, and Native Hawaiians, and facilitate compliance with the American Indian Religious Freedom Act, 42 U.S.C. § 1996, and Executive Order No. 13007, "Indian Sacred Sites," May 24, 1996, 42 U.S.C. § 3161 note (61 Fed. Reg. 26771).

24. FEDERAL TAX LIABILITY AND RECENT FELONY CONVICTIONS

(a) **Transactions Prohibited.** Principal Project Company must certify that it:

(i) does not have any unpaid federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with City responsible for collecting the tax liability; and

(ii) was not convicted of the felony criminal violation under any federal law within the preceding 24 months from the Effective Date.

(b) If Principal Project Company cannot so certify, City agrees to refer the matter to FTA and not to enter into any contract with Principal Project Company without FTA's written approval. Principal Project Company shall include this requirement in Contracts at all lower tiers, without regard to the value of such Contracts.

25. NOTIFICATION TO FTA

If a current or prospective legal matter that may affect the federal government emerges, Principal Project Company must notify City, who will promptly notify the FTA Chief Counsel and FTA Regional Counsel for the region in which City is located. Principal Project Company must include a similar notification requirement in its sub-agreements at every tier, for any agreement that is a "covered transaction" according to 2 C.F.R. §§ 180.220 and 1200.220.

(a) **Types**. The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming any federal government as a party to litigation or a legal disagreement in any forum for any reason.

(b) **Matters**. Matters that may affect any federal government include, but are not limited to, the federal government's interests in the award, this Agreement, and any amendments thereto, or the any federal government's administration or enforcement of federal laws, regulations, and requirements.

(c) **Additional Notice to U.S. DOT Inspector General**. Principal Project Company must notify City, who will promptly notify the USDOT Inspector General in addition to the FTA Chief Counsel or Regional Counsel for the Region in which City is located, if Principal Project Company has knowledge of potential fraud, waste, or abuse occurring on a project receiving assistance from FTA. The notification provision applies if a person has or may have submitted a false claim under the False Claims Act, 31 U.S.C. § 3729, et seq., or has or may have committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bid rigging, misappropriation or embezzlement, bribery, gratuity, or similar misconduct involving federal assistance. This responsibility occurs whether the Project is subject to any agreement between City and FTA. Knowledge, as used in this paragraph, includes, but is not limited to, knowledge of a criminal or civil investigation by a federal, state, or local law enforcement or other investigative agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the possession of Principal Project Company. In this paragraph, "promptly" means to refer information without delay and without change.

26. PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT

(a) Pursuant to section 889 of the National Defense Authorization Act of 2019 (H.R. 5515 at pp. 282-284; Pub. L. 115-232) (NDAA), and as promulgated at 2 C.F.R. § 200.216, Principal Project Company and any Contractor at any tier shall not procure or obtain the Covered Equipment and Services in the performance of work for the Project or in connection with this Agreement.

(b) "Covered Equipment and Services" is defined to include any telecommunication or video surveillance equipment, systems, or services produced or provided by any of the following entities, or any subsidiary or affiliate of the following entities:

(i) Huawei Technologies Company;

(ii) ZTE Corporation;

(iii) Hytera Communications Corporation;

(iv) Hangzhou Hikivision Digital Technology Company;

(v) Dahua Technology Company; and

(vi) any entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

(c) The burden of proof for the origin or place of production of telecommunications or video surveillance equipment, systems, or services is the responsibility of Principal Project Company.

(d) Prior to the use of any telecommunication or video surveillance equipment, systems, or services pursuant to this Agreement, Principal Project Company shall furnish a certification to City stating that the telecommunication or video surveillance equipment, systems, or services are not Covered Equipment and Services pursuant to this Article 26 (Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment), 2 C.F.R. § 200.216, and the NDAA.

27. SENSITIVE SECURITY INFORMATION

Principal Project Company must protect, and take measures to ensure that its Contractors at each tier protect "sensitive security information" made available during the administration of this Agreement or any Contract to ensure compliance with 49 U.S.C. Section 40119(b) and implementing USDOT regulations, "Protection of Sensitive Security Information," 49 C.F.R. Part 15, and with 49 U.S.C. Section 114(r) and implementing Department of Homeland Security regulations, "Protection of Sensitive Security Information," 49 C.F.R. Part 1520.

28. FLOOD INSURANCE

Principal Project Company agree to comply with flood insurance laws and guidance as follows:

(a) It will have flood insurance as required by the Flood Disaster Protection Act of 1973, 42 U.S.C. § 4012a(a), for any building located in a special flood hazard area (100-year flood zone), before accessing federal assistance to acquire, construct, reconstruct, repair, or improve that building.

(b) Each such building and its contents will be covered by flood insurance in an amount at least equal to the federal investment (less estimated land cost) or to the maximum limit of coverage made available with respect to the particular type of property under the National Flood Insurance Act of 1968, 42 U.S.C. § 4001, et seq., whichever is less.

(c) It will follow FTA guidance, except to the extent FTA determines otherwise in writing.

29. PROMPT PAYMENT AND RETENTION

(a) **Payment of Contractors**. Principal Project Company shall pay its Contractors within 30 calendar days from receipt of each payment made to Principal Project Company by City or any Lender. The 30 calendar days is applicable unless a shorter time period controls as provided in Section 9.4 (Prompt Payment to Contractors) of this Agreement. Any delay or postponement of payment over 30 calendar days (or any controlling shorter period) may occur only for good cause and with the prior written approval of City.

(b) **Retention of Funds**.

(i) No standard retention will be withheld by City from payments due to Principal Project Company.

(ii) Any retention withheld by Principal Project Company or Contractors from Progress Payments due applicable Contractors shall be promptly paid in full to Contractors within 30 days (or any shorter time period that controls as provided in Section 9.4 (Prompt Payment to Contractors) of this Agreement) after the Contractor’s work is satisfactorily completed. Principal Project Company shall assure that each Contract contains a clause obligating Principal Project Company or the applicable Contractor to make prompt and full payment of any retention kept by Principal Project Company or the applicable Contractor to the Subcontractor within such time period. For this purpose, a Contractor's work is satisfactorily completed when all the tasks called for in the Contract have been accomplished and documented as required by City.

(c) When City has made an incremental acceptance of a portion of the D&C Work, the Work of a Contractor covered by that acceptance is deemed to be satisfactorily completed. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to Principal Project Company or Contractor in the event of a dispute involving late payment or nonpayment by Principal Project Company, deficient Contractor performance, or noncompliance by a Contractor.

(d) This Section applies to both DBE and non-DBE Contractors.

EXHIBIT 16B

STATE REQUIREMENTS

Principal Project Company shall perform its obligations under the Contract Documents in accordance with the following requirements.

1. LABOR CODE REQUIREMENTS

1.1 Worker's Compensation

Principal Project Company shall comply with the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code, and to secure the payment of compensation to his or her employees. Before commencing the Work, Principal Project Company and Contractors will sign and file a certification with City under Labor Code Section 1861 stating the following:

> *I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for worker's compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of any work or services under the Agreement, any contract or subcontract.*

1.2 Prevailing Wages

Pursuant to the provisions of Section 1773 of the State Labor Code, City has obtained the general prevailing rate of wages (which rate includes employer payments for health and welfare, pension, vacation, travel time and subsistence pay as provided for in Section 1773.8 of said Code, apprenticeship or other training programs authorized by Section 3093 of said Code, and similar purposes) applicable to the Work to be done, for straight time, overtime, Saturday, Sunday, and holiday work. The holiday wage rate listed shall be applicable to all holidays recognized in the collective bargaining agreement of the particular craft, classification or type of worker concerned. Said prevailing wage rates are incorporated herein by reference. These prevailing rates of wages will be furnished to Principal Project Company and other interested parties on request and are on file at City's offices. These wage rates are also available through the California State Department of Industrial Relations at http://www.dir.ca.gov. For crafts or classifications not shown on the prevailing wage determinations, Principal Project Company may be required to pay the wage rate of the most closely related craft or classification shown in such determinations for the Work. Principal Project Company shall post a copy of the prevailing wage rates at the jobsite or material staging area. Workers employed in the Work must be paid at the rates at least equal to the prevailing wage rates as adopted. This Agreement is also subject to federal requirements for payment of prevailing wages as determined by the Secretary of Labor. Where there are differences in the rates, the higher shall apply.

1.3 Hours of Work/Overtime Requirements

Eight hours labor constitutes a legal day's work. Neither Principal Project Company nor any Contractor shall require or permit any worker to work in excess of eight hours in any one

calendar day or in excess of 40 hours in any one calendar week (defined as seven sequential calendar days) unless such worker 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 one calendar day or in excess of 40 hours in any one calendar week, whichever is greater. Failure to comply with the preceding requirements shall subject Principal Project Company to the penalties specified in Labor Code Section 1813.

1.4 Payroll Records

(a) Principal Project Company and each Contractor performing any portion of the Work under this Agreement shall keep an accurate payroll record as required by Law (California Labor Code Section 1776), including showing the name, address, social security number, work classification, straight time and overtime hours for each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, professional, salaried, or other employee employed by him or her in connection with the Work.

(b) The payroll records of Principal Project Company and each Contractor (including payroll records for professional or salaried employees) shall be certified and shall be available for inspection at the principal office of Principal Project Company.

(c) Principal Project Company shall file a certified copy of the payroll records (including those applicable to professional and salaried employees) with City within 10 days after receipt of a written request from City.

(d) Principal Project Company shall inform City of the location of said payroll records, including the street address, city and county, and shall, within five days, provide a Notice of change of location and address of said payroll records.

(e) It shall be the responsibility of Principal Project Company to ensure compliance for itself and the Contractors with the provisions of this section.

(f) In the event of noncompliance with the requirements of this section, Principal Project Company shall have 10 days in which to comply subsequent to receipt of written Notice specifying in what respect it must comply. Should noncompliance exist after the said 10-day period, Principal Project Company shall be subject to a fee of $50.00 for each day, or portion thereof, for each worker to whom the noncompliance pertains, until strict compliance is effectuated. Principal Project Company acknowledges that, without limitation as to other remedies of enforcement available to City, upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement of the California Department of Industrial Relations, such penalties shall be withheld from payments due Principal Project Company.

(g) Certified payroll records shall be submitted to City by Principal Project Company and all Contractors performing work on the Project regardless of dollar amount or type of contract.

(h) The period covered shall be from the time Work starts until all Work is completed on the Project. Failure to submit said certified payrolls on time may result in the

withholding of payments to Principal Project Company and the assessment of penalties as set forth in the California Labor Code.

1.5 Specific Labor Code Provisions

Principal Project Company's attention is directed to the following requirements of the Labor Code. Principal Project Company shall cause Contractors to insert in any Contracts a copy of each such Code section and shall also cause Subcontractors to include these clauses in any lower tier Subcontracts. Principal Project Company shall be responsible for the compliance by any Contractor or Subcontractor with the clauses set forth in this Section 1.5 (Specific Labor Code Provisions), as may be amended and updated from time to time.

Labor Code Section 1725.5
1725.5. A contractor shall be registered pursuant to this section to be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any public work contract that is subject to the requirements of this chapter. For the purposes of this section, "contractor" includes a subcontractor as defined by Section 1722.1. (a) To qualify for registration under this section, a contractor shall do all of the following: (1) (A) Register with the Department of Industrial Relations in the manner prescribed by the department and pay an initial nonrefundable application fee of four hundred dollars ($400) to qualify for registration under this section and an annual renewal fee on or before July 1 of each year thereafter. The annual renewal fee shall be in a uniform amount set by the Director of Industrial Relations, and the initial registration and renewal fees may be adjusted no more than annually by the director to support the costs specified in Section 1771.3. (B) Beginning June 1, 2019, a contractor may register or renew according to this subdivision in annual increments up to three years from the date of registration. Contractors who wish to do so will be required to prepay the applicable nonrefundable application or renewal fees to qualify for the number of years for which they wish to preregister. (2) Provide evidence, disclosures, or releases as are necessary to establish all of the following: (A) Workers' compensation coverage that meets the requirements of Division 4 (commencing with Section 3200) and includes sufficient coverage for any worker whom the contractor employs to perform work that is subject to prevailing wage requirements other than a contractor who is separately registered under this section. Coverage may be evidenced by a current and valid certificate of workers' compensation insurance or certification of self-insurance required under Section 7125 of the Business and Professions Code. (B) If applicable, the contractor is licensed in accordance with Chapter 9 (commencing with Section 7000) of the Business and Professions Code.

(C) The contractor does not have any delinquent liability to an employee or the state for any assessment of back wages or related damages, interest, fines, or penalties pursuant to any final judgment, order, or determination by a court or any federal, state, or local administrative agency, including a confirmed arbitration award. However, for purposes of this paragraph, the contractor shall not be disqualified for any judgment, order, or determination that is under appeal, provided that the contractor has secured the payment of any amount eventually found due through a bond or other appropriate means.

(D) The contractor is not currently debarred under Section 1777.1 or under any other federal or state law providing for the debarment of contractors from public works.

(E) The contractor has not bid on a public works contract, been listed in a bid proposal, or engaged in the performance of a contract for public works without being lawfully registered in accordance with this section, within the preceding 12 months or since the effective date of the requirements set forth in subdivision (e), whichever is earlier. If a contractor is found to be in violation of the requirements of this paragraph, the period of disqualification shall be waived if both of the following are true:

(i) The contractor has not previously been found to be in violation of the requirements of this paragraph within the preceding 12 months.

(ii) The contractor pays an additional nonrefundable penalty registration fee of two thousand dollars ($2,000).

(b) Fees received pursuant to this section shall be deposited in the State Public Works Enforcement Fund established by Section 1771.3 and shall be used only for the purposes specified in that section.

(c) A contractor who fails to pay the renewal fee required under paragraph (1) of subdivision (a) on or before the expiration of any prior period of registration shall be prohibited from bidding on or engaging in the performance of any contract for public work until once again registered pursuant to this section. If the failure to pay the renewal fee was inadvertent, the contractor may renew its registration retroactively by paying an additional nonrefundable penalty renewal fee equal to the amount of the renewal fee within 90 days of the due date of the renewal fee.

(d) If, after a body awarding a contract accepts the contractor's bid or awards the contract, the work covered by the bid or contract is determined to be a public work to which Section 1771 applies, either as the result of a determination by the director pursuant to Section 1773.5 or a court decision, the requirements of this section shall not apply, subject to the following requirements:

(1) The body that awarded the contract failed, in the bid specification or in the contract documents, to identify as a public work that portion of the work that the determination or decision subsequently classifies as a public work.

(2) Within 20 days following service of notice on the awarding body of a determination by the Director of Industrial Relations pursuant to Section 1773.5 or a decision by a court that the contract was for public work as defined in this chapter, the contractor and any

subcontractors are registered under this section or are replaced by a contractor or subcontractors who are registered under this section.

(3) The requirements of this section shall apply prospectively only to any subsequent bid, bid proposal, contract, or work performed after the awarding body is served with of the determination or decision referred to in paragraph (2).

(e) The requirements of this section shall apply to any bid proposal submitted on or after March 1, 2015, to any contract for public work, as defined in this chapter, executed on or after April 1, 2015, and to any work performed under a contract for public work on or after January 1, 2018, regardless of when the contract for public work was executed.

(f) This section does not apply to work performed on a public works project of twenty-five thousand dollars ($25,000) or less when the project is for construction, alteration, demolition, installation, or repair work or to work performed on a public works project of fifteen thousand dollars ($15,000) or less when the project is for maintenance work.

Labor Code Section 1735

1735. A contractor shall not discriminate in the employment of persons upon public works on any basis listed in subdivision (a) of Section 12940 of the Government Code, as those bases are defined in Sections 12926 and 12926.1 of the Government Code, except as otherwise provided in Section 12940 of the Government Code. Every contractor for public works who violates this section is subject to all the penalties imposed for a violation of this chapter.

Labor Code Section 1771

1771. Except for public works projects of one thousand dollars ($1,000) or less, not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the public work is performed, and not less than the general prevailing rate of per diem wages for holiday and overtime work fixed as provided in this chapter, shall be paid to all workers employed on public works.

This section is applicable only to work performed under contract, and is not applicable to work carried out by a public agency with its own forces. This section is applicable to contracts let for maintenance work.

Labor Code Section 1771.1

1771.1 (a) A contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, as defined in this chapter, unless currently registered and qualified to perform public work pursuant to Section 1725.5. It is not a violation of this section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section

10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded.

(b) Notice of the requirement described in subdivision (a) shall be included in all bid invitations and public works contracts, and a bid shall not be accepted nor any contract or subcontract entered into without proof of the contractor or subcontractor's current registration to perform public work pursuant to Section 1725.5.

(c) An inadvertent error in listing a subcontractor who is not registered pursuant to Section 1725.5 in a bid proposal shall not be grounds for filing a bid protest or grounds for considering the bid nonresponsive, provided that any of the following apply:

(1) The subcontractor is registered prior to the bid opening.

(2) Within 24 hours after the bid opening, the subcontractor is registered and has paid the penalty registration fee specified in subparagraph (E) of paragraph (2) of subdivision (a) of Section 1725.5.

(3) The subcontractor is replaced by another registered subcontractor pursuant to Section 4107 of the Public Contract Code.

(d) Failure by a subcontractor to be registered to perform public work as required by subdivision (a) shall be grounds under Section 4107 of the Public Contract Code for the contractor, with the consent of the awarding authority, to substitute a subcontractor who is registered to perform public work pursuant to Section 1725.5 in place of the unregistered subcontractor.

(e) The department shall maintain on its Internet Web site a list of contractors who are currently registered to perform public work pursuant to Section 1725.5.

(f) A contract entered into with any contractor or subcontractor in violation of subdivision (a) shall be subject to cancellation, provided that a contract for public work shall not be unlawful, void, or voidable solely due to the failure of the awarding body, contractor, or any subcontractor to comply with the requirements of Section 1725.5 or this section.

(g) If the Labor Commissioner or his or her designee determines that a contractor or subcontractor engaged in the performance of any public work contract without having been registered in accordance with this section, the contractor or subcontractor shall forfeit, as a civil penalty to the state, one hundred dollars ($100) for each day of work performed in violation of the registration requirement, not to exceed an aggregate penalty of eight thousand dollars ($8,000) in addition to any penalty registration fee assessed pursuant to clause (ii) of subparagraph (E) of paragraph (2) of subdivision (a) of Section 1725.5.

(h) (1) In addition to, or in lieu of, any other penalty or sanction authorized pursuant to this chapter, a higher tiered public works contractor or subcontractor who is found to have entered into a subcontract with an unregistered lower tier subcontractor to perform any public work in violation of the requirements of Section 1725.5 or this section shall be subject to forfeiture, as a civil penalty to the state, of one hundred dollars ($100) for each

day the unregistered lower tier subcontractor performs work in violation of the registration requirement, not to exceed an aggregate penalty of ten thousand dollars ($10,000).

(2) The Labor Commissioner shall use the same standards specified in subparagraph (A) of paragraph (2) of subdivision (a) of Section 1775 when determining the severity of the violation and what penalty to assess, and may waive the penalty for a first time violation that was unintentional and did not hinder the Labor Commissioner's ability to monitor and enforce compliance with the requirements of this chapter.

(3) A higher tiered public works contractor or subcontractor shall not be liable for penalties assessed pursuant to paragraph (1) if the lower tier subcontractor's performance is in violation of the requirements of Section 1725.5 due to the revocation of a previously approved registration.

(4) A subcontractor shall not be liable for any penalties assessed against a higher tiered public works contractor or subcontractor pursuant to paragraph (1). A higher tiered public works contractor or subcontractor may not require a lower tiered subcontractor to indemnify or otherwise be liable for any penalties pursuant to paragraph (1).

(i) The Labor Commissioner or his or her designee shall issue a civil wage and penalty assessment, in accordance with the provisions of Section 1741, upon determination of penalties pursuant to subdivision (g) and subparagraph (B) of paragraph (1) of subdivision (h). Review of a civil wage and penalty assessment issued under this subdivision may be requested in accordance with the provisions of Section 1742. The regulations of the Director of Industrial Relations, which govern proceedings for review of civil wage and penalty assessments and the withholding of contract payments under Article 1 (commencing with Section 1720) and Article 2 (commencing with Section 1770), shall apply.

(j) (1) Where a contractor or subcontractor engages in the performance of any public work contract without having been registered in violation of the requirements of Section 1725.5 or this section, the Labor Commissioner shall issue and serve a stop order prohibiting the use of the unregistered contractor or the unregistered subcontractor on all public works until the unregistered contractor or unregistered subcontractor is registered. The stop order shall not apply to work by registered contractors or subcontractors on the public work.

(2) A stop order may be personally served upon the contractor or subcontractor by either of the following methods:

(A) Manual delivery of the order to the contractor or subcontractor personally.

(B) Leaving signed copies of the order with the person who is apparently in charge at the site of the public work and by thereafter mailing copies of the order by first class mail, postage prepaid to the contractor or subcontractor at one of the following:

(i) The address of the contractor or subcontractor on file with either the Secretary of State or the Contractors' State License Board.

(ii) If the contractor or subcontractor has no address on file with the Secretary of State or the Contractors' State License Board, the address of the site of the public work.

(3) The stop order shall be effective immediately upon service and shall be subject to appeal by the party contracting with the unregistered contractor or subcontractor, by the unregistered contractor or subcontractor, or both. The appeal, hearing, and any further review of the hearing decision shall be governed by the procedures, time limits, and other requirements specified in subdivision (a) of Section 238.1.

(4) Any employee of an unregistered contractor or subcontractor who is affected by a work stoppage ordered by the commissioner pursuant to this subdivision shall be paid at his or her regular hourly prevailing wage rate by that employer for any hours the employee would have worked but for the work stoppage, not to exceed 10 days.

(k) Failure of a contractor or subcontractor, owner, director, officer, or managing agent of the contractor or subcontractor to observe a stop order issued and served upon him or her pursuant to subdivision (j) is guilty of a misdemeanor punishable by imprisonment in county jail not exceeding 60 days or by a fine not exceeding ten thousand dollars ($10,000), or both.

(l) This section shall apply to any bid proposal submitted on or after March 1, 2015, and any contract for public work entered into on or after April 1, 2015. This section shall also apply to the performance of any public work, as defined in this chapter, on or after January 1, 2018, regardless of when the contract for public work was entered.

(m) Penalties received pursuant to this section shall be deposited in the State Public Works Enforcement Fund established by Section 1771.3 and shall be used only for the purposes specified in that section.

(n) This section shall not apply to work performed on a public works project of twenty-five thousand dollars ($25,000) or less when the project is for construction, alteration, demolition, installation, or repair work or to work performed on a public works project of fifteen thousand dollars ($15,000) or less when the project is for maintenance work.

Labor Code Section 1771.4

1771.4 (a) All of the following are applicable to all public works projects that are otherwise subject to the requirements of this chapter:

(1) The call for bids and contract documents shall specify that the project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

(2) The awarding body shall post or require the prime contractor to post job site notices, as prescribed by regulation.

(3) Each contractor and subcontractor shall furnish the records specified in Section 1776 directly to the Labor Commissioner, in the following manner:

(A) At least monthly or more frequently if specified in the contract with the awarding body.

(B) In a format prescribed by the Labor Commissioner.

(4) If the contractor or subcontractor is not registered pursuant to Section 1725.5 and is performing work on a project for which registration is not required because of subdivision (f) of Section 1725.5, the unregistered contractor or subcontractor is not required to furnish the records specified in Section 1776 directly to the Labor Commissioner but shall retain the records specified in Section 1776 for at least three years after completion of the work.

(5) The department shall undertake those activities it deems necessary to monitor and enforce compliance with prevailing wage requirements.

(b) The Labor Commissioner may exempt a public works project from compliance with all or part of the requirements of subdivision (a) if either of the following occurs:

(1) The awarding body has enforced an approved labor compliance program, as defined in Section 1771.5, on all public works projects under its authority, except those deemed exempt pursuant to subdivision (a) of Section 1771.5, continuously since December 31, 2011.

(2) The awarding body has entered into a collective bargaining agreement that binds all contractors performing work on the project and that includes a mechanism for resolving disputes about the payment of wages.

(c) The requirements of paragraph (1) of subdivision (a) shall only apply to contracts for public works projects awarded on or after January 1, 2015.

(d) The requirements of paragraph (3) of subdivision (a) shall apply to all contracts for public work, whether new or ongoing, on or after January 1, 2016.

Labor Code Section 1775

1775. (a) (1) The contractor and any subcontractor under the contractor shall, as a penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit not more than two hundred dollars ($200) for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rates as determined by the director for the work or craft in which the worker is employed for any public work done under the contract by the contractor or, except as provided in subdivision (b), by any subcontractor under the contractor.

(2) (A) The amount of the penalty shall be determined by the Labor Commissioner based on consideration of both of the following:

(i) Whether the failure of the contractor or subcontractor to pay the correct rate of per diem wages was a good faith mistake and, if so, the error was promptly and voluntarily corrected when brought to the attention of the contractor or subcontractor.

(ii) Whether the contractor or subcontractor has a prior record of failing to meet its prevailing wage obligations.

(B) (i) The penalty may not be less than forty dollars ($40) for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rate, unless the failure of the contractor or subcontractor to pay the correct rate of per diem wages was a good faith mistake and, if so, the error was promptly and voluntarily corrected when brought to the attention of the contractor or subcontractor.

(ii) The penalty may not be less than eighty dollars ($80) for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rate, if the contractor or subcontractor has been assessed penalties within the previous three years for failing to meet its prevailing wage obligations on a separate contract, unless those penalties were subsequently withdrawn or overturned.

(iii) The penalty may not be less than one hundred twenty dollars ($120) for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rate, if the Labor Commissioner determines that the violation was willful, as defined in subdivision (c) of Section 1777.1.

(C) If the amount due under this section is collected from the contractor or subcontractor, any outstanding wage claim under Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 against that contractor or subcontractor shall be satisfied before applying that amount to the penalty imposed on that contractor or subcontractor pursuant to this section.

(D) The determination of the Labor Commissioner as to the amount of the penalty shall be reviewable only for abuse of discretion.

(E) The difference between the prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate shall be paid to each worker by the contractor or subcontractor, and the body awarding the contract shall cause to be inserted in the contract a stipulation that this section will be complied with.

(b) If a worker employed by a subcontractor on a public works project is not paid the general prevailing rate of per diem wages by the subcontractor, the prime contractor of the project is not liable for any penalties under subdivision (a) unless the prime contractor had knowledge of that failure of the subcontractor to pay the specified prevailing rate of wages to those workers or unless the prime contractor fails to comply with all of the following requirements:

(1) The contract executed between the contractor and the subcontractor for the performance of work on the public works project shall include a copy of the provisions of Sections 1771, 1776, 1777.5, 1813, and 1815.

(2) The contractor shall monitor the payment of the specified general prevailing rate of per diem wages by the subcontractor to the employees, by periodic review of the certified payroll records of the subcontractor.

(3) Upon becoming aware of the failure of the subcontractor to pay his or her workers the specified prevailing rate of wages, the contractor shall diligently take corrective action to halt or rectify the failure, including, but not limited to, retaining sufficient funds due the subcontractor for work performed on the public works project.

(4) Prior to making final payment to the subcontractor for work performed on the public works project, the contractor shall obtain an affidavit signed under penalty of perjury from the subcontractor that the subcontractor has paid the specified general prevailing rate of per diem wages to his or her employees on the public works project and any amounts due pursuant to Section 1813.

(c) The Division of Labor Standards Enforcement shall notify the contractor on a public works project within 15 days of the receipt by the Division of Labor Standards Enforcement of a complaint of the failure of a subcontractor on that public works project to pay workers the general prevailing rate of per diem wages.

Labor Code Section 1777.5

1777.5. (a) This chapter does not prevent the employment of properly registered apprentices upon public works.

(b) (1) Every apprentice employed upon public works shall be paid the prevailing rate of per diem wages for apprentices in the trade to which he or she is registered and shall be employed only at the work of the craft or trade to which he or she is registered.

(2) Unless otherwise provided by a collective bargaining agreement, when a contractor requests the dispatch of an apprentice pursuant to this section to perform work on a public works project and requires the apprentice to fill out an application or undergo testing, training, an examination, or other preemployment process as a condition of employment, the apprentice shall be paid for the time spent on the required preemployment activity, including travel time to and from the required activity, if any, at the prevailing rate of per diem wages for apprentices in the trade to which he or she is registered. Unless otherwise provided by a collective bargaining agreement, a contractor is not required to compensate an apprentice for the time spent on preemployment activities if the apprentice is required to take a preemployment drug or alcohol test and he or she fails to pass that test.

(c) Only apprentices, as defined in Section 3077, who are in training under apprenticeship standards that have been approved by the Chief of the Division of Apprenticeship Standards and who are parties to written apprentice agreements under Chapter 4 (commencing with Section 3070) of Division 3 are eligible to be employed at the apprentice wage rate on public works. The employment and training of each apprentice shall be in accordance with either of the following:

(1) The apprenticeship standards and apprentice agreements under which he or she is training.

(2) The rules and regulations of the California Apprenticeship Council.

(d) If the contractor to whom the contract is awarded by the state or any political subdivision, in performing any of the work under the contract, employs workers in any apprenticeable craft or trade, the contractor shall employ apprentices in at least the ratio set forth in this section and may apply to any apprenticeship program in the craft or trade that can provide apprentices to the site of the public work for a certificate approving the contractor under the apprenticeship standards for the employment and training of apprentices in the area or industry affected. However, the decision of the apprenticeship program to approve or deny a certificate shall be subject to review by the Administrator of Apprenticeship. The apprenticeship program or programs, upon approving the contractor, shall arrange for the dispatch of apprentices to the contractor. A contractor covered by an apprenticeship program's standards shall not be required to submit any additional application in order to include additional public works contracts under that program. "Apprenticeable craft or trade," as used in this section, means a craft or trade determined as an apprenticeable occupation in accordance with rules and regulations prescribed by the California Apprenticeship Council. As used in this section, "contractor" includes any subcontractor under a contractor who performs any public works not excluded by subdivision (o).

(e) Before commencing work on a contract for public works, every contractor shall submit contract award information to an applicable apprenticeship program that can supply apprentices to the site of the public work. The information submitted shall include an estimate of journeyman hours to be performed under the contract, the number of apprentices proposed to be employed, and the approximate dates the apprentices would be employed. A copy of this information shall also be submitted to the awarding body, if requested by the awarding body. Within 60 days after concluding work on the contract, each contractor and subcontractor shall submit to the awarding body, if requested, and to the apprenticeship program a verified statement of the journeyman and apprentice hours performed on the contract. The information under this subdivision shall be public. The apprenticeship programs shall retain this information for 12 months.

(f) The apprenticeship program supplying apprentices to the area of the site of the public work shall ensure equal employment and affirmative action in apprenticeship for women and minorities.

(g) The ratio of work performed by apprentices to journeymen employed in a particular craft or trade on the public work may be no higher than the ratio stipulated in the apprenticeship standards under which the apprenticeship program operates if the contractor agrees to be bound by those standards. However, except as otherwise provided in this section, in no case shall the ratio be less than one hour of apprentice work for every five hours of journeyman work.

(h) This ratio of apprentice work to journeyman work shall apply during any day or portion of a day when any journeyman is employed at the jobsite and shall be computed on the basis of the hours worked during the day by journeymen so employed. Any work performed by a journeyman in excess of eight hours per day or 40 hours per week shall not be used to calculate the ratio. The contractor shall employ apprentices for the number of hours computed as above before the end of the contract or, in the case of a subcontractor, before the end of the subcontract. However, the contractor shall endeavor, to the greatest extent possible, to employ apprentices during the same time period that

the journeymen in the same craft or trade are employed at the jobsite. When an hourly apprenticeship ratio is not feasible for a particular craft or trade, the Administrator of Apprenticeship, upon application of an apprenticeship program, may order a minimum ratio of not less than one apprentice for each five journeymen in a craft or trade classification.

(i) A contractor covered by this section who has agreed to be covered by an apprenticeship program's standards upon the issuance of the approval certificate, or who has been previously approved for an apprenticeship program in the craft or trade, shall employ the number of apprentices or the ratio of apprentices to journeymen stipulated in the applicable apprenticeship standards, but in no event less than the 1-to-5 ratio required by subdivision (g).

(j) Upon proper showing by a contractor that he or she employs apprentices in a particular craft or trade in the state on all of his or her contracts on an annual average of not less than one hour of apprentice work for every five hours of labor performed by journeymen, the Administrator of Apprenticeship may grant a certificate exempting the contractor from the 1-to-5 hourly ratio, as set forth in this section for that craft or trade.

(k) An apprenticeship program has the discretion to grant to a participating contractor or contractor association a certificate, which shall be subject to the approval of the Administrator of Apprenticeship, exempting the contractor from the 1-to-5 ratio set forth in this section when it finds that any one of the following conditions is met:

(1) Unemployment for the previous three-month period in the area exceeds an average of 15 percent.

(2) The number of apprentices in training in the area exceeds a ratio of 1 to 5.

(3) There is a showing that the apprenticeable craft or trade is replacing at least one-thirtieth of its journeymen annually through apprenticeship training, either on a statewide basis or on a local basis.

(4) Assignment of an apprentice to any work performed under a public works contract would create a condition that would jeopardize his or her life or the life, safety, or property of fellow employees or the public at large, or the specific task to which the apprentice is to be assigned is of a nature that training cannot be provided by a journeyman.

(l) If an exemption is granted pursuant to subdivision (k) to an organization that represents contractors in a specific trade from the 1-to-5 ratio on a local or statewide basis, the member contractors shall not be required to submit individual applications for approval to local joint apprenticeship committees, if they are already covered by the local apprenticeship standards.

(m) (1) A contractor to whom a contract is awarded, who, in performing any of the work under the contract, employs journeymen or apprentices in any apprenticeable craft or trade shall contribute to the California Apprenticeship Council the same amount that the director determines is the prevailing amount of apprenticeship training contributions in the area of the public works site. A contractor may take as a credit for payments to the council any amounts paid by the contractor to an approved apprenticeship program that can

supply apprentices to the site of the public works project. The contractor may add the amount of the contributions in computing his or her bid for the contract.

(2) At the conclusion of the 2002–03 fiscal year and each fiscal year thereafter, the California Apprenticeship Council shall distribute training contributions received by the council under this subdivision, less the expenses of the Department of Industrial Relations for administering this subdivision, by making grants to approved apprenticeship programs for the purpose of training apprentices. The funds shall be distributed as follows:

(A) If there is an approved multiemployer apprenticeship program serving the same craft or trade and geographic area for which the training contributions were made to the council, a grant to that program shall be made.

(B) If there are two or more approved multiemployer apprenticeship programs serving the same craft or trade and county for which the training contributions were made to the council, the grant shall be divided among those programs based on the number of apprentices from that county registered in each program.

(C) All training contributions not distributed under subparagraphs (A) and (B) shall be used to defray the future expenses of the Department of Industrial Relations for the administration and enforcement of apprenticeship standards and requirements under this code.

(3) All training contributions received pursuant to this subdivision shall be deposited in the Apprenticeship Training Contribution Fund, which is hereby created in the State Treasury. Upon appropriation by the Legislature, all moneys in the Apprenticeship Training Contribution Fund shall be used for the purpose of carrying out this subdivision and to pay the expenses of the Department of Industrial Relations.

(n) The body awarding the contract shall cause to be inserted in the contract stipulations to effectuate this section. The stipulations shall fix the responsibility of compliance with this section for all apprenticeable occupations with the prime contractor.

(o) This section does not apply to contracts of general contractors or to contracts of specialty contractors not bidding for work through a general or prime contractor when the contracts of general contractors or those specialty contractors involve less than thirty thousand dollars ($30,000).

(p) An awarding body that implements an approved labor compliance program in accordance with subdivision (b) of Section 1771.5 may, with the approval of the director, assist in the enforcement of this section under the terms and conditions prescribed by the director.

Labor Code Section 1813

1813. The contractor or subcontractor shall, as a penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit twenty-five dollars ($25) for each worker employed in the execution of the contract by the respective contractor or subcontractor for each calendar day during which the worker is required or permitted to work more than 8 hours in any one calendar day and 40 hours in any one

calendar week in violation of the provisions of this article. In awarding any contract for public work, the awarding body shall cause to be inserted in the contract a stipulation to this effect. The awarding body shall take cognizance of all violations of this article committed in the course of the execution of the contract, and shall report them to the Division of Labor Standards Enforcement.
Labor Code Section 1815
1815. Notwithstanding the provisions of Sections 1810 to 1814, inclusive, of this code, and notwithstanding any stipulation inserted in any contract pursuant to the requirements of said sections, work performed by employees of contractors in excess of 8 hours per day, and 40 hours during any one week, shall be permitted upon public work upon compensation for all hours worked in excess of 8 hours per day at not less than 11/2 times the basic rate of pay.

1.6 Excavation Safety

Principal Project Company shall comply with Labor Code Section 6705 while excavating. For an excavation five feet or more in depth, submit shop drawings for a protective system.

The drawings must show the design and details for providing worker protection from caving ground during excavation.

Shop drawings of protective systems for which the Construction Safety Orders issued by Cal/OSHA require design by a registered professional engineer must be sealed and signed by an engineer who is registered as a civil engineer in the State.

2. PUBLIC CONTRACT CODE REQUIREMENTS

2.1 Ineligible Contractors

Principal Project Company shall not enter into or permit entering into any Contract with a Contractor who is ineligible to perform work on the Project pursuant to Section 1777.1 or 1777.7 of the Labor Code.

2.2 Assignment of Causes of Action

Principal Project Company's attention is directed to the following requirements in Public Contract Code Section 7103.5:

> (b) In entering into a public works contract or a subcontract to supply goods, services, or materials pursuant to a public works contract, the contractor or subcontractor offers and agrees to assign to the awarding body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to the public works contract or the subcontract. This assignment shall be made and become effective at

the time the awarding body tenders final payment to the contractor, without further acknowledgment by the parties.

2.3 [RESERVED]

2.4 Specifications by Brand or Trade Names

Principal Project Company's attention is directed to the following requirements in Public Contract Code Section 3400:

(b) No agency of the state, nor any political subdivision, municipal corporation, or district, nor any public officer or person charged with the letting of contracts for the construction, alteration, or repair of public works, shall draft or cause to be drafted specifications for bids, in connection with the construction, alteration, or repair of public works, (1) in a manner that limits the bidding, directly or indirectly, to any one specific concern, or (2) calling for a designated material, product, thing, or service by specific brand or trade name unless the specification is followed by the words "or equal" so that bidders may furnish any equal material, product, thing, or service. In applying this section, the specifying agency shall, if aware of an equal product manufactured in this state, name that product in the specification. Specifications shall provide a period of time prior to or after, or prior to and after, the award of the contract for submission of data substantiating a request for a substitution of "an equal" item. If no time period is specified, data may be submitted any time within 35 days after the award of the contract.

(c) Subdivision (b) is not applicable if the awarding authority, or its designee, makes a finding that is described in the invitation for bids or request for proposals that a particular material, product, thing, or service is designated by specific brand or trade name for any of the following purposes:

(1) In order that a field test or experiment may be made to determine the product's suitability for future use.

(2) In order to match other products in use on a particular public improvement either completed or in the course of completion.

(3) In order to obtain a necessary item that is only available from one source.

(4)(A) In order to respond to an emergency declared by a local agency, but only if the declaration is approved by a four-fifths vote of the governing board of the local agency issuing the invitation for bid or request for proposals.

(B) In order to respond to an emergency declared by the state, a state agency, or political subdivision of the state, but only if the facts setting forth the reasons for the finding of the emergency are contained in the public records of the authority issuing the invitation for bid or request for proposals.

3. GOVERNMENT CODE REQUIREMENTS

3.1 Removal, Relocation or Protection of Existing Utilities

Principal Project Company acknowledges and agrees that the provisions of Article 14 (Compensation and Other Relief for Delay Events and Relief Events) of this Agreement satisfy City's obligations pursuant to Government Code Section 4215. Principal Project Company agrees that to the extent that Government Code Section 4215 may be construed to the contrary, Principal Project Company hereby waives the benefit of such statute.

3.2 Nondiscrimination and Compliance Employment Programs

Principal Project Company shall comply with, and shall require Contractors to comply with, the provisions of:

(b) the Fair Employment and Housing Act (Government Code section 12900 et seq.), and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, section 7285 et seq.); and

(c) the Fair Employment and Housing Commission regulations implementing Government Code section 12990 (a-f) set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations,

which are incorporated into, and made a part of this Agreement as if set forth in full. Principal Project Company shall require each Contractor to include the compliance requirements under this Section 3.2 (Nondiscrimination and Compliance Employment Programs) in its Contract, and give written Notice of such Contractor's obligations under this Section 3.2 (Nondiscrimination and Compliance Employment Programs) to labor organizations with which it has a collective bargaining or other agreement, as appropriate.

4. BUSINESS AND PROFESSIONS CODE

Principal Project Company's attention is directed to the following requirements in Business and Professions Code Sections 7030(a) and 7108.5(a) through (d):

7030. (a) Except for contractors writing home improvement contracts pursuant to Section 7151.2 and contractors writing service and repair contracts pursuant to Section 7159.10, every person licensed pursuant to this chapter shall include the following statement in at least 10-point type on all written contracts with respect to which the person is a prime contractor:

> "Contractors are required by law to be licensed and regulated by the Contractors' State License Board which has jurisdiction to investigate complaints against contractors if a complaint regarding a patent act or omission is filed within four years of the date of the alleged violation. A complaint regarding a latent act or omission pertaining to structural defects must be filed within 10 years of the date of the alleged violation. Any questions concerning a contractor may be referred to the Registrar, Contractors' State License Board, P.O. Box 26000, Sacramento, CA 95826."

7108.5 (a) A prime contractor or subcontractor shall pay to any subcontractor, not later than seven days after receipt of each progress payment, unless otherwise agreed to in writing, the

respective amounts allowed the contractor on account of the work performed by the subcontractors, to the extent of each subcontractor's interest therein. In the event that there is a good faith dispute over all or any portion of the amount due on a progress payment from the prime contractor or subcontractor to a subcontractor, the prime contractor or subcontractor may withhold no more than 150 percent of the disputed amount.

(b) Any violation of this section shall constitute a cause for disciplinary action and shall subject the licensee to a penalty, payable to the subcontractor, of 2 percent of the amount due per month for every month that payment is not made.

(c) In any action for the collection of funds wrongfully withheld, the prevailing party shall be entitled to his or her attorney's fees and costs.

(d) The sanctions authorized under this section shall be separate from, and in addition to, all other remedies, either civil, administrative, or criminal.

EXHIBIT 16C

CITY REQUIREMENTS

[NOTE TO PNC: Local Hire, First Source, and SFMTA Training Program requirements to be added]

1. CITY REQUIREMENTS

Principal Project Company has reviewed, understands, and is ready, willing, and able to comply with the terms and conditions of this Exhibit 16C (City Requirements), which summarizes special City requirements as of the Effective Date, each of which is fully incorporated by reference. Principal Project Company acknowledges that City requirements in effect when any Contract Documents are executed will be incorporated into the Contract Documents, as applicable, and will apply to all Contractors, Subcontractors, and any other PPC-Related Entities, as applicable. City requirements of general applicability will apply to the Project even if not summarized below.

The following summary is for Principal Project Company's convenience only; Principal Project Company is obligated to become familiar with all applicable requirements and to comply with them fully as they are amended from time to time. City ordinances are currently available on the web at www.sfgov.org and at www.amlegal.com/codes/client/san-francisco_ca. References to specific laws in this Exhibit 16C (City Requirements) refer to the San Francisco Municipal Code unless specified otherwise. Capitalized terms used in this Exhibit 16C (City Requirements) and not defined in this Agreement will have the meanings assigned to them in the applicable Section of the San Francisco Municipal Code.

1.1. Nondiscrimination in City Contracts and Benefits Ordinance.

(a) Non-Discrimination in Contracts. Principal Project Company shall comply with the provisions of Chapters 12B and 12C of the Administrative Code, which are incorporated into this Agreement by this reference. Principal Project Company shall incorporate by reference in all Contractor Documents the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the Administrative Code and shall require all PPC-Related Entities to comply with such provisions. Principal Project Company is subject to the enforcement and penalty provisions in Chapters 12B and 12C.

(b) Non-Discrimination in the Provision of Employee Benefits. Principal Project Company does not as of Effective Date, and will not during the Term, in any of its operations in San Francisco, on real property owned by San Francisco, or where work is being performed for City elsewhere in the United States, discriminate in the provision of employee benefits between employees with domestic partners and employees with spouses and/or between the domestic partners and spouses of such employees, subject to the conditions set forth in San Francisco Administrative Code Section 12B.2.

1.2. Requiring Health Benefits for Covered Employees. All undefined, initially-capitalized terms used in this Section 1.2 (Requiring Health Benefits for Covered Employees) shall have the meanings given to them in Administrative Code Chapter 12Q (the "**HCAO**"). If the HCAO applies to this Agreement, Principal Project Company shall comply with the requirements of the HCAO. For each Covered Employee, Principal Project Company shall

provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO. If Principal Project Company chooses to offer the health plan option, such health plan shall meet the minimum standards set forth by the San Francisco Health Commission. Information about and the text of the HCAO, as well as the Health Commission's minimum standards, is available on the web at http://sfgov.org/olse/hcao. Principal Project Company is subject to the enforcement and penalty provisions in the HCAO. Any Contract entered into by Principal Project Company shall require any PPC-Related Entity with 20 or more employees to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section 1.2 (Requiring Health Benefits for Covered Employees).

1.3. Minimum Compensation Ordinance. If San Francisco Administrative Code Chapter 12P applies to this Agreement, Principal Project Company shall pay covered employees no less than the minimum compensation required by San Francisco Administrative Code Chapter 12P ("**Chapter 12P**"), including a minimum hourly gross compensation, compensated time off, and uncompensated time off. Principal Project Company is subject to the enforcement and penalty provisions in Chapter 12P. Information about and the text of the Chapter 12P is available on the web at http://sfgov.org/olse/mco. Principal Project Company is required to comply with all of the applicable provisions of Chapter 12P, irrespective of the listing of obligations in this Section 1.3 (Minimum Compensation Ordinance). By signing and executing this Agreement, Principal Project Company certifies that it complies with Chapter 12P.

1.4. Prevailing Rate of Wages and Working Conditions.

(a) Covered Services. Principal Project Company agrees it will pay, and require the PPC-Related Entities to pay, the Prevailing Rate of Wages for any Work performed by Principal Project Company or the PPC-Related Entities ("**Covered Services**"), including any trade work for the Project performed by or for Principal Project Company during the Term. The provisions of Section 6.22(e) and 21C of the San Francisco Administrative Code are incorporated as provisions of this Agreement as if fully set forth herein and will apply to any Covered Services performed by Principal Project Company and the PPC-Related Entities.

(b) Determining the Prevailing Rate of Wages. The latest Prevailing Rate of Wages for private employment on public contracts as determined by the San Francisco Board of Supervisors and the Director of the California Department of Industrial Relations, as such prevailing wage rates may be changed during the Term, are hereby incorporated as provisions of this Agreement. Copies of the Prevailing Rate of Wages as fixed and determined by the Board of Supervisors are available from the Office of Labor Standards and Enforcement ("**OLSE**") and on the Internet at http://www.dir.ca.gov/DLSR/PWD and http://sfgov.org/olse/prevailing-wage. Principal Project Company agrees that it and the PPC-Related Entities will pay no less than the Prevailing Rate of Wages, as fixed and determined by the Board of Supervisors, to all workers who perform Covered Services and are employed by Principal Project Company or the PPC-Related Entities.

(c) Subcontract Requirements. As required by Section 6.22(e)(5) of the San Francisco Administrative Code, Principal Project Company shall require each Contractor to insert in every Subcontract or other arrangement, which it may make for the performance of Covered Services under this Agreement, a provision that said Subcontractor shall pay to all Persons performing labor in connection with Covered Services under said Subcontract or other arrangement not less than the highest general the Prevailing Rate of Wages as fixed and determined by the Board of Supervisors for such labor or services.

(d) Posted Notices. As required by Section 1771.4 of the California Labor Code, Principal Project Company shall post job site notices prescribed by the California Department of Industrial Relations ("**DIR**") at all job sites where Covered Services are to be performed.

(e) Payroll Records. As required by Section 6.22(e)(6) of the San Francisco Administrative Code and Section 1776 of the California Labor Code, Principal Project Company shall keep or cause to be kept complete and accurate payroll records for all trade workers performing Covered Services. Such records shall include the name, address and social security number of each worker who provided Covered Services on the project, including apprentices, his or her classification, a general description of the services each worker performed each day, the rate of pay (including rates of contributions for, or costs assumed to provide fringe benefits), daily and weekly number of hours worked, deductions made and actual wages paid. Every Contractor and Subcontractor who shall undertake the performance of any part of Covered Services shall keep a like record of each person engaged in the execution of Covered Services under the Contract or Subcontract. All such records shall at all times be available for inspection of and examination by City and its authorized representatives and the DIR.

(f) Certified Payrolls. Certified payrolls shall be prepared pursuant to San Francisco Administrative Code Section 6.22(e)(6) and California Labor Code Section 1776 for the period involved for all employees, including those of Subcontractors, who performed labor in connection with Covered Services. Principal Project Company and each Subcontractor performing Covered Services shall submit certified payrolls to City and to the DIR electronically. Principal Project Company shall submit payrolls to City via the reporting system selected by City. The DIR will specify how to submit certified payrolls to it. City will provide basic training in the use of the reporting system at a scheduled training session. Principal Project Company, all Contractors and all Subcontractors that will perform Covered Services must attend the training session. Principal Project Company, Contractors, and Subcontractors shall comply with electronic certified payroll requirements (including training) at no additional cost to City.

(g) Compliance Monitoring. Covered Services to be performed under this Agreement are subject to compliance monitoring and enforcement of prevailing wage requirements by the DIR and/or the OLSE. Principal Project Company, Contractors and Subcontractors performing Covered Services will cooperate fully with the DIR and/or the OLSE and other City employees and agents authorized to assist in the administration and enforcement of the prevailing wage requirements, and agrees to take the specific steps and actions as required by Section 6.22(e)(7) of the San Francisco Administrative Code. Steps and actions include but are not limited to requirements that: (i) Principal Project Company will cooperate fully with the Labor Standards Enforcement Officer and other City employees and agents authorized to assist in the administration and enforcement of the Prevailing Wage requirements and other labor standards imposed on Principal Project Company by the Charter and Chapter 6 of the San Francisco Administrative Code; (ii) Principal Project Company agrees that the Labor Standards Enforcement Officer and his or her designees, in the performance of their duties, shall have the right to engage in random inspections of job sites and to have access to the employees of Principal Project Company, employee time sheets, inspection logs, payroll records and employee paychecks; (iii) Contractors and Subcontractors shall maintain a sign-in and sign-out sheet showing which employees are present on the job site; (iv) Principal Project Company shall prominently post at each job-site a sign informing employees that the project is subject to the City's Prevailing Wage requirements and that these requirements are enforced by the Labor Standards Enforcement Officer; and (v) that the Labor Standards Enforcement Officer may audit such records of Principal Project Company as he or she reasonably deems necessary to determine compliance with the Prevailing Wage and other labor standards imposed by the

Charter and this Chapter and applicable to this Agreement. Failure to comply with these requirements may result in penalties and forfeitures consistent with analogous provisions of the California Labor Code, including Section 1776(g), as amended from time to time.

(h) Remedies. Should Principal Project Company, Contractors or Subcontractors who shall undertake the performance of any Covered Services, fail or neglect to pay to the persons who perform Covered Services under this Agreement, Contracts or Subcontracts or other arrangement for the Covered Services, the general prevailing rate of wages as herein specified, Principal Project Company shall forfeit, and in the case of any Subcontractor so failing or neglecting to pay said wage, Principal Project Company and the Subcontractor shall jointly and severally forfeit, back wages due plus the penalties set forth in San Francisco Administrative Code Section 6.22 (e) and/or California Labor Code Section 1775. City, when certifying any payment, which may become due under the terms of this Agreement, shall deduct from the amount that would otherwise be due on such payment the amount of said forfeiture.

1.5. Prohibition on Use of Public Funds for Political Activity. In performing the Work, Principal Project Company shall comply with San Francisco Administrative Code Chapter 12G, which prohibits funds appropriated by City for this Agreement from being expended to participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure. Principal Project Company is subject to the enforcement and penalty provisions in Chapter 12G.

1.6. Consideration of Salary History. Principal Project Company shall comply with San Francisco Administrative Code Chapter 12K, the Consideration of Salary History Ordinance or "Pay Parity Act." Principal Project Company is prohibited from considering current or past salary of an applicant in determining whether to hire the applicant or what salary to offer the applicant to the extent that such applicant is applying for employment to be performed on this Agreement or in furtherance of this Agreement, and whose application, in whole or part, will be solicited, received, processed or considered, whether or not through an interview, in City or on City property. The ordinance also prohibits employers from (1) asking such applicants about their current or past salary or (2) disclosing a current or former employee's salary history without that employee's authorization unless the salary history is publicly available. Principal Project Company is subject to the enforcement and penalty provisions in Chapter 12K. Information about and the text of Chapter 12K is available on the web at https://sfgov.org/olse/consideration-salary-history. Principal Project Company is required to comply with all of the applicable provisions of 12K, irrespective of the listing of obligations in this Section 1.6 (Consideration of Salary History).

1.7. Consideration of Criminal History in Hiring and Employment Decisions.

(a) Principal Project Company agrees to comply fully with and be bound by all of the provisions of Chapter 12T, "City Contractor/Subcontractor Consideration of Criminal History in Hiring and Employment Decisions," of the San Francisco Administrative Code ("**Chapter 12T**"), including the remedies provided, and implementing regulations, as may be amended from time to time. The provisions of Chapter 12T are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of the Chapter 12T is available on the web at http://sfgov.org/olse/fco. Principal Project Company is required to comply with all of the applicable provisions of 12T, irrespective of the listing of obligations in this Section 1.7 (Consideration of Criminal History in Hiring and Employment Decisions). Capitalized terms used in this Section 1.7 (Consideration of Criminal History in Hiring and Employment

Decisions.) and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12T.

(b) The requirements of Chapter 12T shall only apply to a Principal Project Company's or its Agent's operations to the extent those operations are in furtherance of the performance of this Agreement, shall apply only to applicants and employees who would be or are performing work in furtherance of this Agreement, and shall apply when the physical location of the employment or prospective employment of an individual is wholly or substantially within the City of San Francisco. Chapter 12T shall not apply when the application in a particular context would conflict with federal or state law or with a requirement of a government agency implementing federal or state law.

1.8. Resource Efficiency Requirements. The Project will be subject to Chapter 7 of the San Francisco Environment Code. Accordingly, the Project must meet certain resource efficient requirements. Principal Project Company agrees that it will design the Project to comply with Chapter 7 of the San Francisco Environment Code, as may be amended from time to time, or any similar law.

1.9. MacBride Principles Northern Ireland. City urges companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to abide by the MacBride Principles. City urges San Francisco companies to do business with corporations that abide by the MacBride Principles.

1.10. Notification of Limitations on Contributions. Principal Project Company acknowledges its obligations under Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with, or is seeking a contract with, any department of City 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, for a grant, loan or loan guarantee, or for a development agreement, from making any campaign contribution to (i) a City elected official if the contract must be approved by that official, a board on which that official serves, or the board of a state agency on which an appointee of that official serves, (ii) a candidate for that City elective office, or (iii) a committee controlled by such elected official or a candidate for that office, at any time from the submission of a proposal for the contract until the later of either the termination of negotiations for such contract or twelve months after the date City approves the contract. The prohibition on contributions applies to (a) each prospective party to the contract, (b) each member of the contractor's board of directors, the contractor's chairperson, chief executive officer, chief financial officer and chief operating officer, (c) any person with an ownership interest of more than ten percent (10%) in the contractor, (d) any Subcontractor listed in the bid or contract, and (e) any committee that is sponsored or controlled by the contractor. Principal Project Company certifies that it has informed each such person of the limitation on contributions imposed by Section 1.126 by the time it submitted the Implementation Proposal, and has provided the names of the persons required to be informed to City.

1.11. Sunshine Ordinance. Principal Project Company acknowledges that the Contract Documents and all records related to its formation, Principal Project Company's performance of Work, and City's payment are subject to the California Public Records Act, (California Government Code § 6250 et. seq.), and the San Francisco Sunshine Ordinance, (San Francisco Administrative Code Chapter 67). Such records are subject to public inspection and copying unless exempt from disclosure under federal, state or local law.

1.12. Conflicts of Interest. Principal Project Company acknowledges that it is familiar with the provisions of San Francisco Charter, Article III, Chapter 2, Section 15.103 of the City's Campaign and Governmental Conduct Code, and California Government Code Sections 87100 *et seq*. and Sections 1090 *et seq*., certifies that it does not know of any facts that would constitute a violation of these provisions, and agrees that if Principal Project Company becomes aware of any such fact during the Term, Principal Project Company will provide Notice to City immediately.

1.13. Certification of Funds. This Agreement is subject to the fiscal provisions of the City's Charter and the budget decisions of its Mayor and Board of Supervisors, each acting in its sole discretion. No funds will be available hereunder until prior written authorization certified by the City's Controller. The City's Controller cannot authorize payments unless funds have been certified as available in the budget or in a supplemental appropriation. City's obligations hereunder shall never exceed the amount certified by the City's Controller for the purpose and period stated in such certification. City, its employees and officers are not authorized to offer or promise any additional funding without City's Controller certification of such additional funding. Without such lawful approval and certification, City shall not be required to provide such additional funding.

1.14. Art Commission Design Review; Art Enrichment Allocation. The Facility will be subject to the requirements of San Francisco Charter Section 5.103 and Administrative Code Section 3.19. Principal Project Company must work with the San Francisco Arts Commission, in consultation with the City, to design and build the Facility in compliance with those requirements.

1.15. Tropical Hardwoods and Virgin Redwood Ban. City urges companies not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood, or virgin redwood wood product, except as expressly permitted by the application of San Francisco Environment Code sections 802(b) and 803(b). Principal Project Company will not, except as permitted by the application of sections 802(b) and 803(b), use or incorporate any tropical hardwood, tropical hardwood wood product, virgin redwood, or virgin redwood wood product in the performance of this Agreement.

1.16. City Business and Tax Regulations Code. Principal Project Company acknowledges that under Section 6.10-2 of the San Francisco Business and Tax Regulations Code, the City Treasurer and Tax Collector may require the withholding of payments to any vendor that is delinquent in the payment of any amounts that the vendor is required to pay the City under the San Francisco Business and Tax Regulations Code. If, under that authority, any payment City is required to make to Principal Project Company under this Agreement is withheld, then City will not be in breach or default under this Agreement, and the Treasurer and Tax Collector will authorize release of any payments withheld under this paragraph to Principal Project Company, without interest, late fees, penalties, or other charges, upon Principal Project Company coming back into compliance with its San Francisco Business and Tax Regulations Code obligations.

1.17. Contracting Requirements. The following City requirements are incorporated into this Agreement and apply to the Principal Project Company, Contractors and Subcontractors, together with any other applicable City contract requirements that are in effect on the Effective Date.

(a) Tobacco and Alcohol Products Advertising Ban. Principal Project Company acknowledges and agrees that no advertising of cigarettes, tobacco products, or

alcoholic beverages is allowed on any real property owned by or under the control of City. This prohibition includes the placement of the name of a company producing, selling or distributing cigarettes, tobacco products, or alcoholic beverages or the name of any cigarette, tobacco product, or alcoholic beverages in any promotion of any event or product. This prohibition does not apply to any advertisement sponsored by a state, local, nonprofit, or other entity designed to: (a) communicate the health hazards of cigarettes and tobacco products or alcoholic beverages; (b) encourage people not to smoke or to stop smoking, or not to drink alcohol or to stop drinking alcohol; or (c) provide or publicize drug or alcohol treatment or rehabilitation services.

(b) Alcohol and Drug-Free Workplace. City reserves the right to deny access to, or require Principal Project Company to remove any PPC-Related Entities from City facilities if City has reasonable grounds to believe that person has engaged in alcohol abuse or illegal drug activity which in any way impairs City's ability to maintain safe work facilities or to protect the health and well-being of City employees and the general public. City shall have the right of final approval for the entry or re-entry of any that person previously denied access to, or removed from, City facilities. Illegal drug activity means possessing, furnishing, selling, offering, purchasing, using or being under the influence of illegal drugs or other controlled substances for which the person lacks a valid prescription. Alcohol abuse means possessing, furnishing, selling, offering, or using alcoholic beverages, or being under the influence of alcohol.

(c) Drug-Free Workplace. Principal Project Company acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1988 (41 U.S.C. §§ 8101 et seq.), the unlawful manufacture, distribution, possession or use of a controlled substance is prohibited on City property.

(d) Food Service Waste Reduction Ordinance. Principal Project Company agrees to comply fully with and be bound by the Food Service Waste Reduction Ordinance (San Francisco Environment Code Chapter 16), including but not limited to the remedies for noncompliance provided therein.

(e) Sugar Sweetened Beverages and Packaged Water. Principal Project Company agrees that it will not sell, provide, or otherwise distribute Sugar-Sweetened Beverages, as defined by San Francisco Administrative Code Chapter 101, as part of its performance of this Agreement. Principal Project Company agrees that it shall not sell, provide, or otherwise distribute Packaged Water, as defined by San Francisco Environment Code Chapter 24, as part of its performance of this Agreement.

1.18. Preservative Treated Wood Products. Principal Project Company shall comply with the provisions of San Francisco Environment Code Chapter 13, which requires that anyone purchasing preservative-treated wood products on behalf of the City, shall only purchase such products from the list of alternatives adopted by the Department of the Environment pursuant to Section 1302 of Chapter 13, unless otherwise granted an exemption by the terms of that Chapter.

1.19. SFMTA Surveillance Technology Policy. Principal Project Company must comply with the SFMTA's Surveillance Technology Policy, adopted under San Francisco Administrative Code Chapter 19B. A copy of the SFMTA's Surveillance Technology Policy is attached as Exhibit 16D (SFMTA's Surveillance Technology Policy).

1.20. Clean Construction. Principal Project Company agrees to comply fully with and be bound by the Clean Construction requirements set forth in Section 6.25 of the San

Francisco Administrative Code and Chapter 25 of the Environment Code. The provisions of Section 6.25 and Chapter 25 are incorporated into this Agreement by reference. Principal Project Company may seek waivers from the Clean Construction requirements as set forth in Chapter 25 of the Environment Code. By entering into this Agreement, Principal Project Company and City agree that if Principal Project Company uses off-road equipment and/or off-road engines in violation of the Clean Construction requirements set forth in Section 6.25 of the Administrative Code and Chapter 25 of the Environment Code, the City will suffer actual damages that will be impractical or extremely difficult to determine. Accordingly, Principal Project Company and the City agree that Principal Project Company shall pay the City the amount of $100 per day per each piece of off-road equipment and each off-road engine used to complete work on the Project in violation of the Clean Construction requirements. Such amount shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Principal Project Company's failure to comply with the Clean Construction requirements.

1.21. Compliance with Americans with Disabilities Act. Principal Project Company shall provide the Work in a manner that complies with the Americans with Disabilities Act (ADA), including but not limited to Title II's program access requirements, and all other applicable federal, state and local disability rights legislation.

1.22. Government Code Claim Requirement. No suit for money or damages may be brought against the City until a written claim therefor has been presented to and rejected by the City in conformity with the provisions of San Francisco Administrative Code Chapter 10 and California Government Code Section 900, et seq. Nothing set forth in this Agreement shall operate to toll, waive or excuse Contractor's compliance with the California Government Code Claim requirements set forth in San Francisco Administrative Code Chapter 10 and California Government Code Section 900, et seq.

1.23. Restrictions on Use of Pesticides. Chapter 3 of the San Francisco Environment Code (the Integrated Pest Management Program Ordinance or "IPM Ordinance") describes an integrated pest management ("IPM") policy to be implemented by all City departments. PCC-Related Entities shall not use or apply or allow the use or application of any pesticides on the Project Site or contract with any party to provide pest abatement or control services to the Project Site without first receiving City's written approval of an IPM plan. PCC-Related Entities will comply, and will require all of PCC-Related Entities' contractors to comply, with any IPM plan approved by the City and will comply with the requirements of sections 300(d), 302, 304, 305(f), 305(g), and 306 of the IPM Ordinance, as if PCC-Related Entities were a City department.

1.24. All-Gender Toilet Facilities. If applicable, PCC-Related Entities will comply with San Francisco Administrative Code Section 4.1-3 requiring at least one all-gender toilet facility in any new building constructed on City-owned land or that is constructed by or for the City where toilet facilities are required or provided. An "all-gender toilet facility" means a toilet that is not restricted to use by persons of a specific sex or gender identity by means of signage, design, or the installation of fixtures.

EXHIBIT 16D

SFMTA'S SURVEILLANCE TECHNOLOGY POLICY

See the SFMTA policy at the attached link:

https://sf.gov/sites/default/files/2022-03/MTA_Security%20Camera%20Policy%20Final%20Draft%202-25-21.pdf

EXHIBIT 17

SECTION 3.6 INVOICE

Reference is made to that certain Design-Build-Finance-Operate-Maintain Agreement dated as of [___________], 2025 (the "**Agreement**"), by and between the City and County of San Francisco ("**City**"), a municipal corporation acting by and through the San Francisco Municipal Transportation Agency ("**SFMTA**"), and [__________] ("**Principal Project Company**").

Capitalized terms used but not defined herein have the meaning given to them in this Agreement.

Pursuant to Section 3.6 of this Agreement, Principal Project Company hereby requests payment of [________] U.S. dollars ($[________]), based on the following: (a) this Agreement has been terminated under Section 3.6.1 or Section 3.6.2 of this Agreement; (b) this invoice is submitted within 30 days of the termination; and (c) Principal Project Company has submitted to City all work product produced by Principal Project Company related to the Project, as required in Section 3.6.5 of this Agreement.

Principal Project Company represents and warrants to City that: (a) Principal Project Company is eligible for payment pursuant to Section 3.6 of this Agreement; and (b) Principal Project Company has attached documentation reasonably required by City sufficient to support such statement.

Principal Project Company acknowledges that: (a) such payment is the exclusive compensation payable by City to Principal Project Company under this Agreement for a termination under Section 3.6.1 or Section 3.6.2 of this Agreement; and (b) submission of this invoice, and payment by City of any amount in response to this invoice, is in all respects subject to the terms and conditions of this Agreement.

EXHIBIT 18

TECHNICAL REQUIREMENTS

[SEE ATTACHED]

EXHIBIT 19

INITIAL SCHEDULE

[See attached]

[Note: Schedule to be attached before Commercial Close. Schedule shall be a critical path schedule, in Primavera 6 software, setting out all the relevant D&C Work activities from Commercial Close through Final Acceptance, with key interim milestones during that period of work, and at a minimum at Level 3 defined in AACE 91R-16 "Schedule Development"]

EXHIBIT 20

LIST OF KEY PERSONNEL

1. Project Director
2. Project Manager
3. Deputy Project Manager
4. Equity Member's Project Principal
5. Engineer(s) of Record
6. Architect(s) of Record
7. Design Manager
8. Construction Manager
9. Quality Program Manager
10. Third Party and Utility Coordination Manager
11. Project Safety Representative
12. IFM Manager
13. IFM Quality Manager

Potrero Yard Modernization Project: Bus Yard Infrastructure Facility*

Small Business Enterprise/Disadvantaged Business Enterprise ("SBE/DBE") Plan
November XX, 2024

*A separate Inclusionary Plan for the Potrero Yard Modernization Project Housing and Commercial Component will be developed at a later date.

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1 SBE/DBE Plan

1.1 Introduction

In 2017, the San Francisco Municipal Transportation Agency ("**SFMTA**") launched the Building Progress Program, a $1.2 billion multi-year effort, to repair, renovate, and modernize the SFMTA aging facilities to keep the City moving and transition Muni to an all-electric bus fleet. Potrero Yard, with entrances on Mariposa Street (between Bryant and Hampshire streets), is the first site scheduled under the Building Progress Program that the SFMTA will modernize and renovate. Potrero Neighborhood Collective ("**PNC**"), as Lead Developer ("**LD**"), was selected to enter into a Predevelopment Agreement ("**PDA**") to enhance the Project design and obtain entitlements. Following Board of Supervisor approval, the Project will be delivered under the Public-Private Partnership ("**P3**") structure in which PNC will be responsible for finalizing design, building, financing, operating, and maintaining the Project over a 30-year term for the Bus Yard and a 75-year term for housing.

The Potrero Yard Modernization Project ("**Project**") is the first of its kind both nationally and for the City and County of San Francisco. The Project is to construct a state-of-the-art bus facility that will serve as an operational and maintenance home to battery-electric buses and enable the SFMTA to expand the capacity for the bus fleet at the yard by over 50%, which will improve efficiency for ground transportation citywide. It is believed that the Project would be the nation's first joint development of a bus maintenance facility with housing integrated on-site. Combining the bus yard improvements with affordable housing units will create opportunities for generations to come.

This SBE/DBE Plan ("Plan") applies only to the Bus Yard Infrastructure Facility. Additionally, the Code of Federal Regulations 49 CFR Part 26 and SFMTA's SBE/DBE Program also apply to the Bus Yard Infrastructure Facility. A separate inclusionary plan will be developed for the Housing and Commercial Component **("HCC")** of the Project.

PNC is committed to maintaining a small disadvantaged business supplier base throughout the entirety of the Project while also providing SFMTA optimal design, construction, ongoing asset management.The SFMTA's goal is to create a level playing field on which SBEs/DBEs can compete fairly for contracts and subcontracts relating to its construction, procurement and professional services activities in accordance with the federal regulations in 49 CFR Part 26. Further, this SBE/DBE Plan is intended to guide the buying decisions of LD, Infrastructure Facility Design-Builder **("Design-Builder")**[1], and lower tier subcontractors/suppliers in support of SBE/DBE utilization.

At time of SBE/DBE Plan development, the LD is procuring for a Design-Builder for the Bus Yard Infrastructure Facility. The procurement includes a 2-step process with a Request for Qualifications ("**RFQ**") and Request for Proposals ("**RFP**"). The LD has further identified a contractual structure that includes the PDA Lead Architect (Arcadis/IBI Group) to continue in this role as the Lead Architect during the Project Agreement phase. The successful bidder will be responsible to implement this SBE/DBE Plan and accept obligations of any Project Labor Agreement(s) that may apply.[2]

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[1] At time of issuance of the SBE/DBE Plan, the LD has not identified a Design-Builder.
[2] At time of issuance of the SBE/DBE Plan, the LD has not entered into any Project Labor Agreement with any union.

Any changes to the SBE/DBE Plan must have SFMTA's Contract Compliance Office ("**SFMTA CCO**") approval.

1.2 Purpose and Scope

This Plan only governs the SBE/DBE obligations for the Bus Yard Component (**"BYC"**) also known as the Infrastructure Facility of the Potrero Yard Modernization Project and satisfies the obligations of the Lead Developer. There will be a separate inclusionary plan(s) for the HCC that will be developed at a later date.

Capitalized terms not defined herein shall have the meanings ascribed to them in the Pre-Development Agreement, Project Agreement, SFMTA's SBE/DBE Program ("SBE/DBE Program") or federal regulations (49 CFR 26) issued March 4, 1999, as amended from time to time ("Regulations") as applicable. The SBE/DBE Program and the Regulations are incorporated into this Plan as though fully set forth herein. In the event of any conflict between the applicable portions of the Regulations, SBE/DBE Program and this Plan, the Regulations shall govern.

This Plan provides a vision on how LD will maximize SBE/DBE participation and include the expectations that LD and its Design-Builders will need to adhere to for compliance purposes. LD is ultimately responsible for meeting this SBE/DBE Plan. LD and its Design-Builders must perform outreach in an effort to obtain SBE/DBE participation.

1.3 SBE/DBE Goals

This Plan outlines the LD's approach to meeting SBE/DBE Goals for the design and construction phase of the Bus Yard Infrastructure Facility of the Project. Lead Developer shall achieve the below SBE/DBE Goals. The SBE/DBE Goals include all awards made to SBE/DBE Contractors, Subcontractors, Consultants, Subconsultants, Vendors or Suppliers.

Table 1: LBE Requirements

Bus Yard Infrastructure Facility Project Phase	SBE Goal	DBE Goal
Design and Professional Services	20%	Woman-Owned DBE: 5%
Construction	15%	Black & Woman-Owned DBE: 5%
Maintenance	TBD	TBD

SFMTA's SBE program is an inclusive program that is important to the local business community. Under the definition of SBEs, the City's LBEs are also considered SBEs. This allows LBEs to participate on these types of projects.

In order to meet the **20% and 15% SBE Goals for Design and Professional Services and Construction**, Small business firms must be certified in one of the following programs:

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- California Unified Certification Program (DBEs) – Federal Program
  https://californiaucp.dbesystem.com
- California Department of General Services (SBEs) – State Program
  https://www.caleprocure.ca.gov/pages/PublicSearch/supplier-search.aspx
- San Francisco Contract Monitoring Division (LBEs) – City Program
  sfcitypartner.sfgov.org/pages/LBESearch/supplier-search.aspx

OR

- Have its Small Business Verification Form approved by SFMTA CCO

In order to meet the **5% Woman-Owned DBE Goal** for the Design and Professional Services Phase of this project, the Woman-Owned DBE firm(s) must be certified by the:

  - California Unified Certification Program (DBEs) – Federal Program

In order to meet the **5% Black & Woman-Owned DBE Goal** for the Construction Phase of this project, the Black and/or Woman-Owned DBE firm(s) must be certified by the:

  - California Unified Certification Program (DBEs) – Federal Program

The total average gross revenue thresholds for the past five years must not exceed the current SBA business size standard appropriate to the type(s) of work the firm seeks to perform as set forth below. Even if it meets the appropriate SBA size standard, a firm is not eligible if it (including its affiliates) has had average annual gross receipts over the firm's previous three fiscal years, in excess of $30.72 million. These figures may be updated periodically by the DBE/SBE program - see SBA's webpage for updates:

https://www.ecfr.gov/current/title-13/chapter-I/part-121#121.201

SBE/DBE Goals identified during the Bus Yard Infrastructure Facility are inclusive of all types of SBE/DBE participation including traditional construction trades, architectural/engineering design services, other professional services, goods and supplies, trucking, and other project-related costs.

The LD will submit an SBE/DBE report at the end of the PDA period to the City to apply applicable SBE/DBE utilization credit to the SBE/DBE Goals. Likewise, if the LD conducts Early Works, any SBE/DBE participation will be reported to the City to apply applicable utilization credit to the SBE/DBE Goals.

1.3.1 SBE/DBE Open Ended Performance Plan[3] ("OEPP")

At the time of Proposal, D&C Proposers must submit a complete SBE/DBE Open-Ended Performance Plan (OEPP) with its proposal. The OEPP verifies the D&C Proposer's commitment to meet the SBE and DBE Goals with details of anticipated subcontracting opportunities. In the OEPP, D&C Proposers must submit a narrative detailing how the OEPP was formulated and how it will be successfully implemented with respect to all 4 SBE/DBE Goals referenced below. The OEPP must show enough work opportunities for SBEs & DBEs to achieve the SBE and DBE Goals.

[3] Pursuant to USDOT's Final Rule 2024 and 49 CFR Part 26, Section 26.53

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The OEPP must include a commitment to use good faith efforts to meet the Goals and provide details of the types of subcontracting work or services with projected dollar amounts and percentages that the D&C Proposer will solicit SBEs & DBEs to perform. The OEPP must include an estimated time frame in which actual SBE and DBE subcontracts would be executed.

The OEPP must at a minimum add up to the dollar value of the SBE and DBE goal percentages when it is submitted at time of proposal. An example of the datasets required is included in the SBE/DBE Plan. D&C Proposers will be required to include 4 separate tables (with the required datasets included in each table) in the OEPP:

- **Table 1 for the 20% SBE Goal for the Design and Professional Services portion**
- **Table 2 for the 5% DBE Woman-Owned Goal for the Design and Professional Services portion**
- **Table 3 for the 15% SBE Goal for the Construction portion**
- **Table 4 for the 5% Black & Woman-Owned DBE Goal for the Construction portion**

A complete OEPP includes:
The 4 separate tables described above which details the following:
  - Anticipated Work Type
  - Anticipated Timeframe of that Work
  - Anticipated Time frame in which actual subcontracts would be executed
  - Anticipated Dollar Value & Percentage of the Work Opportunities
  - Adds up to the Dollar Value & Percentage of the specific SBE/DBE Goal
- Narrative detailing how the OEPP was formulated and how it will be successfully implemented with respect to all 4 SBE/DBE Goals
- Statement of Commitment from the D&C Proposer that it will use Good Faith Efforts to meet the SBE/DBE Goals throughout the life of the project.

D&C Proposer must submit a complete OEPP **at time of proposal** in order to be considered responsive for purposes of SBE/DBE.

Required Columns for each of the 4 tables is provided in detail below. Please note that D&C Proposer will need to create their own tables to add rows accordingly.

Required Columns for Table 1 for the 20% SBE Goal for the Design and Professional Services portion:

Anticipated SBE Work Activity/ Scope of Work*	Anticipated Time Frame of when subcontract will be executed	Anticipated Time Frame of work	Estimated Dollar Value for SBE Participation	Anticipated SBE %
		Total:	$	%

Required Columns for Table 2 for the 5% DBE Woman-Owned Goal for the Design and Professional Services portion:

For Each Anticipated DBE Work Activity/	Anticipated DBE Woman-Owned DBE	Anticipated Time Frame of when	Anticipated Time Frame of work	Estimated Dollar Value	Anticipated DBE Woman-Owned %

Scope or Work, Proposer Must Acknowledge that it will be Performed by a Woman-Owned DBE firm by Notating "CONFIRM"*	Work Activity/Scope of Work*	subcontract will be executed		for DBE Participation	
			Total:	$	%

Required Columns for Table 4 for the 15% SBE Goal for the Construction portion:

Anticipated SBE Work Activity/Scope of Work*	Anticipated Time Frame of when subcontract will be executed	Anticipated Time Frame of work	Estimated Dollar Value for SBE Participation	Anticipated SBE %
		Total:	$	%

Required Columns for Table 4 for the 5% Combined Black & Woman-Owned DBE Goal for the Construction portion:

For Each Anticipated DBE Work Activity/Scope or Work, Proposer Must Acknowledge that it will be Performed by a Black-Owned DBE and/or Woman-Owned DBE firm by Notating "CONFIRM"*	Anticipated DBE Work Activity/Scope of Work	Anticipated Time Frame of when subcontract will be executed	Anticipated Time Frame of work	Estimated Dollar Value for DBE Participation	Anticipated DBE %
			Total:	$	%

*Please note that the selected Design-Builder will be required to update the above tables as required in Sections 1.5.1, 1.5.2, 1.5.3 and as requested by CCO. Additionally, the selected Design-Builder will be required to Identify the above DBE NAICS Work Codes for the SBE/DBE work activity/scope of work/certification categories for the aforementioned updates.

1.3.2 SBE Set-Aside(s)

SBE set-asides requirements apply to this project.

Design and Professional Services:

Design-Builder must include at least one SBE designer for the Project Agreement phase. This participation will count towards the Design and Professional Services SBE/DBE Goals.

Construction:

Proposer must set-aside the following scopes of work based on the below percentages:

CATEGORIES	SET-ASIDE PERCENTAGE (%) *At a minimum*
Concrete Contractor	10%
Earthwork & Paving	100%
Drywall	30%

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Electrical	10%
Insulation/Acoustical	100%
Landscape	100%
Traffic Control	100%
Trucking and Hauling	75%
Construction Clean-up	100%

The above SBE set-aside participation will count towards the Construction SBE/DBE Goals.

1.3.3 SBE/DBE Goals during Maintenance Period

Terms defining SBE/DBE utilization for the Maintenance Period (see above table) are to be determined and will be updated at least six (6) months prior to substantial construction completion is reached.

1.4 Liaisons

To meet the complexity and long-term nature of this Project, PNC will identify a Lead Developer Small Disadvantaged Business Liaison (“**LD Liaison**”) and will also require Design-Builder to specify an SBE/DBE Liaison (“**DB SBE/DBE Liaison**”, which together with the LD Liaison are referred to as “**Liaisons**” in this document). This structure is intended to maintain accountability and transparency of buyers throughout both the PDA Term and Project Agreement Term.

Each Liaison will be required to be knowledgeable of supplier inclusion principles and have experience in compliance and in utilizing small businesses via a disadvantaged business program.

As determined by the SFMTA CCO, the LD Liaison and DB SBE/DBE Liaison must meet with the City at a mutually agreed upon time regarding this SBE/DBE Plan and/or on any SBE/DBE issues.

1.4.1 Lead Developer Liaison

To administer the small disadvantaged business program for the Bus Yard Infrastructure Facility, LD has identified Rosales Business Partners LLC and Yerba Buena Advisors LLC as the Lead Developer Liaison. The LD Liaison will have direct, independent access to LD executive officer concerning SBE/DBE program matters and will be the City’s point of contact for items related to SBE/DBE participation.

Additionally, the LD Liaison (or their designee), will be responsible for implementing the following aspects of the Bus Yard Infrastructure Facility SBE/DBE Program including:

- During PDA Term
    - Conducting SBE/DBE outreach efforts to notify the SBE/DBE community of the Project during the PDA Term. Outreach efforts shall include holding a public workshop for applicable contractor communities to publicize anticipated contracting opportunities for the Project. The workshop may be held independently or in conjunction with other SBE/DBE outreach efforts;
    - Monitoring SBE/DBE participation and performance of a Commercially Useful Function (CUF) and ensuring that SBEs/DBEs have the correct SBE/DBE certification for work performed, including for any Early Work activities;
    - Reporting SBE/DBE participation to the City; and

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  - Confirming that all Design-Builder solicitation documents include information about SBE/DBE participation including specific requirements to be responsive.

- During Project Agreement Term
  - Implementing small business assistance training and educational activities to support SBE/DBE growth and development;
  - Confirming Good Faith Efforts for SBE/DBE participation conducted by Design-Builder to meet their respective SBE/DBE Goals stated in this Plan;
  - Providing confirmation of the results of SBE/DBE responsiveness of bids/proposals to SFMTA CCO (including all SBE/DBE certification verifications, completed Good Faith Efforts taken by Design-Builder);
  - Receiving concerns from SBEs/DBEs (e.g., non utilization, etc.) and guiding SBEs/DBEs to address concerns with Design-Builder;
  - Ensuring retainage payments are returned to each subcontractor within 30 days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of CCO. If the Contractor does not pay its subcontractor as required, it shall pay interest to the subcontractor at the legal rate set forth in California Code of Civil Procedure Section 685.010(a). This information is to be submitted to CCO upon request.;
  - Confirming nondiscrimination in subcontracting; and
  - Requiring clear selection procedures and criteria when the LD or Design-Builder decide to have a competitive procurement. The LD Liaison will certify any competitive procurement selection process for the Bus Yard Infrastructure Facility. Unless there is a rebid, the selection criteria/weights cannot be changed post bid.

- During both the PDA and Project Agreement Term
  - Utilizing good faith efforts to hire SBEs/DBEs for ongoing service contracts.

1.4.2 Design-Builder SBE/DBE Liaison

All Design-Build bidders will be required to identify an SBE/DBE Liaison.

The DB SBE/DBE Liaison will be responsible for implementing the SBE/DBE Program for the Bus Yard Infrastructure Facility, including:

- Holding a public workshop at least once annually for applicable contractor communities to publicize anticipated contracting opportunities for the Project. The workshop may be held independently or in conjunction with other SBE/DBE outreach efforts;
- Monitoring SBE/DBE participation and performance of a Commercially Useful Function (CUF) and ensuring SBEs/DBEs are certified under the appropriate SBE/DBE certification category and providing confirmation of such to LD Liaison;
- Confirming nondiscrimination/Contracts Assurances language is in all subcontract agreements and send to CCO;
- Maintaining all subcontracts agreements and provide to SFMTA upon request;
- Conducting Good Faith Efforts for SBE/DBE participation that meets the SBE/DBE Goals stated in this SBE/DBE Plan;
- Documentation of Good Faith Efforts outreach conducted. Design-Builder will provide results to LD Liaison for its review;

- Reporting SBE/DBE participation to the SFMTA CCO following LD review and approval;
- Updating, on a quarterly basis, the overall SBE/DBE OEPP to indicate completed, present and forecasted scopes of work to be performed by SBEs/DBEs. These updates should identify changes that impact SBE/DBE participation or confirm the overall OEPP remains the same because there are no changes that would impact SBE/DBE participation.
- Developing, in conjunction with the LD, a Mentor-Protégé Program and providing other small business assistance as appropriate; and
- Other duties as identified in this SBE/DBE Plan.

1.5 Subcontracted Goods and Services – SBE/DBE Goals

The established Goals for Design and Professional Services and Construction, respectively, will be applied to subcontracted goods and services. Selected Design-Builder will be responsible for obtaining a valid copy of SBE/DBE certifications issued by the applicable certifying agency from subtier bidders at time of subtier bid opportunity.

1.5.1 Design and Professional Services Subcontracting

At the time of bid submission, bidding Design-Builders for the Bus Yard Infrastructure Facility must provide an OEPP to be responsive (see Section 1.3.1). Due to the contractual structure of this Project, the OEPP must include the PDA Lead Architect (Arcadis/IBI Group) to continue in its role as the Lead Architect during the Project Agreement phase. Additionally, the proposing Design-Builders must commit in its OEPP to include at least one SBE designer for the Project Agreement phase.

To allow for adequate time for selected Design-Builder to bid out all Design and Professional Services scopes of work, within sixty (60) days of contract award, the successful Design-Builder shall identify all SBE/DBE subconsultants, vendors, and lower tier subconsultants that the Design-Builder will rely on to meet the SBE/DBE Goals. New subconsultants may be added at this time at the Design-Builder's discretion; however, no SBEs/DBE listed at time of proposal submission can be substituted, removed from the Contract or have its Contract, purchase order or other form of agreement reduced without LD/SFMTA CCO's prior approval. SBE/DBE agreements may be modified to increase contract amount without LD/SFMTA CCO's prior approval.

The Forms listed below will need to be submitted by the successful Design-Builder within 60 days of contract award.

SBE/DBE Form No. 1	Consultant/Joint Venture Partner and Subconsultant Participation Report
SBE/DBE Form No. 2A	Bidders List
SBE/DBE Form No. 2B	SBE/DBE Consultant/Joint Venture Partner/Subconsultant Gross Revenue Declaration
SBE/DBE Form No. 3	Questionnaire on Recruitment, Hiring, and Training Practices for Consultants
SBE/DBE Form No. 4	Subconsultant Participation Declaration
SBE/DBE Form No. 5	Small Business Enterprise/Disadvantaged Business Enterprise Acknowledgment Declaration

1.5.2 Construction Subcontracting

At the time of bid submission, bidding Design-Builders for the Bus Yard Infrastructure Facility must provide an OEPP. All SBE Set-Asides identified in Section 1.3.2 above must be included in the OEPP.

To allow for adequate time for selected Design-Builder to bid out all Construction scopes of work, within 90 days after Notice To Proceed (NTP), the successful Design-Builder will identify all SBE/DBE subcontractors, vendors, and lower tier subcontractors that the Design-Builder relies on to meet the SBE/DBE Goals. New subcontractors may be added at the Design-Builder's discretion; however, no SBEs/DBEs listed at time of proposal submission can be substituted, removed from the Contract or have its Contract, purchase order or other form of agreement reduced without LD/SFMTA CCO prior approval. SBE/DBE agreements may be modified to increase contract amount without LD/SFMTA CCO prior approval.

The Forms listed below will need to be submitted by the successful Design-Builder within 90 days after NTP.

SBE/DBE Form No. 1	Contractor/Joint Venture Partner and Subcontractor Participation Report
SBE/DBE Form No. 2A	Bidders List
SBE/DBE Form No. 2B	SBE/DBE Contractor/Joint Venture Partner/Subcontractor Gross Revenue Declaration
SBE/DBE Form No. 3	Construction Employment Information
SBE/DBE Form No. 4	Subcontractor Participation Declaration
SBE/DBE Form No. 5	Small Business Enterprise/Disadvantaged Business Enterprise Acknowledgment Declaration

1.5.3 OEPP Updates

The selected Design-Builder must update its SBE/DBE OEPP at least quarterly (January 15, April 15, July 15 and October 15) to:

1. Demonstrate how the LD/Design-Builder is meeting and forecasting to meet its SBE/DBE Goals (reference Section 1.3 and 1.5 above).
2. Identify DBE NAICS Work Codes for the SBE/DBE work activity/scope of work/certification categories that will be used to pursue SBE/DBE Subcontractors
3. SFMTA CCO will provide ongoing monitoring in order to evaluate whether the LD/Design-Builder is using good faith efforts to comply with the OEPP and schedule. SFMTA CCO must approve all changes to OEPP.
4. SFMTA and LD/Design-Builder may agree to make written revisions to the OEPP throughout the life of the project as long as the LD/Design-Builder continue to use good faith efforts to meet the Goals.

1.6 Good Faith Efforts

LD & Design-Builder must make good faith efforts to enter into contracts with SBEs/DBEs and give good faith consideration to bids and proposals submitted by SBEs/DBEs.

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As part of LD's Good Faith Efforts ("**Good Faith Efforts**") to reach the SBE/DBE Goals identified, the LD will cause the following to be performed:

1.6.1 Advance Notice

During the Project Agreement Term, notify SFMTA CCO in writing of all upcoming solicitations of proposals for work under a Contract at least fifteen (15) business days before issuing such solicitations to allow opportunity for LD/SFMTA CCO to help identify the possible SBE/DBE categories that the Design-Builder should outreach to for the Contract scope of work.

1.6.2 Contract Size

Where practicable, the Design-Builder in their sole discretion, may divide the work in order to encourage maximum SBE/DBE participation. The Design-Builder will identify specific items of each Contract that may be performed by Subcontractors.

1.6.3 Advertise

LD and Design-Builder will advertise all upcoming proposals/solicitations for at least 30 days where an SBE/DBE opportunity has been identified. This will ensure an adequate amount of time is given to all bidders to prepare and submit their bids/proposals. Advertise for professional services and contracting opportunities in media focused on small disadvantaged businesses.

1.6.4 Pre-Bid Meetings

As Design-Builder deems necessary, convene pre-bid or pre-solicitation meetings no less than 15 days prior to the opening of bids and proposal to provide opportunity for SBEs/DBEs to ask questions about the selection process and/or technical specifications or requirements.

1.6.5 SFMTA CCO Invitation

If a pre-bid meeting or other similar meeting is held with proposed bidders, Design-Builder must invite the SFMTA CCO to the meeting to allow SFMTA CCO along with the Design-Builder to address the SBE/DBE Goal(s) and answer any SBE/DBE related questions.

1.6.6 Follow-up with Interested SBE/DBE Bidders

Design-Builder will follow-up on initial solicitations of interest by contacting SBEs/DBEs to determine with certainty whether they are interested in performing specific scopes of work. Each attempt to contact SBEs/DBEs, including by phone or email, shall be documented.

1.6.7 Outreach

The Design-Builder will a) provide SBEs/DBEs with applicable and necessary plans, specifications, and requirements for all or part of the Project; and b) notify organizations that disseminate bid and contract information. The DB SBE/DBE Liaison will conduct outreach to SBEs/DBEs for all buying opportunities in the applicable trades, professional services, and material (supplies, equipment) needs in order to encourage SBEs/DBEs to participate on the Project.

The LD requires Design-Builder to implement the following when outreaching to SBEs/DBEs:

- Communicate subcontracting opportunities early, consistently, and through multiple channels. This outreach should communicate anticipated buying needs, solicit SBEs'/DBEs' interest in specific contracting opportunities, and encourage SBEs/DBEs to attend future pre-bid meetings.
- Provide an interactive web link to bidding opportunities or a list of bidding opportunities on the Design-Builder's webpage, bidding software, or similar web-based platform.

- Post award results on the Design-Builder's webpage, bidding software, or similar web-based platform.

1.6.8 Contacts

Make contacts with SBEs/DBEs, associations, development centers, or any agencies which disseminate bid and contract information. These contacts will be used to advertise bidding opportunities and general project updates.

1.6.9 Nondiscrimination & Incorporation into Contract Provisions

For each Contract that the LD and Design-Builder enters into with a Contractor or Consultant, the LD and Design-Builder will include a Contract provision requiring the Contractor or Consultant to comply with the terms of SFMTA's SBE/DBE Program and this Plan and setting forth the applicable SBE/DBE Goal(s) as appropriate for such Contract.

LD and its Design-Builder shall not discriminate in its selection of Contractors and Consultants, and such Contractors and Consultants shall not discriminate in their selection of Subcontractors, Subconsultants, and Suppliers against any person on the basis of race, color, sex or national origin in the award and administration of DOT-assisted contracts. The City and County of San Francisco also prohibits discrimination on 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, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status).

For the purpose of clarity, exercise of subjective aesthetic taste in selection decisions for design professionals shall not be deemed discriminatory and the exercise of its commercially reasonable judgment in all hiring decisions shall not be deemed discriminatory.

LD/Design-Builder will submit copies of all subcontracts to CCO as they are executed. It is the responsibility of the prime contractor to ensure that every executed subcontract on this project includes the exact non-discrimination language contained in the Contract Assurances section of the SBE/DBE Program, which is as follows:

> The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:
>
> (1) Withholding monthly progress payments;
>
> (2) Assessing sanctions;
>
> (3) Liquidated damages; and/or
>
> (4) Disqualifying the contractor from future bidding as non-responsible.

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1.6.10 Maintain Records and Cooperation
LD and Design-Builder shall maintain records of SBEs/DBEs that are awarded Contracts for five years following the expiration of the Design-Builder contract. If requested, LD and Design-Builder will meet and confer with SFMTA CCO as reasonably required in addition to the meet and confer sessions described below in Section 1.6.12 to identify a strategy to meet the SBE/DBE Goal(s). At the SFMTA CCO request, LD shall provide or cause Design-Builder to provide information to SFMTA CCO within 21 calendar days so SFMTA CCO can monitor compliance with the SBE/DBE Plan.

1.6.11 Quarterly and Annual Reports
During the Project Agreement Term the SBE/DBE Liaison(s) shall prepare a quarterly (due January 15, April 15, July 15 and October 15) and annual report (due January 31 for the prior year) of SBE/DBE Goals attainment and submit to SFMTA CCO. Details of reporting requirements are found in Section 1.11.

1.6.12 Meet and Confer
Commencing with the Contract that is executed for a Design-Builder and every six (6) months thereafter, or more frequently if requested by any of the parties listed in this section, the LD, Design-Builder, and SFMTA CCO shall meet in order to ascertain whether there are deficiencies to any of the SBE/DBE Goals and, in such cases, execute plans to perform good faith efforts and adjust the SBE/DBE OEPP. For any concerns raised by SFMTA CCO, the LD, Contractor, Consultant, and/or Subcontractor shall be required to meet with SFMTA CCO within 21 days of SFMTA CCO's meeting request.

1.6.13 Documenting Good Faith Efforts Outreach
Design-Builder may be asked to provide documentation of its outreach efforts that were conducted to select SBEs/DBEs to meet the SBE/DBE Goal(s). This documentation shall be provided to LD within 5 business days of request. At minimum, Design-Builder must maintain the following documentation:

- The name of each listed subcontractor, the dollar amount of each subcontract and the scope of work to be performed under the subcontract;
- For each subcontractor listed, identify whether the firm is a
    - SBE;
    - Woman-Owned DBE construction, professional services, and/or goods and other services firm;
    - Black-Owned DBE construction firm; or
    - Non-SBE/DBE;
- Provide copies of all of the Subcontractor Bids submitted (including bids that were not accepted), if applicable. The information should include the name of the firm, bid amount, scope of work, and the SBE/DBE or /Non-SBE/DBE status as noted in the second bullet above.
- In cases where both SBEs/DBEs and Non-SBEs/DBEs submitted bids for the same scope of work and where the Non-SBE/DBE was selected, provide a full and complete statement of the reason(s) for selection of each non-SBE/DBE Subcontractor, if applicable.
- In cases where only Non-SBEs/DBEs submitted bids for a particular scope of work and where a Non-SBE/DBE was selected, the bidder shall note that this is the case, provide

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the scope of work, and state the efforts made to outreach to SBEs/DBEs for the stated scope of work, if applicable.

LD will not allow D&C Proposers to accept unwritten (verbal) bids except in the case of an applicable State of Emergency proclaimed by City, State, or Federal agency. In the unlikely event that the Design-Builder accepts an unwritten bid, then they will be required to submit a written statement containing the information: 1) the amount of each oral Bid; 2) separately, for each subcontract, a full and complete statement of the reason(s) for selection of the Subcontractor.

1.7 Best Faith Outreach

In addition to the above identified Good Faith Efforts, Design-Builder is encouraged to take on the following best faith efforts to maximize SBE/DBE participation:

- Meet with Tier 1 Subontractors bi-weekly, or more often as appropiate, to confirm compliance with this Plan.
- Develop a pre-qualification process that reviews lower tier partners from a best-value perspective that weighs SBE/DBE status of bidder, or experience with meeting SBE/DBE Goals in the overall selection criteria, and/or plans to hire local residents.
- Recognize lower tier contractors successful in meeting SBE/DBE Goals through formal awards programs, team lunch for onsite labor, or other methods.
- Identify non-traditional opportunities for SBE/DBE participation such as insurance, safety, equipment, technology, signage, translation services and services for construction office facilities.
- Require lower-tier Subcontractors and Subconsultants to establish a contract-specific goal for SBE/DBE participation.
- Require Subcontractors that are not compliant with this SBE/DBE Plan to prepare a Subcontracting/Vendor Plan indicating how it plans to improve upon its Good Faith Efforts as identified in Section 1.6 within 30 days of notice.
- Provide tracking of the above listed activities in a monthly report to LD.

1.8 Assistance to Small Businesses

As part of the LD's technical assistance and capacity building proposal, theDesign-Builder will need to cooperate with the LD in developing a capacity building initiative that is multi-pronged and designed to support certified SBE/DBE growth and development. The objective of the program is to enhance the capabilities and technical development of SBEs/DBEs, improve their ability to successfully grow and compete on this Project, and assist in building relationships with LD, Design-Builder, and City or corporate buyers for future teaming opportunities. The success of the program depends on the level of commitment by all parties involved.

Below outlines capacity building initiatives that LD anticipates to be offered throughout the Bus Yard Infrastructure Facility:

- **Education and Training Program** provide lower tier SBEs/DBEs with technical assistance and capacity building services by partnering with existing small business advocacy organizations; support SBE/DBE eligible companies in navigating the certification process; and/or sponsor SBE/DBE executive(s) in attending business

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training programs (such as Dartmouth University's Tuck Diversity Business Program or other similar program providing multi-day executive level capacity building).

- **Mentor-Protégé Program** – As part of the LD's mentoring/coaching proposal, the Design-Builder will need to cooperate with the LD in developing a Mentor-Protégé Program or similar program with the goal to improve SBE/DBE participants' ability to compete effectively for contracts. The Mentor-Protégé program should identify Mentor(s) (project personnel with financial decisionmaking responsibilities) providing training, networking, and general mentorship to Protégé(s). The intent is for the proteges to be SBE/DBE subcontractors on the BYC. Additionally, the Mentor-Protégé program should provide a framework that identifies the number of mentor-protégé teams, specific activities to be conducted, tracking and reporting plan, and how success will be measured.

1.9 SFMTA CCO Obligations

The following are obligations of SFMTA CCO:

1.9.1.1 During the fifteen (15) business day notification period for upcoming Contracts (as required by Section 1.6.1), SFMTA CCO will help assist the LD and/or Design-Builder in identifying the possible applicable SBE/DBE categories/NAICS Work Codes so that the LD and/or Design-Builder can send such notification to SBEs/DBEs to alert them to upcoming contracting opportunities as performance of Good Faith Efforts outreach. LD and/or Design-Builder must provide SFMTA CCO an Engineer's Estimate and/or breakdown of the scope of work at the earliest practicable time so SFMTA CCO can provide its assistance. The Liaisons will submit a list of the possible SBE/DBE categories/NAICS Work Codes for SFMTA CCO to review. Once SFMTA CCO has this necessary information (including any clarifications that SFMTA CCO may need), it shall respond within 5 business days to determine if there are additional categories/NAICS Work Codes that should be outreached to.

1.9.1.2 Provide assistance to LD/Design-Builders or their lower tier Subcontractors or Subconsultants on how to navigate through the SBE/DBE Directories in order to obtain contact information to perform Good Faith Efforts outreach to SBEs/DBEs.

1.9.1.3 Review quarterly and annual reports of SBE/DBE Goals. When necessary, in a timely manner give suggestions as to how best to maximize SBEs/DBEs ability to compete and win procurement opportunities.

1.9.1.4 Provide guidance to the LD and its Design-Builders when there are challenges in meeting SBE/DBE Goal(s).

1.9.1.5 Assist LD and Design-Builders in implementing its SBE Trucking program.

1.9.1.6 Meet as needed with City and LD, Design-Builders and/or Subcontractors regarding SBE/DBE participation questions or concerns.

1.10 SBE Trucking Program

The Design-Builder must set aside at least 75% of eligible trucking work to SBE Trucking Firms. The Design-Builder must coordinate with its Subtiers to determine and manage the trucking needs for the Project.

The Design-Builder shall actively engage SBE certified trucking firms to the maximum extent possible to participate on the Bus Yard Infrastructure Facility. When the 75% SBE requirement

is not being met in a given month, the Design-Builder shall immediately inform the SFMTA CCO.

Additionally, if it is determined that there is specialized trucking that would impact the ability of trucking SBEs to perform such work, the Design-Builder must communicate this immediately to the LD, SFMTA CCO, and SBE trucking firm(s).

The Design-Builder must notify the LD/SFMTA CCO 21 days prior to the start of any trucking work. For months where there is trucking, the Design-Builder shall submit a monthly report to LD/SFMTA CCO (by the last day of each month) certifying that the 75% SBE Set-Aside trucking requirement is being met or provide the Good Faith Efforts documentation performed for all trucking work as prescribed in Section 1.6 and this section above.

1.11 Reporting and Monitoring

Each Contractor, Consultant, and its Subcontractors and Subconsultants, as applicable, shall maintain accurate records demonstrating compliance with the SBE/DBE Goals. LD shall create a reporting method for tracking SBE/DBE participation. Data tracked shall include information identified on SBE/DBE Form No. 6 (Progress Payment Report), including:

- Name/Type of Contract(s) let (e.g. civil engineering contract, environmental consulting, etc.)
- Name of Prime Contractors, including identifying which are
    - SBEs,
    - Woman-Owned DBEs (construction, professional services, and/or goods and other services),
    - Black-Owned DBEs (construction), and
    - Non-SBEs/DBEs
- Name of Subcontractors, including identifying which are
    - SBEs,
    - Woman-Owned DBEs (construction, professional services, and/or goods and other services),
    - Black-Owned DBEs (construction), and
    - Non-SBEs/DBEs
- Scope of work performed by SBEs/DBEs (e.g., under an architect, an SBE/DBE could be procured to provide renderings)
- Dollar amounts (invoiced and paid) associated with both SBE/DBE and non-SBE/DBE Contractors at both Design-Builder and Subcontractor levels
- Total SBE/DBE participation as defined as a percentage of total Contract dollars

SFMTA CCO will review LD data tracking methods to confirm compliance with SBE/DBE Form 6.

Additionally, Design-Builder will submit SBE/DBE Form 9 (Contractor Exit Report and Declaration) for each SBE/DBE at time of each SBE/DBE's final progress payment.

1.12 Written Notice of Deficiencies or Other Causes

If based on a complaint, failure to report, or other cause, then the SFMTA CCO has reason to question the SBE/DBE participation of LD, Contractor, Subcontractor, Consultant or

Subconsultant. The SFMTA CCO shall provide written notice to the LD, each affected Contractor or Consultant and, if applicable, also to its Subcontractor or Subconsultant of such alleged deficiency or other causes. The LD, Contractor or Consultant and, if applicable, the Subcontractor or Subconsultant, shall have up to 30 days to demonstrate to the reasonable satisfaction of the SFMTA CCO that it has exercised good faith to satisfy its obligations under the SFMTA's SBE/DBE Program and this Plan. When deficiencies or other causes are noted, SFMTA CCO will work with the appropriate SBE/DBE Liaison(s) to address such deficiencies or other causes.

1.13 Remedies/Penalties/Enforcement Mechanisms

The following shall apply for any non-compliance of this Plan in the design, construction, and ongoing asset management of the Bus Yard Infrastructure Facility:

For any noncompliance concerns, the LD, Contractor, Consultant, and/or Subcontractor shall be required to meet with SFMTA within 21 days of SFMTA's meeting request.

In situations where the noncompliance concerns/issues cannot be successfully resolved and the LD, Contractor, Consultant, or Subcontractor is found by the SFMTA CCO to be noncompliant with the following sections: Good Faith Efforts/OEPP; SBE Trucking Program; Meet and Confer; Quarterly and Annual Reports, the LD, Contractor, Consultant, or Subcontractor shall be subject to the Noncompliance Regime outlined in the Project Agreement.

The LD, Contractor, Consultant, or Subcontractor shall be subject to the Noncompliance Regime outlined in the Project Agreement in the following cases where the SFMTA CCO has determined that the LD, Contractor, Consultant, or Subcontractor:

1) has not met its written commitment to an individual SBE/DBE and failed to provide a justifiable reason(s) for not meeting said commitment; and/or
2) has not met its SBE/DBE Goals(s) and failed to demonstrate substantial Good Faith Efforts/OEPP to meet the SBE/DBE Goal(s) of the Plan.

Reporting to DOT/Penalties/Debarment

SFMTA will bring to the attention of DOT any false, fraudulent, or dishonest conduct in connection with the Program, so that DOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules).

Contractor may also be subject to penalties and/or a debarment action under the San Francisco Administrative Code. Failure to comply with the requirements of the SBE/DBE Program constitutes a material breach of Contract and may be grounds for termination of the Contract. Funds may also be withheld under the Contract pending investigation of a complaint of violation of the SBE/DBE Program.

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POTRERO YARD MODERNIZATION PROJECT

Exhibit 18:

Technical Requirements

November 15, 2024

FINAL

PREDEVELOPMENT AGREEMENT

by and between

THE CITY AND COUNTY OF SAN FRANCISCO

acting by and through the

SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY

and

POTRERO NEIGHBORHOOD COLLECTIVE LLC

Potrero Yard Modernization Project

November 2, 2022

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PREDEVELOPMENT AGREEMENT

This Predevelopment Agreement (this "**Agreement**") dated for reference purposes only as of November 2, 2022, is by and between the **CITY AND COUNTY OF SAN FRANCISCO** ("**City**"), a municipal corporation acting by and through the **SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY** ("**SFMTA**"), and **POTRERO NEIGHBORHOOD COLLECTIVE LLC**, a limited liability company organized under the laws of the State of Delaware ("**Lead Developer**" or "**LD**"). City and Lead Developer are also each referred to as a "**Party**" and together referred to as the "**Parties**" below.

RECITALS

A. City, under the jurisdiction of the SFMTA, owns the real property commonly known as 2500 Mariposa Street in San Francisco, California, which is a 4.4-acre site comprised of Assessor's Block No. 3971-001, bounded by Bryant Streets, 17th Street, Hampshire Street, and Mariposa Street, and fully described on the attached Appendix A (the "**Project Site**").

B. The Project Site is currently improved with a two-story structure used for electric trolley bus parking, operations, and maintenance services and an open trolley bus storage yard, which do not have the capacity to meet current needs, expected future needs, or modern safety and maintenance standards. City policy also promotes using public lands to build affordable housing to the greatest extent possible.

C. On August 21, 2020, San Francisco Public Works issued a Request for Qualifications on behalf of the SFMTA (together with all its addenda, the "**RFQ**") to invite interested parties to submit a statement of qualifications to design, build, finance and maintain the Infrastructure Facility (as defined in Article 1 (*Definitions*)) at the Project Site and design, build, finance, operate and maintain the Housing and Commercial Component (as defined in Article 1 (*Definitions*)) at the Project Site.

D. City determined Lead Developer and two other respondents to the RFQ were the three most qualified respondents to the RFQ and invited those three respondents to respond to a Request for Proposals for the development of the Project, which was issued by City on April 9, 2021 (the "**Initial RFP**"). The Initial RFP and all addenda to the Initial RFP shall be collectively referred to in this Agreement as the "**RFP**".

E. On December 30, 2021, Lead Developer submitted a proposal to City in response to the RFP (the "**Original Proposal**") offering to perform predevelopment services and negotiate the form of the Project Agreement, the Housing and Commercial Component Agreement with respect to the Housing and Commercial Component (as defined in Article 1 (*Definitions*)) to develop and deliver the Project.

F. On May 26, 2022, City issued Addendum #30 to the RFP requesting proposal revisions from eligible proposers.

G. On July 20, 2022, Lead Developer submitted its revised response to the RFP, which was clarified through the request for clarifications process set forth in the RFP. The Original Proposal and the revised response to the RFP, as clarified, are collectively referred to as (the "**Proposal**").

H. On September 12, 2022, Lead Developer was selected by City as the preferred respondent with the best-value proposal to the RFP.

I. Lead Developer and City wish to enter into this Agreement to provide for terms and conditions of the following predevelopment activities needed for timely delivery of the Project (as defined in Article 1 (*Definitions*)): (i) negotiating and finalizing agreements that are necessary for the Project, (ii) preparing and obtaining design documents, due diligence materials, and other development materials and analyses, (iii) preparing the analysis for any early works to prepare the Project Site for the Project during the PDA Term and if approved by City, performing that early work, (iv) negotiating and finalizing the MME Construction Agreement (as defined in Article 1 (*Definitions*), (v) developing the commercial and financing structure for the Project and negotiating and finalizing the related financing documents, (v) procuring a design-build contract for the construction of the Infrastructure Facility, (vi) procuring a facility maintenance contract for certain elements of the Infrastructure Facility, and (vii) any other predevelopment activities necessary to develop the Project and Project Documents to timely reach Commercial Close (as defined in Article 1 (*Definitions*)) and IF Financial Close and HCC Financial Close (each as defined in Article 1 (*Definitions*) below).

J. This Agreement addresses predevelopment activities only and does not commit City to any definite course of action with respect to approval of the Project or any portion of the Project. City will not consider approval of the Project until the City has completed environmental review with respect to the Project in compliance with the CEQA (as defined in Article 1 (*Definitions*) below) and City's CEQA procedures, as set forth in San Francisco Administrative Code Chapter 31. Accordingly, notwithstanding this Agreement, City and any other public agencies with jurisdiction over any part of the Project each shall have the absolute discretion to (a) require modifications to the Project and/or implementation of specific measures to mitigate significant adverse environmental impacts; (b) select feasible alternatives that avoid significant adverse impacts of the Project, including the "no project" alternative; (c) reject all or part of the Project if the economic and social benefits of the Project do not outweigh otherwise unavoidable significant adverse impacts of the Project; (d) approve the Project upon a finding that the economic and social benefits of the Project outweigh otherwise unavoidable significant adverse environmental impact of the Project; and (e) deny the Project.

AGREEMENT

1. DEFINITIONS

1.1. "**100% SD Package**" is described in Section 3.2 (*100% SD Package*) of Appendix B-2.

1.2. "**50% SD Package**" is described in Section 3.1 (*50% SD Package*) of Appendix B-2.

1.3. "**Access Agreement**" is defined in Section 6.3 (*Due Diligence Investigation*).

1.4. **"Additional HCC Materials"** is defined in Section 6.9(h) (*Additional HCC Materials*).

1.5. "**Affiliate**" means any of the following: (a) any Equity Member; (b) any Person that directly or indirectly through one or more intermediaries controls, or is controlled by, or is under common control with Lead Developer or any Equity Member; and (c) any Person owned in whole or in part by (i) Lead Developer, (ii) any Equity Member, or (iii) any Affiliate of Lead Developer under clause (b) of this definition, whether the ownership interest is direct or indirect,

beneficial or of record, provided that ownership of less than 10% of the equity interest in a Person shall not give rise to Affiliate status. For the purpose of this definition, "control" means the power to direct the management of a Person, whether through voting, nomination, or other selection rights, by contract, through family relationship, or by other means.

1.6. "**Affordable Housing Developer**" means each of Mission Economic Development Agency, Young Community Developers, Inc., and Tabernacle Community Development Corp.

1.7. "**Affordable Units**" means the affordable units in the Proposed HCC, which are comprised of three low income projects (senior housing facing Bryant Street and two family housing projects along the southwestern corner of the Facility, with each containing between 80-110 units), and one moderate income project (containing approximately 284 units), subject to any modification pursuant to Section 9.2 (*HCC Change*) or Section 9.3 (*Changes Proposed by City*).

1.8. **"Agreement"** means this Predevelopment Agreement, including all appendices and attachments, as such agreement may be modified from time to time.

1.9. "**Allowance**" means any of the items identified in FS Form D of the Financial Proposal.

1.10. "**Applicable Law**" means all federal, state, local, and administrative laws, ordinances, resolutions, regulations, requirements, proclamations, orders, or decrees of any municipal, county, state, or federal government or other governmental or regulatory authority, board of fire underwriters, or any directive or occupancy certificate issued under any law by any public officer or officers acting in their regulatory capacity, in each case having the force of law and applicable to either of the Parties, the Project or any element of the Project, or the Project Site or any portion of the Project Site.

1.11. "**Area Median Income**" or "**AMI**" means median income as published annually by the San Francisco Mayor's Office of Housing and Community Development for the City and County of San Francisco, derived in part from the income limits and area median income determined by United States Department of Housing and Urban Development for the San Francisco area, adjusted solely for household size, but not high housing cost area.

1.12. "**Asset Management Program**" means a plan that describes all the management, engineering, repairs and maintenance, and other activities needed to provide a best-value level of service for the Facility as a whole during its operational life-cycle, and allocates responsibility for those activities between the Principal Project Company, the Housing Project Company, and City during the Infrastructure Facility Term and the Housing Term.

1.13. "**Asset Management Program Development Plan**" is described in Section 2.2.2.4 (*Asset Management Program Development Plan*) of Appendix B-2.

1.14. "**Availability Payment**" means the payments to be made by City to the Principal Project Company during the Infrastructure Facility Term in consideration for the Principal Project Company's services under the Project Agreement. The amount and timing of each Availability Payment will be established in the Project Agreement.

1.15. **"Base Date"** means July 20, 2022.

1.16. "**Base License Rights**" is defined in Section 11.2 (*Lead Developer IP*).

1.17. "**BEB Charging Equipment**" is described in Article 1 (*Introduction*) of Division 5 (*Battery-Electric Bus Supplemental Criteria*) of the Technical Requirements.

1.18. "**BEB Charging Infrastructure**" is described in Article 1 (*Introduction*) of Division 5 (*Battery-Electric Bus Supplemental Criteria*) of the Technical Requirements.

1.19. "**BIM Execution Plan**" or "**BEP**" is described in Section 2.2.2.2 (*BIM Execution Plan*) of Appendix B-2.

1.20. "**Board of Supervisors**" means the Board of Supervisors of the City and County of San Francisco.

1.21. "**Building Automation System**" or "**BAS**" means a computer-based system installed in buildings to control and monitor mechanical and electrical plants, including HVAC (heating, ventilation, air conditioning), lighting, power systems, fire systems, and security systems.

1.22. "**Building Information Modeling**" or "**BIM**" means a three-dimensional, digital, model-based process that gives owners, architects, engineers, contractors, and facility maintenance managers the insight and tools to more efficiently plan, design, construct, operate, and maintain buildings and infrastructure.

1.23. "**Business Day**" means any day that is not a Saturday or Sunday, a City public holiday, a State of California public holiday, or a federal public holiday.

1.24. "**Bus Yard Component**" or "**BYC**" means the Facility's transit component, which (a) will include the spaces needed for City's operation and maintenance activities at the Facility after Substantial Completion of the Infrastructure Facility, (b) must meet the Bus Yard Component criteria in the Technical Requirements except as otherwise approved by City in writing, which approval shall be at its sole discretion, and (c) will not be used for the Common Infrastructure.

1.25. "**CEQA**" is defined in Article 13 (*Final Action Subject to Environmental Review*).

1.26. "**CEQA and General Regulatory Approvals Plan**" is described in Section 2.2.3.2 (*Entitlements and General Regulatory Approvals Plan*) of Appendix B-2.

1.27. "**Change of Control**" means any Equity Transfer, transfer of an interest, direct or indirect, in an Equity Member, or other assignment, sale, financing, grant of security interest, hypothecation, conveyance, transfer of interest or transaction of any type or description, including by or through voting securities, asset transfer, contract, merger, acquisition, succession, dissolution, liquidation, bankruptcy or otherwise, that results, directly or indirectly, in a change in possession of the power to direct or control or cause the direction or control of the management of Lead Developer or a material aspect of its business. A change in possession of the power to direct or control or cause the direction or control of the management of an Equity Member may constitute a Change in Control of Lead Developer if such Equity Member possesses, immediately prior to such Change in Control, the power to direct or control or cause the direction or control of the management of Lead Developer. Notwithstanding the foregoing, the following shall not constitute a Change in Control:

(a) a change in possession of the power to direct or control the management of Lead Developer or a material aspect of its business due solely to bona fide open market transactions in securities effected on a recognized public stock exchange, including such transactions involving an initial public offering;

(b) an upstream reorganization or transfer of indirect interests in Lead Developer so long as no change occurs in the entity with ultimate power to direct or control or cause the direction or control of the management of Lead Developer;

(c) a change in possession of the power to direct or control the management of Lead Developer or a material aspect of its business due solely to a bona fide transaction involving a beneficial interest in the ultimate parent organization of an Equity Member (but not if the Equity Member is the ultimate parent organization) if the references, experience or financial statements of the ultimate parent organization were not considered or evaluated in the statement of qualifications or proposal, provided, however, that this exception shall not apply if at the time of the transaction the transferee is suspended or debarred from bidding, proposing or contracting with the City or any federal or State department or agency, or is subject to a suspension or debarment proceeding;

(d) an Equity Transfer, where the transferring Equity Member and the transferee are under the same ultimate parent organization ownership, management and control before and after the transfer; or

(e) a transfer of interests (i) between managed funds that are under common ownership, management or control or (ii) by an Equity Member to a fund, investment vehicle or other entity managed by or under common control of such Equity Member, except, in each case, a change in the management or control of a fund, investment vehicle or other entity, as applicable, that manages or controls; and

(f) the exercise of minority veto or voting rights (whether pursuant to applicable Law, by Lead Developer's organizational documents or by related member or shareholder agreements or similar agreements) over major business decisions of Lead Developer, provided that if such minority veto or voting rights are exercised pursuant to shareholder or similar agreements, City received copies of such agreements on or before the date of the Agreement.

1.28. "**City**" is defined in the Preamble.

1.29. **"City Agents**" means, collectively, employees, officers, members, managers, directors, agents, contractors, subcontractors, and consultants of City.

1.30. "**City Data**" means any information, data, or document, whether or not protectable Intellectual Property, which is created, developed, or collected by, or on behalf of, City related to transportation operations, national infrastructure planning and Personal Information of the City employees, vendors and consumers. For the avoidance of doubt, City Data shall include, but not be limited to, (a) all "nonpublic information," as defined by the Gramm-Leach-Bliley Act (15 USC § 6801 et seq.), (b) personal information as defined by California Civil Code §§ 1798.29, 1798.82, and 1798.140 (California Consumer Privacy Act of 2018, effective January 1, 2020), as amended and supplemented by the California Privacy Rights Act of 2020 (effective December 16, 2020; operative January 1, 2023), (c) protected health information or individually identifiable health information as defined by the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the Health Information Technology for Economic and Clinical Health (HiTECH) Act or as defined by the Code of Federal Regulations (45 CFR § 160.103), and/or (d) personal data as defined by the EU General Data Protection Regulation (Regulation (EU) 2016/679). For the further avoidance of doubt, City Data is not limited to proprietary or confidential information, and need not constitute trade secret information.

1.31. "**City Event of Default**" is defined in Section 19.2 (*City Event of Default*).

1.32. "**City IP**" means all Intellectual Property owned by, or sufficiently licensed to, City (other than pursuant to any license granted by the Lead Developer, any Lead Developer Related Entity or any owner of any Third Party IP under or as required by this Agreement).

1.33. "**City Predevelopment Cost**" is defined in Section 2.3(c) (*City Predevelopment Cost*).

1.34. "**City Project Director**" is defined in Section 7.3(b) (*For City*).

1.35. "**City Project Manager**" is defined in Section 7.3(b) (*For City*).

1.36. **"City Proposed Change"** is defined in Section 9.3(a).

1.37. "**claims**" means all claims, demands, rights, and causes of action.

1.38. "**COTS**" (or, "Commercially Available Off-the-Shelf Software") means Software (i) sold in substantial quantities, (ii) readily available to City without Lead Developer or third party participation, (iii) provided without modification in the same form in which it is sold in the commercial marketplace, and (iv) for which there are at least two (2) readily available alternative solutions or items with the same or substantially similar design, use or function as the proposed COTS. For the avoidance of doubt, COTS does not include so-called open source software or sole-source software.

1.39. "**Commencement Date**" means the date that City delivers Notice to Proceed #1 to Lead Developer under Section 4.2(a) (*Notice to Proceed #1*).

1.40. "**Commercial Close**" means the concurrent, full execution and delivery of both the Project Agreement and the HCC Agreement.

1.41. "**Common Infrastructure**" means the physical infrastructure component of the Facility that is shared by the Bus Yard Component and the Housing and Commercial Component, as further described in the Technical Requirements, and the criteria for which are set forth in the Technical Requirements, except as otherwise approved by City in writing, which approval shall be at its sole discretion.

1.42. "**Common Infrastructure Costs**" is defined in Section 2.6 (*Allocation of Common Infrastructure Costs*).

1.43. "**Conference/Media Summary**" is defined in Section 7.6(i) (*Press Conference or Media Activity*).

1.44. "**Construction Permitting Plan**" is described in Section 2.2.2.6 (*Construction Permitting Plan*) of Appendix B-2.

1.45. "**Contractor Procurement Plan**" is described in Section 2.2.4.1 (*Contractor Procurement Plan*) of Appendix B-2.

1.46. "**Cost and Risk Management Plan**" is described in Section 2.2.2.3 (*Cost and Risk Management Plan*) of Appendix B-2.

1.47. "**Cost Management**" is defined in Section 2.2.2.3 (*Cost and Risk Management Plan*) of Appendix B-2.

1.48. **"Covered Services"** is defined in Section 24.4(a) (*Covered Services*).

1.49. "DB" means design-build.

1.50. "**Debt Financing Plan**" is defined in Section 2.2.1.2 (*Financing Management Plan*) of Appendix B-2.

1.51. "**Design Deliverables**" is referenced in Appendix B-2.

1.52. "**Design-Build Contract**" is defined in Section 6.11 (*Design-Build Contract*).

1.53. "**Design-Build RFP**" means the request for proposals for the Design-Build Contract.

1.54. "**Design-Build RFQ**" means the request for qualifications for the Design-Build Contract.

1.55. "**Design Management Plan**" is described in Section 2.2.2.1 (*Design Management Plan*) of Appendix B-2.

1.56. "**Design Quality Management**" is defined in Section 2.1.2.1 (*Design Quality Management*) of Appendix B-2.

1.57. "**Design Reviews**" is defined in Section 2.2.2.1 (*Design Management Plan*) of Appendix B-2.

1.58. "**Developed IP**" means Intellectual Property that is authored, created, invented or reduced to practice under or for the purposes of the Agreement, the Work or the Project, whether or not such Intellectual Property is incorporated into the Project IP but excluding any adaptation, continuation or derivative work that constitutes Lead Developer IP.

1.59. "**Development Team Member**" and "**Development Team**" are defined in Section 7.1 (*Development Team*).

1.60. "**Director of Transportation**" means the SFMTA's Director of Transportation.

1.61. "**Discontinuation Notice**" is defined in Section 4.2(c) (*Decision Not to Proceed*).

1.62. "Dispute" means any dispute, disagreement or controversy between City and Lead Developer concerning their respective rights and obligations under the Agreement, including concerning any claim, alleged breach or failure to perform and remedies.

1.63. "**Draft EIR**" is defined in Section 6.20(a) (*Project Sponsor*).

1.64. "**Early Works**" means, to the extent approved by City, any physical work required at the Project Site, or off-site utility work, or physical work associated with relocating the Potrero Division bus fleet and all relevant operations out of the Project Site, during the PDA Term to enable Substantial Completion of the Infrastructure Facility by the Outside Delivery Date. The MME Expansion Project is not an Early Work.

1.65. "**Early Works Agreement**" means an agreement entered into by City and Lead Developer for the performance of Early Works by Lead Developer during the PDA Term.

1.66. "**Early Works Plan**" is described in Section 2.2.5.1 (*Early Works Plan*) of Appendix B-2.

1.67. "**Effective Date**" means the date the Director of Transportation executes this Agreement.

1.68. "**EIR**" means the Environmental Impact Report for the Project, including the Draft EIR, public and agency comments on the Draft EIR (DEIR) received during the review process, a list of people and organizations that submitted comments, responses from the lead agency to the comments received, and any revisions of the Draft EIR.

1.69. "**Energy Management Program**" is defined in Section 6.7 (*Energy Management Program*).

1.70. "**Engineering Analysis**" means the process of applying scientific analytic principles and processes to reveal the properties and state of a system, device, or mechanism under study.

1.71. "**Entitlements and General Regulatory Approvals Plan**" is described in Section 2.2.3.2 (*Entitlements and General Regulatory Approvals Plan*) of Appendix B-2.

1.72. "**Equity Member**" means a Person that directly holds a legal and beneficial interest in Lead Developer.

1.73. "**Equity Transfer**" means any assignment, mortgage, encumbrance, hypothecation, conveyance, sale, or other transfer of equity interest in Lead Developer.

1.74. "**Extension Notice**" is defined in Section 3.3(c) (*Performance Extension*).

1.75. "**Extension Request**" is defined in Section 3.1 (*PDA Term; Predevelopment Period Extensions*).

1.76. "**Extremely low income**" is described in Section 3.1.2 (*Housing*) of Division 8 (*Public Benefit Principles*) of the Technical Requirements.

1.77. "**Facility**" means the Bus Yard Component, Housing and Commercial Component, and Common Infrastructure, collectively.

1.78. "**FF&E**" means furniture, fixtures, and equipment.

1.79. "**Final Acceptance**" means that all design and construction work is complete and all other prerequisites for final acceptance have been met as set forth in (a) any Early Works Agreement (with respect to the applicable Early Works); (b) the Project Agreement (with respect to the Infrastructure Facility); and (c) the HCC Agreement (with respect to the Housing and Commercial Component), as applicable.

1.80. "**Final Price**" is defined in the "Final Price and Cost Savings Form" in Attachment 4 of Appendix B-2).

1.81. "**Finance Plan**" is defined in Section 6.8 (*Project Financing*).

1.82. "**Financial Model**" is described in Section 2.2.1.2 (*Financing Management Plan*) of Appendix B-2.

1.83. "**Financial Proposal"** means Volume 3 to the Proposal, which is attached as Appendix G, except the Housing and Commercial Component contingency plan included in

Financial Submittal 11 (*Housing and Commercial Component Organizational, Financial, and Operations Plan*).

1.84. "**Financing Management Plan**" is described in Section 2.2.1.2 (*Financing Management Plan*) of Appendix B-2.

1.85. "**Fixed Budget Limit**" or "**FBL**" is defined in Section 2.5(a) (*Fixed Budget Limit*).

1.86. **"Floating Milestone Date"** is defined in Section 3.2(b) (*Phase 2 Floating Milestone*).

1.87. "**General Regulatory Approvals**" is defined in Section 6.21(b) (*General Regulatory Approvals*).

1.88. "**Geotechnical Baseline Report**" is described in Section 3.2.1 (*Drawings and Reports*) of Appendix B-2.

1.89. "**gsf**" is defined in Section E1.2.3 (*Lead Developer's Predevelopment Costs*) of Appendix B-2.

1.90. "**Guarantor**" means each Person providing a Guaranty as described in Section 6.23 (*Guaranty*). As of the Effective Date, the Guarantor is Plenary Americas US Holdings Inc.

1.91. **"Guaranty"** means each guaranty executed by a Guarantor guaranteeing some or all of the obligations of Lead Developer under the Agreement.

1.92. "**Handback Requirements**" means the terms, conditions, requirements, and procedures governing the condition in which Principal Project Company is to deliver the Infrastructure Facility and its assets upon expiration of the Infrastructure Facility Term.

1.93. "**HCAO**" is defined in Section 24.2 (*Requiring Health Benefits for Covered Employees*).

1.94. **"HCC Agreement"** means the agreement between City and the Housing Project Company (or between City and the Principal Project Company and assigned by Principal Project Company to a Housing Project Company) which would be signed at the HCC Commercial Close, pursuant to which City will grant a long-term real property interest in certain premises for the development of the Housing and Commercial Component.

1.95. "**HCC Change"** is defined in Section 9.2(a) (*Basis for HCC Changes*).

1.96. **"HCC Change Request"** is defined in Section 9.2(b) (*HCC Change Request*).

1.97. **"HCC Commercial Close**" means the full execution and delivery of the HCC Agreement.

1.98. **"HCC Financial Close"** means the full execution and delivery of the HCC Financing Documents, either at or after HCC Commercial Close, where all conditions to the effectiveness of the HCC Agreement and Housing Financing Documents have been satisfied so that the Housing Project Company is sufficiently funded to commence construction of the Housing and Commercial Component.

1.99. "HCC Financing Documents" means all documents to be executed by the Housing Project Company) to finance the Housing and Commercial Component.

1.100. "HCC Interface Requirements" is defined in Section 6.9(a) (*HCC Interface Requirements*).

1.101. "HCC Schedule" is defined in Section 6.9(c) (*HCC Schedule*).

1.102. "**HCC Term Sheet**" is defined in Section 6.9(d) (*HCC Term Sheet*).

1.103. "**HCC Transaction Documents**" mean, collectively, the HCC Term Sheet, the HCC Agreement, and any other documents to be executed by City and the Housing Project Company with respect to the Project.

1.104. "**Housing and Commercial Component**" or "**HCC**" means the Facility's housing and commercial component, which would include the commercial space, the housing units and their associated support spaces (e.g., lobbies, vertical and horizontal circulation, storage, open space, rooms for building systems, offices for property management and residential services, and resident amenities such as laundry and community rooms) that are not used for the Bus Yard Component or the Common Infrastructure.

1.105. "**Housing Developer**" means each of Presidio Development Partners, LLC and Tabernacle Community Development Corp.

1.106. "**Housing Project Company(ies)**" means the special-purpose entity(ies) that will deliver, operate and maintain the Housing and Commercial Component pursuant to the HCC Agreement.

1.107. "**Housing Term**" means the period during which a Housing Project Company has the right and obligation to maintain and operate the Housing and Commercial Component.

1.108. "**IF Commercial Close**" means the full execution and delivery of the Project Agreement.

1.109. "**IF Financial Close**" means the full execution and delivery of the IF Financing Documents, either at or after IF Commercial Close, where all conditions to the effectiveness of the Project Agreement and IF Financing Documents have been satisfied so that the Principal Project Company is sufficiently funded to commence construction of the Infrastructure Facility.

1.110. "**IF Financing Documents**" means all documents to be executed by the Principal Project Company to finance the Infrastructure Facility.

1.111. "**IF Transaction Documents**" mean, collectively, the Project Agreement, and any other documents to be executed by City and the Principal Project Company with respect to the Project.

1.112. "**IFM Contract**" is defined in Section 6.13 (*IFM Contract*).

1.113. "**IFM RFP**" means the request for proposals for the IFM Contract.

1.114. "**IFM RFQ**" means the request for qualifications for the IFM Contract.

1.115. "**Indemnified Parties**" is defined in Section 21.1 (*Lead Developer's Duty to Indemnify*).

1.116. "**Infrastructure Facility**" means the Bus Yard Component and the Common Infrastructure, collectively.

1.117. "**Infrastructure Facility Maintenance**" or "**IFM**" means all management, engineering, repairs and maintenance, renewals and replacement, and other ancillary services required at all times for the Infrastructure Facility to allow for the ongoing operations and maintenance activities needed at the Facility and to meet the service requirements specified in the Asset Management Program and the Handback Requirements.

1.118. "**Infrastructure Facility Term**" means the 30-year period during which the Principal Project Company must provide the Infrastructure Facility Maintenance under the Project Agreement.

1.119. "**Intellectual Property**" means all current and future legal and/or equitable rights and interests, anywhere in the world, in know-how, patents (including applications), copyrights (including moral rights), trademarks (registered and unregistered), service marks, trade secrets (as defined by the Defend Trade Secrets Act § 2(b)(1) (18 USC § 1839(3)), and pursuant to US state and federal laws), designs (registered and unregistered), utility models, circuit layouts, mask works, business and domain names, inventions, solutions embodied in technology, and other intellectual activity, and applications of or for any of the foregoing, subsisting in or relating to the Work Materials or IP Materials. Without limiting the foregoing, Intellectual Property includes Software and City Data. For the avoidance of doubt, Intellectual Property is distinguished from the physical, electronic, and/or mechanical embodiments of such Intellectual Property (see IP Materials).

1.120. "**IP Escrow**" is defined in Section 11.7(b).

1.121. "**IP Escrow Agent**" is defined in Section 11.7(b).

1.122. "**IP Materials**" means all physical, electronic and/or mechanical embodiments of, and documents disclosing, Intellectual Property. Without limiting the generality of the foregoing, IP Materials include embodiments, documents, deliverables and/or Work Materials incorporating concepts, inventions (whether or not protected under patent laws), works of authorship, information, new or useful art, combinations, discoveries, formulae, algorithms, specifications, manufacturing techniques, technical developments, systems, computer architecture, artwork, Software, Source Code, decompilation instructions, programming, applets, scripts, designs, procedures, processes, and methods of doing business, and any other media, materials, plans, reports, project plans, work plans, documentation, training materials, and other tangible objects produced under the Agreement or required by, incorporated into or combined with the Work, Work Materials, or the Project.

1.123. "**LBE Plan**" is defined in Section 6.10 (*Local Business Enterprise Plan*).

1.124. "LD Change Request" is defined in Section 9.1(c) (*LD Change Request*).

1.125. "**LD Event of Default**" is defined in Section 19.1 (*LD Event of Default*).

1.126. "**LD Media Contact**" is defined in Section 7.6(d)(iii) (*Media and Communications Team Contacts*).

1.127. "**LD Outreach Plan**" is defined in Section 7.6(c) (*Lead Developer Outreach Plan*).

1.128. "**LD Predevelopment Cost**" is defined in Section 2.3(d) (*LD Predevelopment Cost*).

1.129. "**LD Project Director**" is defined in Section 7.3(a) (*For Lead Developer*).

1.130. "**LD Project Manager**" is defined in Section 7.3(a) (*For Lead Developer*).

1.131. **"LD Proposed Change**" is defined in Section 9.1(a) (*LD Proposed Change*).

1.132. "**Lead Developer**" or "**LD**" is defined in the Preamble.

1.133. "**Lead Developer Agents**" means, collectively, Lead Developer's employees, officers, members, managers, directors, agents, contractors, subcontractors, consultants, members, Affiliates, and Development Team Members.

1.134. "**Lead Developer IP**" means Intellectual Property that is (i) owned by any Lead Developer Related Entity prior to the Effective Date, (ii) developed or acquired by any Lead Developer Related Entity independently of the Agreement or not specifically for the purposes of performing the Work (iii) any adaptation, continuation or derivative work which requires the incorporation, exercise or practice of Intellectual Property that is the subject of either subsection (i) or (ii).

1.135. **"Lead Developer Related Entities"** means:

(a) Lead Developer;

(b) Lead Developer Agents;

(c) any Guarantor;

(d) any other persons or entities performing any of the Work;

(e) any other persons or entities for whom Lead Developer may be legally or contractually responsible; and

(f) the employees, agents, officers, directors, representatives, consultants, successors and assigns of any of the foregoing.

1.136. "**Local Business Enterprise**" or "**LBE**" means a business designated and certified as such by the San Francisco Contract Monitoring Division under San Francisco Administrative Code Section 14B.3.

1.137. "**Losses**" means, collectively, any loss, expense, cost, compensation, damages (including foreseeable consequential damages), attorneys' fees, claims, demands, liens, obligations, injuries, liability, interest, penalties, fines, lawsuits and other proceedings, judgments, awards, or liabilities of any kind, known or unknown, contingent or otherwise, equitable relief, mandamus relief, specific performance, or any other relief.

1.138. "**Low income**" is described in Section 2.2.2 (*Equity, Affordability Mix and Tenant Preferences*) of Division 6 (*Program for the Housing and Commercial Component*) of the Technical Requirements.

1.139. **"Mediation"** is defined in Section 25.5(a) (*Mediation Request*).

1.140. "Mediation Request" is defined in Section 25.5(a) (*Mediation Request*).

1.141. "**MEP**" means mechanical, electrical, and plumbing.

1.142. "**MME Expansion Project**" means the expansion of SFMTA's Muni Metro East facility located at 601 25th Street in San Francisco, as further described in Appendix K.

1.143. "**MME Construction Agreement**" means the agreement between Lead Developer and City for the performance of the MME Expansion Project to be negotiated and finalized in accordance with Section 6.24 (*MME Expansion Project*).

1.144. "**MMRP**" means any Mitigation Monitoring and Reporting Program for the Project adopted by the Planning Commission in certifying the EIR.

1.145. "**Moderate income**" is described in Section 2.2.2 (*Equity, Affordability Mix and Tenant Preferences*) of Division 6 (*Program for the Housing and Commercial Component*) of the Technical Requirements.

1.146. "**MOHCD**" means the San Francisco Mayor's Office of Housing and Community Development.

1.147. "**Muni Metro East**" or "**MME**" means the City property that comprises portions of Blocks 4297, 4298, 4299, 4300, 4310, and 4313, and is bounded by 25th, Illinois, Cesar Chavez, and Maryland Streets.

1.148. "Notice of Acceptance" means the notice described in Section 4.3(c) (*Notice of Acceptance*).

1.149. "**Notice to Proceed**" or "**NTP**" is defined in Section 4.1 (*Performance*).

1.150. "**NPV**" means net present value.

1.151. "**OEWD**" means City's Office of Economic Workforce and Development.

1.152. "**Original Proposal**" means the original proposal submitted by Lead Developer on December 30, 2021, as described in Recital E, in response to the Initial RFP.

1.153. "**Outside Delivery Date**" means November 30, 2027.

1.154. "**Owner's Information Requirements**" or "**OIR**" is described in Section 2.2.2.2 (*BIM Execution Plan*) of Appendix B-2.

1.155. "**PCIC**" means the percentage of Common Infrastructure cost allocated to City, which will be 55.10%, as set forth in FS Form B of the Financial Proposal, as may be further adjusted pursuant to the version of FS Form B submitted by Lead Developer at Performance Milestone 15 and Performance Milestone 27A if approved, respectively, by City at Performance Milestone 16 and Performance Milestone 28.

1.156. "**PCIC(Dis)**" means the discount to the PCIC(Max) described in FS Form B of the Financial Proposal.

1.157. "**PCIC(Max)**" means the percentage of Common Infrastructure cost allocated to City as stated in Form FS B of the Financial Proposal, which is based on (i) the gross square feet of floor area of the Bus Yard Component divided by (ii) the gross square feet of floor area of the

Bus Yard Component and the Housing and Commercial Component. Such percentage may be further adjusted pursuant to the version of FS Form B submitted by Lead Developer at Performance Milestone 15 and Performance Milestone 27A if approved, respectively, by City at Performance Milestone 16 and Performance Milestone 28.

1.158. "**PCIH**" means the percentage of Common Infrastructure cost allocated to the Housing and Commercial Component, which will be 44.90%, as set forth in FS Form B of the Financial Proposal. Such percentage may be further adjusted pursuant to the version of FS Form B submitted by Lead Developer at Performance Milestone 15 and Performance Milestone 27A if approved, respectively, by City at Performance Milestone 16 and Performance Milestone 28.

1.159. "**PDA Management Plan**" means a plan that covers Lead Developer's management of the Work, which will be based on the preliminary plan included in the Technical Proposal and to be finalized as described in Appendix B-2.

1.160. "**PDA Phase**" is defined in Section 4.1 (*Performance*).

1.161. "**PDA Term**" is defined in Section 3.1 (*PDA Term; Predevelopment Period Extensions*).

1.162. "**Performance Date**" means the date for the performance of a Performance Milestones, as set forth in Appendix B-1.

1.163. "**Performance Extension**" is defined in Section 3.3(c) (*Performance Extension*).

1.164. "**Performance Milestones**" is defined in Section 3.2(a) (*Compliance*).

1.165. "**Person**" means any individual, corporation, joint venture, limited liability company, company, voluntary association, partnership, trust, unincorporated organization, governmental entity, or other entity.

1.166. "Phase 2 Floating Milestone" is defined in Section 3.2(b) (*Phase 2 Floating Milestone*).

1.167. "**Plan for Coordination with Regulatory Agencies**" is described in Section 2.2.2.5 (*Plan for Coordination with Regulatory Agencies*) of Appendix B-2.

1.168. "**Planning Commission**" means the San Francisco Planning Commission.

1.169. "**Planning Department**" means the San Francisco Planning Department.

1.170. "**Predevelopment Agreement Management Plan**" or "**PMP**" is described in Section 2.1.1 (*Predevelopment Agreement Management Plan*) of Appendix B-2.

1.171. "**Predevelopment Period**" means the five hundred sixty-eight (568) consecutive day period that commences on the Commencement Date, as may be extended by in accordance with Section 3.1 (*PDA Term; Predevelopment Period Extensions*).

1.172. "**Preliminary Financial Model**" means the electronic financial model that generates financial projections for the Infrastructure Facility, which Lead Developer included in its Financial Proposal.

1.173. "**Preliminary Pro Forma**" means the electronic pro forma model that generates financial projections for the Housing and Commercial Component, which Lead Developer included in its Financial Proposal.

1.174. "**Preliminary Term Sheet**" is the term sheet attached as Appendix F.

1.175. **"Premises"** is defined in Section 6.9(d) (*HCC Term Sheet*).

1.176. "**Press Matters**" is defined in Section 7.6(h) (*Press Contacts*).

1.177. "**Press Release**" is defined in Section 7.6(h) (*Press Contacts*).

1.178. "**Prevailing Rate of Wages**" shall have the meaning given in Section 6.22(e) of the San Francisco Administrative Code.

1.179. "**Principal Project Company**" or "**PPC**" means the Lead Developer or a special-purpose entity in which Lead Developer is the only party with the power to direct the management of that entity, whether through voting, nomination, or other selection rights, by contract, or by other means, that enters into the Project Agreement with City for delivery of the Infrastructure Facility and maintenance of certain elements thereof.

1.180. "**Pro Forma**" is defined in Section 2.2.1.2 (*Financing Management Plan*) of Appendix B-2.

1.181. "**Project**" means development, design, construction, and financing of the Facility at the Project Site, the Infrastructure Facility Maintenance, and the Property Management.

1.182. "**Project Agreement**" means the agreement between City and the Principal Project Company for delivery of the Infrastructure Facility, which would be signed at IF Commercial Close.

1.183. "**Project Documents**" mean, collectively, the Transaction Documents, the IF Financing Documents, the HCC Financing Documents, the Design-Build Contract, the IFM Contract, and any other documents to be executed by the Principal Project Company, the Housing Project Company, any Design-Build Contract contractor, the IFM Contract contractor, or any other third party providing either services, funding, or financing with respect to the Project, the performance of the Principal Project Company's obligations under the Project Agreement, the performance of the Housing Project Company's obligations under the HCC Agreement, or the independent function of the Bus Yard Component and the Housing and Commercial Component.

1.184. "**Project IP**" means all Intellectual Property authored, created, invented or reduced to practice under or for the purposes of the Agreement, or otherwise required by, integrated into or combined with the Work or the Project.

1.185. "**Project Management Deliverables**" is defined in Appendix B-2.

1.186. "**Project Objectives**" are set forth in Appendix D.

1.187. "**Project Principal(s)**" is the person(s) each Equity Member has designated as its representative principally responsible for that Equity Member's role on the Development Team.

1.188. "**Project Schedule**" is defined in Section 6.2 (*PDA Phases*).

1.189. "**Project Site**" is defined in Recital A.

1.190. "**Property Management**" means the management, leasing, rent collection, tenant services and relations, engineering, repairs and maintenance, renewals and replacement, and other ancillary services required for operating the of the Housing and Commercial Component in compliance with Applicable Law and keeping it in a good operating condition during the Housing Term.

1.191. "**Proposal**" means the Original Proposal, and the revised response to the RFP submitted by Lead Developer to City on July 20, 2022 as clarified through the request for clarifications process set forth in the RFP. Portions of the Proposal are included in the Agreement at Appendix C (*Proposal Commitments*), Appendix G (*Financial Proposal*), Appendix H (*Technical Proposal*), Appendix I (*Development Team and Key Personnel*), and including Attachment 1 (*SFMTA Trainee Hiring Program*) and Attachment 2 (*First Source Hiring Program*) of Appendix G.

1.192. "Proposal Payment" is defined in Section 16.3(a) (*Proposal Payment*).

1.193. "Proposed HCC" is defined in Section 6.9 (*HCC Predevelopment Work*).

1.194. "**Public Records Act**" means the Public Records Act in California Government Code Section 6250 *et seq*.

1.195. "**Quality Assurance Manager**" is the person that the Lead Developer has designated to develop, implement, and maintain a system of quality management for the Development Team's work products and development process.

1.196. "**Quality Management Plan**" or "**QMP**" is described in Section 2.1.2 (*Quality Management Plan*) of Appendix B-2.

1.197. "**Qualified Out-of-Pocket Costs**" means the costs incurred by Lead Developer, including demonstrated internal costs, to prepare the Work Materials and procure the Design-Build Contract and IFM Contract, which costs must not be increased by any dollar or percentage amount representing added profit, fee, or administrative or other charge but can include the actual financing costs incurred by Lead Developer during the PDA Term from loans or lines of equity extended by any third party financial institutions, or Affiliates provided the Affiliate provides rates competitive with third party financial institutions, to finance the Work Materials and the procurement of the Design-Build Contract and IFM Contract, and which must have been documented by Lead Developer in compliance with this Agreement. The following costs shall not be included as Qualified Out-of-Pocket Costs: (a) HCC costs (except those specifically incurred in connection with Work Materials identified in Appendix B-1 and Appendix B-2; (b) the internal financing costs incurred by any of the Development Team Members; or (c) the costs of any Additional HCC Materials.

1.198. "**Reference Documents**" means the materials described in Appendix N.

1.199. "**Regulatory Agency**" is defined in Section 6.21(c) (*No Lobbying; Proprietary Capacity*).

1.200. "**Regulatory Appeal Delay**" is defined in Section 3.3(b) (*Regulatory Appeal Delay*).

1.201. "**Regulatory Approval**" is defined in Section 6.21 (*Regulatory Approvals*).

1.202. "**Regulatory Approval Strategy**" is defined in Section 6.21(b) (*General Regulatory Approvals*).

1.203. "Regulatory Change" is defined in Section 9.1(a) (*LD Proposed Change*).

1.204. "**Release Conditions**" is defined in Section 11.7(c).

1.205. "**RFP**" means the request for proposals for the selection of the Lead Developer, as described in Recital D.

1.206. "**RFQ**" means the request for qualifications for the selection of the Lead Developer.

1.207. "**Scheduled Substantial Completion Date**" means the Substantial Completion date for the Infrastructure Facility or the HCC, as applicable, that Lead Developer includes in the Financial Model and Pro Forma.

1.208. "**SFMTA**" means the San Francisco Municipal Transportation Agency.

1.209. "**SFMTA Board**" means the San Francisco Municipal Transportation Agency Board of Directors.

1.210. "**SFMTA Media Contact**" is defined in Section 7.6(d)(iii) (*Media and Communications Team Contacts*).

1.211. "**SFMTA Public Outreach and Engagement Program**" is defined in Section 7.6(a) (*SFMTA Public Outreach and Engagement Program*).

1.212. "**SFPW**" means San Francisco Public Works.

1.213. "**Short-Listed Proposers**" means Potrero Neighborhood Collective, Potrero Mission Community Partners, and Potrero Yard Community Partners.

1.214. "**Software**" means individually each, and collectively all, of the computer programs developed or provided by Lead Developer, and any Lead Developer Related Entity, under this Contract (including Project IP, Lead Developer IP and/or Third-Party IP), including as to each such program, the processes, and routines used in the processing of data, the object code, interfaces to be provided hereunder by Lead Developer, updates, upgrades, and any and all programs otherwise provided by Lead Developer under this Agreement.

1.215. "**Source Code**" means the version of a Software computer program in which the programmer's original programming statements are expressed in any programming language. (See 2 CCR 20621.)

1.216. "**Substantial Completion**" means **(a)** in the case of Early Works, when construction is completed in accordance with the requirements of the applicable Early Works Agreement and the Early Works can be utilized for its intended purpose; **(b)** in the case of the Housing and Commercial Component, when (i) construction is completed in accordance with the requirements of the HCC Agreement and the Housing and Commercial Component can be utilized for its intended purpose, (ii) a certificate of temporary occupancy is issued for the Housing and Commercial Component, (iii) tenants are able to move into the Housing and Commercial Component; and (iv) demobilization from the Project Site is complete, and **(c)** in the case of the Infrastructure Facility, when (i) construction is completed in accordance with the requirements of the Project Agreement and the Infrastructure Facility can be utilized for its

intended purpose, (ii) a certificate of temporary occupancy is issued for the Bus Yard Component, and (iii) the Bus Yard Component is in a condition of full operational functionality to allow the SFMTA's transit operations to relocate to the Bus Yard Component.

1.217. "**Sunshine Ordinance**" means the San Francisco Sunshine Ordinance in Chapter 67 of the San Francisco Administrative Code.

1.218. "**TDM**" means transportation demand management.

1.219. "**Technical Proposal**" means Volume 2 to the Proposal, which is attached as Appendix H, except the Housing and Commercial Component contingency plan included in Technical Submittal 28 (*PDA Management Plan*).

1.220. "**Technical Requirements**" means the requirements set forth in Appendix E, as may be modified in writing by City during the PDA Term.

1.221. "**Terminating Event**" is defined in Section 16.2 (*Terminating Event*).

1.222. "**Termination**" is defined in Section 16.2 (*Terminating Event*).

1.223. "**Termination Notice**" is defined in Section 16.4 (*Termination Notice; Effect of Termination*).

1.224. "**Termination Payment**" is defined in Section 16.3 (*Termination Payments*).

1.225. "**Third Party IP**" means Intellectual Property owned by any Person unrelated to any Lead Developer Related Entity.

1.226. "**Transaction Documents**" mean, collectively, the IF Transaction Documents and the HCC Transaction Documents.

1.227. "**Unavoidable Delays**" is defined in Section 3.3(a) (*Unavoidable Delay*).

1.228. "**Very low income**" is described in Section 1.2.1 (*Equity, Affordability, and Target Populations*) of Division 6 (*Program for the Housing and Commercial Component*) of the Technical Requirements.

1.229. "**Work**" means all work, services and activities to be performed, furnished, provided, or undertaken by or on behalf of Lead Developer under this Agreement, including but not limited to the activities in Appendix B-1 and Appendix B-2.

1.230. "**Work Materials**" means the Proposal and all studies, analyses, models, applications, reports, permits, plans, drawings, designs, drawings, specifications, blueprints, studies, memoranda, computation sheets, pro-forma assumptions, financial methodologies, computer files and media, or other documents, original works of authorship and similar work product, whether in digital or any other format, generated by or for the Lead Developer in submitting the Proposal or performing the Work.

2. PREDEVELOPMENT GUIDELINES

2.1. Predevelopment Approach. During the PDA Term, each Party will diligently and collaboratively work to develop the Project, with City performing its obligations as described in Article 8 (*City Predevelopment Obligations*) below, and Lead Developer performing all other predevelopment activities required to allow for IF Financial Close no later than

November 30, 2024, Substantial Completion of the Infrastructure Facility within the Fixed Budget Limit no later than the Outside Delivery Date, and Substantial Completion of the Housing and Commercial Component no later than one year after Substantial Completion of the Infrastructure Facility. The commercial and financing structure for the Project shall not expose City to any interface or integration risk relating to the Project's physical and operational components, or resulting from the use, if specifically permitted by this Agreement, of multiple entities and contracts to deliver the Project. Lead Developer's predevelopment activities shall fulfill the Project's objectives set forth in Appendix D ("**Project Objectives**") and conform to the Technical Requirements and the requirements of this Agreement.

2.2. Incorporation of Elements of RFP and Proposal.

(a) The Technical Requirements and Project Objectives, which comprised a portion of the RFP, and portions of the Proposal are attached to and incorporated in this Agreement, provided that:

(i) if there is any conflict between the Technical Requirements or the Project Objectives and the body of this Agreement, then the terms of the body of this Agreement shall govern;

(ii) if there is any conflict between Appendix B-1, Appendix B-2 or the Technical Requirements and the Project Objectives, then Appendix B-1, Appendix B-2 and the Technical Requirements shall govern; and

(iii) if there is any conflict among the portions of the Proposal attached to and incorporated into this Agreement and the body of this Agreement, Appendix B-1, Appendix B-2, the Technical Requirements or the Project Objectives, then the body of this Agreement, Appendix B-1, Appendix B-2, the Technical Requirements and the Project Objectives shall govern, except as otherwise approved by City in writing, which approval shall be at City's sole discretion, and provided that if City determines, in its sole discretion, that the Proposal contains a provision that is more beneficial to City than is specified elsewhere in this Agreement, then that provision shall take precedence.

(b) Lead Developer acknowledges City's execution of this Agreement with portions of the Proposal attached to and incorporated in this Agreement as appendices shall not in and of itself serve as City's approval to any variance between the Proposal and any aspect of this Agreement.

(c) City will not be responsible for any errors, omissions, inaccuracies or incomplete statements in the Proposal, and the incorporation of the Technical Proposal and the Financial Proposal in this Agreement does not constitute any statement or determination as to their compliance with the Technical Requirements or the Project Objectives.

(d) With the exception of the Fixed Budget Limit, the LD Predevelopment Cost, the PCIC, PCIC(Max), PCIC(Dis), and the PCIH, the Parties acknowledge that the financing assumptions for the Infrastructure Facility and the Housing and Commercial Component included in the Financial Proposal are indicative in nature and subject to development during the PDA Term.

(e) City's interim or final answers to the questions or requests for clarifications (RFCs) posed during the Proposal process for this Agreement shall in no event be deemed part of the Agreement and shall not be relevant in interpreting the Agreement except and solely to the extent as they may clarify provisions otherwise considered ambiguous by City, in its

sole discretion. Except to the extent incorporated into this Agreement in accordance with Section 2.2(a), the RFP shall not be relevant in interpreting this Agreement.

2.3. Prior Costs and Predevelopment Costs. Before the Effective Date, City, Lead Developer and the Lead Developer Agents devoted time, effort, and financial resources with respect to the Project. City performed due diligence, submitted and pursued certain Regulatory Approval applications, and issued the RFQ and the RFP, and Lead Developer submitted a statement of qualifications in response to the RFQ and submitted the Proposal in response to the RFP. The Parties also anticipate that during the PDA Term, City, the City Agents, Lead Developer, and the Lead Developer Agents will devote substantial time, effort, and financial resources as required in this Agreement. The Parties are willing to engage in these PDA Term activities subject to the terms and conditions set forth in this Agreement. Each Party shall bear its own costs; provided, however, that if any Commercial Close occurs, the applicable Transaction Documents will require the Principal Project Company and the Housing Project Company, as applicable, to reimburse the Parties as set forth in this Section 2.3 (*Prior Costs and Predevelopment Costs*).

(a) City's Prior Cost. None of the costs incurred by City with respect to the Project prior to the Effective Date will be reimbursed to City.

(b) Lead Developer Prior Cost. None of the costs incurred by Lead Developer or any of the Lead Developer Agents with respect to the Project prior to the Effective Date will be recovered as a direct reimbursement.

(c) City Predevelopment Cost. The "**Reporting Date**" means the twentieth (20th) Business Day before the Commercial Close, and the "**City Predevelopment Cost**" means City's direct and indirect costs related to the development of the Project and its obligations under this Agreement and any Early Works Agreements between the Effective Date and the Reporting Date. On the Reporting Date, City will notify Lead Developer of the total amount of the City Predevelopment Cost as of the Reporting Date. At the HCC Financial Close, the Housing Project Company will be required to reimburse City by an amount equal to the City Predevelopment Cost multiplied by the PCIH, which will be allocated to the Housing and Commercial Component. At City's election, at the IF Financial Close, the Principal Project Company will be required to reimburse City by an amount equal to the City Predevelopment Cost multiplied by the PCIC, which will be allocated to the Bus Yard Component.

(d) LD Predevelopment Cost. During the PDA Term, Lead Developer will bear its direct and indirect costs related to the development of the Project and its obligations under this Agreement at its sole cost (as described in FS Form A5-PR of the Financial Proposal and as adjusted through the PDA Term as specified in this Agreement, the "**LD Predevelopment Cost**"); provided, however, that at the IF Financial Close, the Principal Project Company will be required to reimburse Lead Developer by the amounts calculated and allocated as follows: (i) for the Bus Yard Component, the amount equal to the LD Predevelopment Cost multiplied by the PCIC minus the amount of the Continuation Payment; and (ii) for the Housing and Commercial Component, the amount equal to the LD Predevelopment Cost multiplied by the PCIH.

2.4. Risk Allocation.

(a) Preliminary Term Sheet; HCC Term Sheet. The risks assigned to each Party with respect to designing, building, and financing the Infrastructure Facility, the long-term Infrastructure Facility Maintenance, and the physical and operational interface and integration of Infrastructure Facility and the Housing and Commercial Component, are described in the Preliminary Term Sheet. The Preliminary Term Sheet will be the basis for allocating Project

risks in the Project Agreement and any other applicable IF Transaction Documents. The HCC Term Sheet will be the basis for allocating Project risks in the HCC Agreement.

(b) Integration and Interface Risks. While Lead Developer may form a Principal Project Company to develop the Infrastructure Facility, and a separate Housing Project Company to develop the Housing and Commercial Component, and may procure a design-build contractor for the Infrastructure Facility and a different design-build contractor for the Housing and Commercial Component, all risks relating to the physical and operational interface and integration of the various elements of the Facility, and all risks arising from the use, if specifically permitted by this Agreement, of multiple entities and contracts to deliver the Project, shall be allocated to Lead Developer, the Principal Project Company and the Housing Project Company under the Project Agreement and the HCC Agreement (with sufficient performance guaranties from or development agreements with the original Guarantor, its Affiliate, or other parties acceptable to City) and under no circumstances shall City bear any such risks.

2.5. Fixed Budget Limit; Adjustments; Allowances; Submittals.

(a) Fixed Budget Limit. Lead Developer has committed to a maximum amount for the design and construction costs and Infrastructure Facility Maintenance costs of the Infrastructure Facility, together with the LD Predevelopment Cost, as specified in FS Form A7 of the Financial Proposal (the **"Fixed Budget Limit"**). The Fixed Budget Limit is subject to adjustment from the Commencement Date through to Performance Milestone 27A in accordance with Section 2.5(b) (*Increases to Fixed Budget Limit*), (c) (*No Other Increases to Fixed Budget Limit*), (d) (*Reductions to Fixed Budget Limit*) and (e) (*Submittals, and Process for Adjustments to Fixed Budget Limit*). City will exercise reasonable effort to provide notice of changes prior to Performance Milestone 27A.

(b) Increases to Fixed Budget Limit. The Fixed Budget Limit may be increased to account for increases in the design and construction costs or the Infrastructure Facility Maintenance costs of the Infrastructure Facility, and to account for increases in the LD Predevelopment Cost due only to increased design costs related to the Infrastructure Facility incurred during the PDA Term, due to the following only:

(i) City Proposed Change. A City Proposed Change under Section 9.3 (*Changes Proposed by City*), including any City Proposed Change to the Technical Requirements to add any additional scope item Allowance described in FS Form D, other than Allowances relating to escalation or insurance;

(ii) LD Proposed Change. City accepts an LD Proposed Change due to:

A. A change in Applicable Law that occurs within the period commencing June 20, 2022 and ending at Performance Milestone 27A;

B. Project Site conditions revealed through Lead Developer's due diligence investigation of the Project Site differ materially from the conditions disclosed in the Reference Documents; or

C. The Planning Commission, the SFMTA Board, or the Board of Supervisors imposes Regulatory Approval conditions on the Infrastructure Facility or Infrastructure Facility Maintenance.

(iii) LBE Changes. LBE Plan requirements that differ from the assumed LBE percentage goals and objectives stated in Technical Submittal 28 of the Technical

Proposal, provided that Lead Developer must reasonably demonstrate the increased costs caused by the differing LBE Plan requirements, using the same qualitative and quantitative methodologies that were used to calculate the costs of the LBE percentage goals and objectives described in Technical Submittal 28.

(iv) Changes to PCIC. The PCIC changes due to a change in the actual gross square footage of the Bus Yard Component or the Housing and Commercial Component from that anticipated in the Technical Proposal and Financial Proposal.

(c) No Other Increases to Fixed Budget Limit. The Fixed Budget Limit will not be adjusted to reflect any increases in the cost to design and build the Infrastructure Facility or to perform the Infrastructure Facility Maintenance, except as specified in Section 2.5(b) (*Increases to Fixed Budget Limit*), unless City provides its consent, in City's sole discretion.

(d) Reductions to Fixed Budget Limit. City anticipates that, as the Work progresses, the design and construction costs and the Infrastructure Facility Maintenance costs of the Infrastructure Facility, and consequently the Fixed Budget Limit, will trend downward from the Fixed Budget Limit set forth in the FS Form A7 of the Financial Proposal. In addition, the Fixed Budget Limit will be reduced by the MME Expansion Project procurement costs set forth in FS Form A5-PR if the Parties do not sign the MME Construction Agreement (except to the extent that Lead Developer demonstrates to City's satisfaction that Lead Developer has incurred reasonable MME Expansion Project procurement costs), and to account for reductions in the design and construction costs, or the Infrastructure Facility Maintenance costs, of the Infrastructure Facility, arising from changes to the Project made prior to Performance Milestone 27A, including due to: (i) City Proposed Changes, (ii) LD Proposed Changes accepted by the City, (iii) LBE Plan requirements differing from the LBE assumptions given in Technical Submittal 28 of the Technical Proposal, and (iv) PCIC changes due to a change in the actual gross square footage of the Bus Yard Component or the Housing and Commercial Component from that anticipated in the Technical Proposal and Financial Proposal.

(e) Submittals, and Process for Adjustments to Fixed Budget Limit.

(i) Fixed Budget Limit Forms. At Performance Milestone 15 and Performance Milestone 27A, Lead Developer must submit updated versions of FS Forms A1, A2, A3, A4, A5-PR, A7 and A8 and FS Form B to the Financial Proposal, a full and detailed cost estimate in accordance with Attachment 2 to Appendix B-2, a summary schedule in accordance with Appendix B-2 and in the same format as Appendix H, and a risk register in accordance with Appendix B-2. Such updated versions will reflect the following:

A. The updated costs to design and build the Infrastructure Facility and provide the Infrastructure Facility Maintenance, including any changes in costs to the extent arising from the circumstances described in Section 2.5(b) (*Increases to Fixed Budget Limit*) and Section 2.5(d) (*Reductions to Fixed Budget Limit*), and updates to the LD Predevelopment Cost, if any, as expressly permitted by this Agreement; and

B. Any change in the actual gross square footage of the Bus Yard Component or the Housing and Commercial Component.

(ii) If the materials submitted pursuant to Section 2.5(e)(i) (*Fixed Budget Limit Forms*) at Performance Milestone 15 and Performance Milestone 27A are approved by City and show any change in the cost to design and build the Infrastructure Facility or perform the Infrastructure Facility Maintenance due to any of the matters described in Section 2.5(b) (*Increases to Fixed Budget Limit*) or Section 2.5(d) (*Reductions to Fixed Budget Limit*), or any change to the LD Predevelopment Cost expressly permitted by this Agreement, or any

change to the actual gross square footage of the Bus Yard Component or the Housing and Commercial Component from that anticipated in the Technical Proposal and Financial Proposal, the Fixed Budget Limit will be modified accordingly at Performance Milestone 16 and at Performance Milestone 28 to be the amount shown in the updated version of FS Form A7 submitted by Lead Developer at Performance Milestone 27A.

(f) Allowances Cost Estimates.

(i) Updates to Form D. At Performance Milestone 15 and Performance Milestone 27A, Lead Developer must submit updated versions of FS Form D to the Financial Proposal and cost estimates in the same format as Attachment 2 to Appendix B-2. The updated information for the Allowance cost estimates shall also be clearly identified in each submission of the Design Deliverables to City (draft and final), as shown in Appendix B-1. The updated version of FS Form D submitted at Performance Milestone 15 must include an explanation for any differences from the Allowance amounts set forth in FS Form D of the Financial Proposal. The updated version of FS Form D submitted at Performance Milestone 27A must include an explanation for any differences from the Allowance amounts set forth in FS Form D submitted at Performance Milestone 15. If any Allowance prices exceed the applicable Allowance amounts in FS Form D of the Financial Proposal, Lead Developer shall propose design strategies and changes to the relevant scope(s) and/or technical requirement(s) to bring them back within the Allowance amounts stated in FS Form D of the Financial Proposal.

(ii) Insurance. At Performance Milestone 15 and Performance Milestone 27A Lead Developer must submit, at item (g) in Part I and item (c) in Part III of FS Form D, its reasonable estimate of the cost of the insurance that will be required for the design and construction of the Infrastructure Facility and the Infrastructure Facility Maintenance, respectively (the "**Required Insurance**"). If the Principal Project Company will self-perform the Infrastructure Facility Maintenance, then at Performance Milestone 32, Lead Developer must submit to City an updated version of FS Form D submitted at Performance Milestone 27A, with the only change being to item (c) in Part III of FS Form D showing the actual cost of the Required Insurance for the Infrastructure Facility Maintenance.

(iii) Escalation. At Performance Milestone 15 and Performance Milestone 27A, Lead Developer must submit, at item (h) in Part I of FS Form D, the updated construction cost escalation Allowance, which shall be equal to the 5-year average of the Engineering News Record (ENR) Buildings Cost Index (BCI) in San Francisco, averaged year over year from the date of the corresponding Performance Milestone, and applied from the date of the corresponding Performance Milestone to the mid-point of construction.

(g) Sum of Fixed Budget Limit, Insurance, Escalation. At Performance Milestone 15 and Performance Milestone 27A, Lead Developer must submit FS Form A8 setting forth the sum of the updated Fixed Budget Limit, plus insurance costs, plus the escalation amount.

2.6. Allocation of Common Infrastructure Costs. "**Common Infrastructure Costs**" means the total costs (including those costs incurred during the PDA Term) to design and build the Common Infrastructure and perform the Infrastructure Facility Maintenance with respect to the Common Infrastructure. The PCIC under the Transaction Documents is stated in the FS Form B of the Financial Proposal (the "**Original FS Form B**"); provided, however, that if the gross square footage of the Bus Yard Component or the Housing and Commercial Component changes from the gross square footage set forth in the Technical Proposal and Financial Proposal, the PCIC(Max) and the PCIC shown in the Original FS Form B will be adjusted accordingly at Performance Milestone 27A. In calculating any PCIC adjustment at Performance Milestone 27A, there shall be no change in the PCIC(Dis) from that described in

Original FS Form B, except that if as a result of an HCC Change pursuant Section 9.2 (*HCC Change*) the Project is modified to only be comprised of the Bus Yard Component, then the PCIC(Dis) shall be zero.

City will compensate the Principal Project Company for delivering the Infrastructure Facility and performing the Infrastructure Facility Maintenance, adjusted by the PCIC, via an industry-standard, performance-based regime of Availability Payments during the Infrastructure Facility Term. The Housing Project Company will pay for its share of the annual cost of Infrastructure Facility Maintenance, based on the PCIH, starting on Substantial Completion of the Infrastructure Facility or on such other date as mutually agreed by the Parties and every year thereafter for the Housing Term.

2.7. Diligent and Good Faith Efforts. Subject to each Party's termination rights under the terms of this Agreement, each Party agrees to diligently and in good faith pursue to completion all of its respective obligations under this Agreement during the PDA Term. Lead Developer agrees to commit the financial and personnel resources reasonably required to fulfill its obligations under this Agreement, and pay all costs it incurs to fulfill its obligations under this Agreement. City agrees to commit the personnel resources reasonably required to fulfill its obligations under this Agreement.

2.8. Standard of Care. Each Party agrees to perform, and to cause its Agents to perform, its obligations under this Agreement in accordance with accepted standards of professional practice that are applicable to other projects of similar size and complexity in the San Francisco Bay Area. This standard of care shall apply to and define all professional obligations provided by licensed professionals for any of the Work Materials.

2.9. Suspension of Obligations. If a Party cannot timely satisfy any obligation under this Agreement solely because the other Party's failure to timely comply with its obligations under this Agreement, the affected obligation of the first Party will be suspended until the other Party performs the unperformed obligation that is precluding or preventing the first Party's performance, with a corresponding extension to the Performance Date for any Performance Milestone the first Party is precluded or prevented from timely performing solely due to the other Party's failure. The first Party must continue to perform all of its other obligations under this Agreement to the extent they are not precluded or prevented by other Party's failure.

2.10. Exclusive Negotiations; City's Reserved Rights. City will not solicit or consider any other proposals or negotiate with any other party with respect to developing or using the Project Site without Lead Developer's consent; provided, however, that City reserves the right, in its sole discretion but subject to Section 9.3 (*Changes Proposed by City*), to take or not take, any or all of the following actions at any time:

(a) Enter into agreements for the use, occupancy, maintenance or repair of all or any portion of the Project Site as long as they do not prevent Lead Developer from conducting due diligence investigations of the Project Site that are reasonably needed for the Project, permanently alter the condition of the Project Site, and expire or are terminable by City without penalty, cost or expense to Lead Developer before Commercial Close. Lead Developer acknowledges the Project site is being used for transit operations and it will need to schedule its due diligence activities in a manner that does not unreasonably interfere with those operations.

(b) Waive, extend or conditionally extend the time to complete the various Performance Milestones by the applicable dates set forth in Appendix B-1 attached hereto (the "**Performance Dates**"), subject to the requirements of Section 3.2 (*Performance Milestones*) with regard to extending any of the Performance Milestones beyond the Predevelopment Period.

(c) Expand or contract the scope of the Project by altering the Technical Requirements to respond to new information, community, regulatory or environmental issues, or opportunities to reduce costs to City or to enhance community benefits.

In addition, if negotiations with Lead Developer under this Agreement are unsuccessful or do not lead to approval of the Transaction Documents by the Director of Transportation or, as applicable, the SFMTA Board, the Board of Supervisors, or any other City commission or board within the PDA Term, City has the right to negotiate with another developer for the development of the Project Site, to elect not to pursue any project at the Project Site, or to undertake other efforts with the Project Site including pursuing a new procurement or issuing a new request for proposals. Lead Developer agrees that if this Agreement terminates on its own terms, City shall have the right to elect to negotiate with another Short-Listed Proposer or to reprocure the Project.

2.11. Proprietary or Confidential Information.

(a) Lead Developer Information. The Parties enter into this Agreement with the understanding that in the course of the negotiations City may require that Lead Developer provide certain information that is proprietary. Such information may be necessary for City to verify financial, operational or trade secret information that is relevant to the negotiations of the Transaction Documents and the review of other Project Documents that will serve the public interest and the economic feasibility of the Project. Lead Developer will provide such information, and with respect to such information Lead Developer reasonably designates as confidential trade secret or proprietary information, Lead Developer will clearly identify, in writing and with specificity, the materials it believes to be confidential trade secret or proprietary information and the provision of the Public Records Act and the Sunshine Ordinance that it believes to provide an exemption to disclosure (the "**LD Confidential Information**"). City shall not publicly disclose LD Confidential Information without Lead Developer's consent except to the extent City is compelled to make such a disclosure under Applicable Law. Lead Developer acknowledges that regardless of its determination that any information or materials are confidential trade secret or proprietary information, City must make its own determination of whether the LD Confidential Information or other information or materials are confidential trade secret or proprietary or are subject to disclosure under existing law.

City agrees to notify Lead Developer of any public records request that involves LD Confidential Information. Lead Developer agrees to bear all the costs of any litigation that is filed to determine the applicability of the public records law to documents submitted by Lead Developer and designated as LD Confidential Information under this Section 2.11 (*Proprietary or Confidential Information*). Lead Developer acknowledges that the drafts of the Project Documents and other Work Materials during negotiations and other correspondence between Lead Developer and City may be public records.

(b) City Information. Lead Developer understands and agrees that, in the performance of the Work or in contemplation thereof, Lead Developer may have access to private or confidential information that may be owned or controlled by City ("**City Confidential Information**"). The City Confidential Information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to City. Lead Developer shall exercise the same standard of care to protect the City Confidential Information as a reasonably prudent developer would use to protect its own proprietary data.

Lead Developer agrees to hold any City Confidential Information it receives from or creates under this Agreement in strictest confidence and used only in the performance of the Work. Lead Developer shall not use or disclose any City Confidential Information or other City data it receives under this Agreement ("**City Data**") except as permitted or required by the Agreement or as otherwise authorized in writing by City. Any work using, or sharing or storage

of, City Confidential Information outside the United States is subject to prior written authorization by City. Access to City Confidential Information must be strictly controlled and limited to Key Personnel on a need-to-know basis only. Lead Developer is provided a limited non-exclusive license to use the City Data or Confidential Information solely for performing the Work and not for Lead Developer's own purposes or later use. Nothing herein shall be construed to confer any license or right to the City Data or City Confidential Information, by implication, estoppel or otherwise, under copyright or other intellectual property rights, to any third party. Unauthorized use of City Data or City Confidential Information by Lead Developer, the Lead Developer Agents or other third parties is prohibited. For purpose of this requirement, the phrase "unauthorized use" means the data mining or processing of data, stored or transmitted by the service, for commercial purposes, advertising or advertising-related purposes, or for any purpose other than security or service delivery analysis that is not explicitly authorized.

On any termination of this Agreement (unless this Agreement is terminated due to the full execution of the Project Agreement) or at City's request, Lead Developer shall, within forty-eight (48) hours, return all City Confidential Information which includes all original media. Once Lead Developer has received written confirmation from City that all the City Confidential Information has been successfully transferred to City, Lead Developer shall within ten (10) Business Days purge all the City Confidential Information from its servers, any hosted environment Lead Developer has used in performance of this Agreement, work stations that were used to process the data or for production of the data, and any other work files stored by Lead Developer in whatever medium. Lead Developer shall provide City with written certification that such purge occurred within five (5) Business Days of the purge.

3. TERM; PERFORMANCE DATES

3.1. PDA Term; Predevelopment Period Extensions. The term of this Agreement (the "**PDA Term**") will commence on the Effective Date and will expire on the earlier date (the "**Expiration Date**") to occur of the Commercial Close and the expiration of the Predevelopment Period, subject to earlier termination as provided in this Agreement. The Parties obligations under this Agreement will terminate on the termination of this Agreement, subject to any obligations that expressly survive such termination.

The Predevelopment Period can only be extended with the written consent of both Parties, which consent shall not be unreasonably withheld, conditioned or delayed; provided, however, that a non-requesting Party has the sole discretion to withhold or condition its consent to the other Party's Predevelopment Period extension request if the requesting Party is in default of its obligations under this Agreement at the time of submitting the extension request. A Party requesting a Predevelopment Period extension shall do so by delivering written notice of that extension request (an "**Extension Request**") to the other Party. The non-requesting Party must respond in writing to an Extension Request within ten (10) Business Days of receiving of an Extension Request. If the non-requesting Party withholds its consent to an Extension Request, the requesting Party has the right to request a meeting of the Parties to discuss the matter by delivering a written meeting request to the non-requesting Party within ten (10) Business Days of receiving the non-requesting Party's written notice of withholding its consent to the Extension Request. If the requesting Party timely delivers the meeting request to the non-requesting Party, the Parties must meet to discuss the Extension Request at a mutually agreeable time within ten (10) Business Days of the non-requesting Party's receipt of the meeting request. If the non-requesting Party does not agree to the Extension Request after that meeting, the Predevelopment Period will not be extended pursuant to that Extension Request.

3.2. Performance Milestones.

(a) Compliance. Each of the performance milestones ("**Performance Milestones**") are described in the attached Appendix B-1, which also establishes the dates for completing the Performance Milestones. The Parties established the Performance Milestones to ensure that the Commercial Close occurs on or before the expiration of the Predevelopment Period, the Substantial Completion of the Infrastructure Facility occurs no later than the Outside Delivery Date, and the Substantial Completion of the Housing and Commercial Component occurs no later than one year after Substantial Completion of the Infrastructure Facility. During the PDA Term, subject to City's delivery of the applicable Notice to Proceed to Lead Developer pursuant to Article 4 (*PDA Phases; Notices to Proceed*), the Lead Developer agrees to diligently pursue to completion the Performance Milestones in the manner and by the Performance Dates described in attached Appendix B-1. "Performance Milestones" shall include any additional Performance Milestones specified by the Parties in writing and "Performance Dates" shall include the performance dates mutually established by the Parties for those additional Performance Milestones.

Lead Developer's compliance with the Performance Milestones by the applicable Performance Dates shall not alter or reduce its obligations to comply with any other provision of this Agreement. The Performance Milestones shown in the attached Appendix B-1 can be changed by the mutual agreement of Lead Developer and City. It is anticipated that the PDA Management Plan could contain additional Performance Milestones and Performance Dates and propose other changes to Appendix B-1, all without increasing the LD Predevelopment Cost or changing the Predevelopment Period.

(b) Phase 2 Floating Milestone. The Performance Milestones include a **"Phase 2 Floating Milestone"**, which will be achieved upon the last to occur of the following (the "**Floating Milestone Date**"): (i) the Planning Commission has certified the EIR and approved, or recommended to the Board of Supervisors for approval as applicable, the special use district, conditional use authorization, General Plan Referral, and related General Plan amendments (the "**Phase 2 Entitlements**") needed to construct and operate the Facility as stated in the Draft EIR project description or as otherwise mutually agreed to by the Parties; (ii) if the Planning Commission certification of the EIR is appealed, the Board of Supervisors, in its sole discretion, has adopted findings to affirm the Planning Commission's certification of the EIR; (iii) the Board of Supervisors has, in its sole discretion and as applicable, adopted legislation and findings to approve any Phase 2 Entitlements that require the approval of the Board of Supervisors to be effective, and (iv) the approvals and legislation described in the foregoing (i) through (iii) are effective.

3.3. Unavoidable Delays and Regulatory Appeal Delays.

(a) Unavoidable Delay. "**Unavoidable Delays**" means delays in the timely completion of a Performance Milestone by reason of enemy action, civil commotion, epidemics, pandemics, and related governmental orders and requirements (and private sector responses to comply with those orders and requirements), strikes, lockouts or other labor disputes, protests, riots, demonstrations, acts of God, or by any other similar reason without the fault and beyond the reasonable control of the Party meeting that Performance Milestone. Unavoidable Delays shall not include any Regulatory Appeal Delay, any delays in meeting the MME Project Expansion Performance Milestones specified in Section 6.24 (*MME Expansion Project*), any delays under the MME Construction Agreement, or any delays under any Early Works Agreement.

(b) Regulatory Appeal Delay. "**Regulatory Appeal Delay**" means any delays arising from a proceeding or administrative appeal before any court, tribunal, or other judicial,

adjudicative, or legislative decision-making body that challenges the validity of any Regulatory Approval if the pendency of the proceeding or appeal is reasonably likely to prevent the Parties from timely entering into the Transaction Documents. A Regulatory Appeal Delay includes litigation related to the approval of any of the Transaction Documents by the SFMTA Board or, as applicable, the Board of Supervisors, or any other City commission or board. Regulatory Appeal Delays exclude any action or proceeding brought by any Lead Developer Affiliate or their Affiliates, any Lead Developer Agents, or any other third party assisted directly or indirectly by Lead Developer.

(c) Performance Extension. If Lead Developer is unable to timely satisfy any Performance Milestone because of an Unavoidable Delay or a Regulatory Appeal Delay, except as otherwise described below, Lead Developer can extend the period for completing that Performance Milestone (a "**Performance Extension**") by giving notice to City (the "**Extension Notice**") within five (5) Business Days of Lead Developer first learning of that Unavoidable Delay or Regulatory Appeal Delay. The Extension Notice must describe the Unavoidable Delay or Regulatory Appeal Delay, as applicable, describe how it immediately affects the timely performance of Lead Developer's obligations under the applicable Performance Milestone, and provide Lead Developer's good faith estimate of the dates by which it will be able to satisfy the affected Performance Milestone(s) immediately affected by that Unavoidable Delay or Regulatory Appeal Delay, as applicable, provided that the estimate shall not extend the Performance Date for completing any of Performance Milestones beyond the Predevelopment Period (as may be extended by the Parties pursuant to Section 3.1 (*PDA Term; Predevelopment Period Extensions*)).

If Lead Developer delivers an Extension Notice to City, the Performance Dates for Lead Developer's satisfaction of the Performance Milestones affected by the Unavoidable Delay or Regulatory Appeal Delay described in the Extension Notice will be extended to the dates specified in the Extension Notice (but no later than the expiration of the Predevelopment Period as may be extended by the Parties pursuant to Section 3.1 (*PDA Term; Predevelopment Period Extensions*)) unless Lead Developer delivers an Extension Notice to City and any of the following applies:

(i) On or before the tenth (10th) day following City's receipt of the Extension Notice, City notifies Lead Developer in writing that there is no basis for a Performance Extension under the criteria set forth in this Section 3.3(c) (*Performance Extension*) for a Performance Extension; or

(ii) A Terminating Event has occurred.

Except for the changes in the Performance Dates for the Performance Milestones affected by an Unavoidable Delay or Regulatory Appeal Delay (which shall not be extended beyond the Predevelopment Period), all other terms and conditions of the Agreement will remain in full force and effect during a Performance Extension. Any Party that is unable to timely achieve any Performance Milestone it is required to meet due to an Unavoidable Delay or Regulatory Appeal Delay must proceed with due diligence to resolve the matters causing the Unavoidable Delay Event or Regulatory Appeal Delay to the extent reasonably possible and, once resolved, to use commercially reasonable efforts to achieve the affected Performance Milestone as soon as possible.

4. PDA PHASES; NOTICES TO PROCEED

4.1. Performance. Lead Developer shall perform, and cause the Lead Developer Agents, as applicable, to perform, the Work in compliance with all the terms and conditions of this Agreement. The Work is to be performed in the three phases (each, a "**PDA Phase**" and

collectively, the "**PDA Phases**") described in the attached Appendix B-1, with each PDA Phase only commencing if City, in its sole discretion, issues a written notice to proceed (a "**Notice to Proceed**" or "**NTP**") to Lead Developer for that PDA Phase. Lead Developer is not authorized to perform Work for any PDA Phase until City delivers a Notice to Proceed to Lead Developer for that PDA Phase. In addition, if the Floating Milestone Date occurs, Lead Developer is not authorized to perform any further PDA Phase 2 Work after the Floating Milestone Date unless City delivers a Notice to Proceed for the remaining PDA Phase 2 Work. Notwithstanding anything to the contrary in the two preceding sentences, Lead Developer may elect to perform Work for a PDA Phase before receiving a Notice to Proceed for that PDA Phase, or before receiving a Notice to Proceed for the remaining PDA Phase 2 Work after the Floating Milestone Date occurs, at the risk of not receiving any Termination Payment for that Work if City terminates this Agreement before delivering the applicable Notice to Proceed to Lead Developer.

4.2. Notices to Proceed; Decision Not to Proceed

(a) Notice to Proceed #1. City will deliver Notice to Proceed #1 of Appendix B-1 to Lead Developer within five (5) Business Days of the last to occur of (i) the full execution and delivery of this Agreement, (ii) the full execution and delivery of the Guaranty, (iii) Lead Developer's delivery of the evidence of insurance required in Article 17 (*Insurance*) and any other materials reasonably required by City, and (iv) Lead Developer becoming a City vendor with a valid business tax registration number from the Business Tax Division of the San Francisco Tax Collector.

(b) Additional Notices to Proceed. City can elect, in its sole discretion, to issue to Lead Developer a Notice to Proceed #2 as described in Appendix B-1 for PDA Phase 2 after City has issued a Notice of Acceptance with respect to PDA Phase 1, subject to any suspension of the PDA Phase 2 Work pursuant to Section 4.2(d) (*Suspension of PDA Phase 2; Continuation Payment*). City can elect, in its sole discretion, to issue to Lead Developer a Notice to Proceed #3 as described in Appendix B-1 for PDA Phase 3 after City has issued a Notice of Acceptance with respect to PDA Phase 2. The issuance of any Notice to Proceed shall not be deemed to excuse the continued compliance with the requirements for the issuance of any prior Notice to Proceed.

(c) Decision Not to Proceed. City has the sole discretion in determining whether to issue a Notice to Proceed for any of the PDA Phases. If City decides not to proceed with a PDA Phase, it must provide written notice of that decision to Lead Developer (a "**Discontinuation Notice**"), after which this Agreement will terminate in accordance with Article 16 (*Termination*). Within fifteen (15) Business Days of receiving a Discontinuation Notice, Lead Developer will deliver all Work Materials that is in the possession of Lead Developer or the Lead Developer Agents and was not previously delivered to City.

(d) Suspension of PDA Phase 2; Continuation Payment.

(i) If the Floating Milestone Date occurs, then Lead Developer's obligation and authorization to perform the PDA Phase 2 Work shall automatically be suspended as of the Floating Milestone Date unless City elects, in its sole discretion, to issue a Notice to Proceed for the continuation of the PDA Phase 2 Work (a "**Continuation Notice**"). Within 45 Business Days of issuing a Continuation Notice, City shall make a payment of Four Million Three Hundred Fifty Thousand Dollars ($4,350,000) (the "**Continuation Payment**") to Lead Developer in exchange for an executed release from Lead Developer satisfactory in form and substance to City. The executed release from Lead Developer shall release, waive, and discharge City and City Agents of and from all liabilities, obligations, claims, and demands whatsoever arising out of or under this Agreement for Work during the period beginning on the Effective

Date and ending on the Floating Milestone Date. City's ability to issue the Continuation Notice is contingent on obtaining the authorizations described in Section 4.2(d)(ii).

(ii) City's payment of the Continuation Payment requires the prior authorization of both the SFMTA Board and the Board of Supervisors, each acting in their respective sole discretion.

(iii) If the Floating Milestone Date occurs and City obtains the authorizations described in Section 4.2(d)(ii), but does not elect to issue the Continuation Notice on or before the 30th day after the Floating Milestone Date (the "**Outside Suspension Date**"), then City must provide a Discontinuation Notice to Lead Developer within five (5) Business Days after the Outside Suspension Date, after which this Agreement will terminate in accordance with Article 16 (*Termination*).

(iv) If the Floating Milestone Date occurs but City does not obtain the authorizations described in Section 4.2(d)(ii) by the Outside Suspension Date, the Parties can mutually agree in writing to permit City to issue the Continuation Notice without any City obligation to make the Continuation Payment.

4.3. Acceptance of Work.

(a) Acceptance Request. Within five (5) Business Days of determining all the Work for a PDA Phase has been fully completed, including the delivery of the required Work Materials for that PDA Phase, Lead Developer will submit a written request (each, an "**Acceptance Request**") for Acceptance of the PDA Phase specifying that the Work for that PDA Phase is completed and the date that Work was completed to City.

(b) Notice of Incompleteness. Within fourteen (14) Business Days of receiving an Acceptance Request, if City determines that the Work for the applicable PDA Phase is not complete or if additional information is required to determine if Acceptance should be granted, City must notify Lead Developer in writing of any outstanding Work that must be completed at no cost to City and any other outstanding issues (each, a "**Notice of Incompleteness**"). Lead Developer must promptly cure the deficiencies identified in the Notice of Incompleteness and submit a new Acceptance Request for that PDA Phase. The procedure in this subsection (b) shall be repeated until City is satisfied that all Work required for that PDA Phase has been completed in accordance with this Agreement and no further requirements must be met.

(c) Notice of Acceptance. City will issue a Notice of Acceptance for the Work in a PDA Phase if it has received an Acceptance Request for that PDA Phase and determines, in its sole discretion, that the Work for that PDA Phase is complete and the following conditions are met:

(i) Lead Developer has provided a certification that the Work for the applicable PDA Phase has been completed;

(ii) Lead Developer has delivered and City has, if applicable, approved in writing all Work Materials required for that PDA Phase under this Agreement;

(iii) Lead Developer has provided a signed statement under penalty of perjury and in form acceptable to City that all other debts and claims of all applicable Lead Developer Agents and suppliers relating to the Work for that PDA Phase and prior PDA Phases have been paid or settled and provided evidence that any Agents or suppliers that created the

Work Materials have consented to those Work Materials being assigned to City if this Agreement terminates for any reason other than Commercial Close; and

(iv) All of Lead Developer's other obligations relating to that PDA Phase have been satisfied in full or waived in writing by City.

5. PROJECT DOCUMENTS

5.1. Negotiating Principles.

(a) Coordination in Responses. Lead Developer shall ensure each draft of a Project Document, or each response to a draft Project Document, that Lead Developer delivers to City for review under this Agreement has been internally reviewed by the appropriate Lead Developer Related Entities. City shall ensure each draft of a Project Document, or each response to a draft Project Document, that City delivers to Lead Developer for review has been internally reviewed by the appropriate City parties acting with respect to City's rights and obligations under this Agreement.

(b) Good Faith Efforts. The Preliminary Term Sheet provides some of the terms to be incorporated in the Project Agreement and, as applicable, the other IF Transaction Documents except to the extent the Parties mutually agree to modify any of those terms. Section 6.9(d) (*HCC Term Sheet*) provides some of the terms to be incorporated in the HCC Agreement and, as applicable, the other HCC Transaction Documents except to the extent the Parties mutually agree to modify any of those terms. City reserves the right, in its sole discretion, to modify the Preliminary Term Sheet (either through a revised Preliminary Term Sheet or through development of the Project Agreement) to reflect the Proposal, the commercial/financial structure that is developed during the PDA Term and for impacts to the terms of the Preliminary Term Sheet arising out of the commercial/financial structure of the Housing and Commercial Component. If and to the extent that City does decide to modify the Preliminary Term Sheet (either through a revised Preliminary Term Sheet or through development of the Project Agreement), City will collaborate with Lead Developer on the modified terms. During the PDA Term, City and Lead Developer will each use commercially reasonable good faith efforts to negotiate the terms of the Transaction Documents. The obligation to negotiate in good faith requires the Parties to communicate with each other with respect to those issues for which agreement has not been reached, and in such communication to follow reasonable negotiation procedures, including meetings, telephone, virtual meetings, and correspondence.

(c) Meeting Schedule. The Parties must establish a schedule for weekly meetings, and for providing and reviewing various drafts of the Project Agreement, the HCC Term Sheet, and the other Transaction Documents. This schedule must reflect the Performance Dates for submitting the Project Agreement, the HCC Term Sheet and other Transaction Documents to the SFMTA Board for consideration, the Outside Delivery Date, and the date for Substantial Completion of the Housing and Commercial Component no later than one year after Substantial Completion of the Infrastructure Facility. Lead Developer shall submit its proposed schedule to City by Performance Milestone 2. If the Parties cannot mutually agree on that schedule on or before by Performance Milestone 5 or any later date approved by City in writing, City can terminate this Agreement.

(d) Conformity. The Transaction Documents must conform to the Preliminary Term Sheet, the HCC Term Sheet requirements set forth in Section 6.9(d) (*HCC Term Sheet*), the Technical Proposal, and the Financial Proposal, except to the extent the Parties mutually agree to revise them, and meet the requirements of this Agreement. The Transaction Documents must be mutually satisfactory to City and Lead Developer, and approved as to form by the Office of the City Attorney.

(e) Subject to Approvals. The negotiated form of each Transaction Document shall be subject to the completion of CEQA review and the Planning Commission's certification of the EIR, the Parties' successful negotiation of the final terms of all of the Transaction Documents (subject to an approved HCC Change pursuant to Section 9.2 (*HCC Change*) to remove the Housing and Commercial Component), and approval of the negotiated Transaction Documents by the SFMTA Board and, as applicable, the Board of Supervisors and any other City board or commission, each acting in its sole discretion.

5.2. Transaction Documents.

(a) City will submit drafts of the Project Agreement and the HCC Agreement to Lead Developer by the applicable Performance Date specified in the Performance Milestones. City prepare the first drafts of all other Transaction Documents unless otherwise mutually agreed by the Parties.

(b) If the Performance Milestones do not specify a Performance Date for delivering a specific Transaction Document (an "**Unspecified Document**"), City shall deliver the initial draft of that Unspecified Document by the date mutually, if any, selected by the Parties. If the Parties do not agree on a specific date, City will deliver the draft to Lead Developer by Performance Milestone 19.

(c) Each draft of the Transaction Documents must incorporate the following to the extent applicable to that Transaction Document: (i) the Technical Requirements, (ii) the Project Objectives, (iii) the requirements of Section 6.5(c) (*Project Agreement*), Section 7.1 (*Development Team*), Section 7.2 (*Key Personnel; Organization*), and Section 15.1 (*Prohibited Payments*), (iv) the LBE Plan, (v) the Asset Management Program and Energy Management Program, (vi) the Fixed Budget Limit and the updated Financial Model for the design and delivery of the Infrastructure Facility and performance of the Infrastructure Facility Maintenance for the Infrastructure Facility submitted at Performance Milestone 32, (vii) require Substantial Completion of the Infrastructure Facility no later than the Outside Delivery Date, and Substantial Completion of the Housing and Commercial Component no later than one year after Substantial Completion of the Infrastructure Facility, (viii) require that the Project be consistent with the Project description in the EIR and require the Principal Project Company to comply with and implement the MMRP, and (ix) the requirements listed in the attached Appendix M.

(d) As long as a Party complies with its obligations to negotiate in good faith under Section 5.1 (*Negotiating Principles*), timely submits the drafts of each Transaction Document it is required to submit to the other Party by the applicable Performance Date, timely provides its comments to the drafts of each Transaction Document submitted by the other Party by the applicable Performance Date, and for each draft Transaction Document incorporates or otherwise conforms the matters described in the foregoing sentence to the extent applicable, that Party will not be in default of its obligations under this Agreement by reason of the Parties' failure to mutually agree to the final form of any Transaction Document.

5.3. Approval of Project Agreement and Other Transaction Documents. The Parties acknowledge that the SFMTA Board and Board of Supervisors will, and other City boards or commissions may, need to approve the Project Agreement negotiated under this Agreement, and their approval may be required for the other Transaction Documents. Lead Developer understands and agrees that although the SFMTA is a department of the City, City staff and executives have no authority or influence over the SFMTA Board, the Board of Supervisors, or other City boards or commissions for approval of any Transaction Documents. Accordingly, there is no guarantee or a presumption that any Transaction Document negotiated by the Parties under this Agreement will be approved by the SFMTA Board, the Board of Supervisors or, if applicable, any other City board or commission. City's sole obligation under

this Agreement with respect to the approval of the Transaction Documents shall be to negotiate in good faith with Lead Developer, review Lead Developer's timely submittals in good faith, provide any comments it is required to deliver to Lead Developer by the applicable Performance Date, and present and recommend any final negotiated Transaction Documents that are in the forms approved by the City Project Director and the LD Project Director to the SFMTA Board and the Board of Supervisors (and if applicable, any other City boards or commissions) for their review and consideration, acting in their respective sole discretion.

6. PREDEVELOPMENT WORK

6.1. Statement of Work.

(a) During the PDA Term, Lead Developer must conduct all predevelopment activities needed to (i) develop the Project in compliance with this Agreement and the PDA Management Plan approved by the City, (ii) reach Commercial Close before the expiration of the Predevelopment Period, (iii) reach IF Financial Close by November 30, 2024, (iv) reach Substantial Completion of the Infrastructure Facility in compliance with the requirements of this Agreement by no later than the Outside Delivery Date, (v) reach Substantial Completion of the Housing and Commercial Component no later than one year after Substantial Completion of the Infrastructure Facility, and (vi) avoid delaying Substantial Completion of the Infrastructure Facility beyond the Outside Delivery Date or adversely impacting the SFMTA's operations at or use of the Bus Yard Component. Such activities include, but are not limited, to the predevelopment obligations described in this Article 6 (*Predevelopment Work*).

(b) As part of City's rights under Section 9.3 (*Changes Proposed by City*), City may elect to change the Technical Requirements to include any or all of the additional scope item Allowances described in FS Form D, other than Allowances relating to escalation or insurance. Accordingly, Lead Developer shall also develop the scopes and technical requirements of the Allowances, using its best efforts to deliver each Allowance within the applicable cost estimate for that Allowance in FS Form D of the Financial Proposal.

6.2. PDA Phases. Lead Developer will deliver the Project Management Deliverables and Design Deliverables to City in the three PDA Phases described in the attached Appendix B-1. Lead Developer must timely deliver the Project Management Deliverables and Design Deliverables by the dates specified for them in the attached Appendix B-1 (as may be modified by Section 3.2 (*Performance Milestones*)), and prepare the other Work Materials in compliance with the PDA Management Plan schedule ("**Project Schedule**"). Any change in the initial Project Schedule from the schedule originally included in the Financial Proposal, and any change to the Project Schedule, will require written approval from the City.

6.3. Due Diligence Investigation. If City delivers Notice to Proceed #1 to Lead Developer, Lead Developer must duly execute and deliver to City the access agreement attached as Appendix L ("**Access Agreement**") for its due diligence investigations at the Project Site, either by providing the number of original signed copies requested by City or signing the Access Agreement through DocuSign, under a multifactor authentication process initiated by City. City must duly execute the Access Agreement by the tenth (10th) Business Day immediately following its receipt of the Access Agreement executed by Lead Developer. Lead Developer and City will use the form of Access Agreement for any other due diligence activities proposed by Lead Developer at the Project Site that are not included in the first Access Agreement executed by the Parties.

Lead Developer must complete all due diligence that is reasonably needed to determine if the Project Site is appropriate for the Project in consideration of the Preliminary Term Sheet, the Fixed Budget Limit, and the other requirements specified in this Agreement. Such due diligence

shall include the site due diligence investigations set forth in Appendix B-2, and shall include, but not be limited to, determining (i) the quality, nature, adequacy and physical condition of the Project Site, including all aspects of the existing improvements, the physical, geological and environmental condition of the Project Site (including soils and any groundwater), and the presence or absence of any hazardous materials in, on, under or about the Project Site, (ii) all title matters affecting the Project Site, (iii) the Applicable Law and private or public covenants, conditions and restrictions relating to the Project Site and its legal status, including, without limitation, the compliance of the Project Site or its operation, (iv) taxes, assessments, use permit requirements relating to the Project Site and the Project, and (iv) all other matters of material significance affecting the Project Site. Lead Developer shall submit the scope of its proposed due diligence investigation of the Project Site and the final reports, analyses, and materials it prepares and receives regarding the conditions described in (i) and (ii) of this paragraph to City by the applicable Performance Dates specified in the Performance Milestones.

All entries by Lead Developer or the Lead Developer Agents onto the Project Site to perform any testing, inspections, or other investigations will be made only at mutually agreeable times and pursuant to the terms and conditions of the Access Agreement. As specified in the Access Agreement, Lead Developer acknowledges the Project Site has active high voltage overhead lines and special clearance procedures and authorizations will be necessary before Lead Developer or the Lead Developer Agents can commence certain due diligence activities at the Project Site. Lead Developer is responsible for scheduling sufficient time to comply with these procedures and obtain these authorizations in order to timely commence and complete its due diligence investigations at the Project Site.

6.4. Compliance with Plans. The PDA Management Plan and the other plans described in Appendix B-2 must guide Lead Developer's predevelopment activities and obligations for the Project during the PDA Term. If the PDA Management Plan and those other plans are approved by City through the process described in Appendix B-2, Lead Developer must promptly follow and comply with each of the processes and requirements described in them.

6.5. Design Development.

(a) Compliance of Design Deliverables. Every Design Deliverable must comply with the Technical Requirements and the requirements of Appendix B-2, regardless of any conflicts between the Technical Requirements and the Technical Concept Design submitted as part of the Proposal, unless City approves of any variance in writing, which approval will be in its sole discretion. Every Design Deliverable must maintain the Fixed Budget Limit. Lead Developer is solely responsible for ensuring the Design Deliverables and all other Project design work performed by or for Lead Developer during the PDA Term complies with Applicable Law and the requirements and procedures of this Agreement. Lead Developer bears the risk of any of the Design Deliverables being incorrect or incomplete due to an incomplete and/or incorrect review, examination or investigation of the Project Site or its existing improvements as long as City gives Lead Developer adequate access to the Project Site for its due diligence investigations, subject to the limitations specified in Section 6.3 (*Due Diligence Investigation*) and the Access Agreement.

(b) Design Deliverable Analyses. In developing each Design Deliverable, Lead Developer must comply with the following:

(i) Incorporate and make design changes as needed to comply with the Technical Requirements without exceeding the Fixed Budget Limit.

(ii) Evaluate changes to the design that are directly related to material changes to the Technical Requirements implemented pursuant to Article 9 (*Changes to the Project*). Lead Developer shall provide City with a cost and schedule impact analysis for each proposed material change to the Technical Requirements and a determination if these would increase or decrease the Fixed Budget Limit. As stated in Section 2.10 (*Exclusive Negotiations; City's Reserved Rights*) and Article 9 (*Changes to the Project*), City retains sole discretion to propose, accept, or reject any changes to the Technical Requirements.

(iii) Evaluate the development of the Allowance items and provide City with (i) a full and detailed cost estimate of those items in accordance with Attachment 2 to Appendix B-2, (ii) a summary schedule of those items in accordance with Appendix B-2 and in the same format as Appendix H, (iii) a risk register for those items in accordance with Appendix B-2 relative to their corresponding cost estimates provided by Lead Developer in FS Form D of the Financial Proposal, and (iv) a determination if these Allowances would increase or decrease the Fixed Budget Limit.

(c) Project Agreement. The Project Agreement must include substantially the same design submittal and review procedures and requirements for each subsequent design deliverable to be submitted by the Principal Project Company to City after Commercial Close, and shall follow the content and format requirements that shall be agreed by Lead Developer and City during the PDA Term. The Project Agreement design deliverables must comply with these design submittal and review requirements as stated in Appendix B-2 before they are submitted to City, acting in its regulatory capacity, for any site permit or construction permit.

6.6. Asset Management Program. Lead Developer must timely refine and finalize the scope of the Infrastructure Facility Maintenance and develop the Asset Management Program, as required in the PDA Management Plan and the attached Appendix B-2, all of which are subject to City's prior approval and must be performed in consultation with City. The Asset Management Program must be used by Lead Developer for the competitive bidding process for the Design-Build Contract and IFM Contract. As of Commercial Close, the implementation of the Asset Management Program will be part of the Principal Project Company's responsibilities under the Project Agreement during the Project's construction period and the Infrastructure Facility Term.

6.7. Energy Management Program. Lead Developer must develop an energy management program for the Facility ("**Energy Management Program**") in accordance with the requirements set forth in Appendix B-2 and in consultation with City. The Energy Management Program shall be consistent with good industry practice, Applicable Law, applicable standards and specifications. The Energy Management Program must be used by Lead Developer for the competitive bidding process for the Design-Build Contract and IFM Contract, all as part of the Asset Management Program Development Plan. As of the IF Commercial Close, the implementation of the Energy Management Program will be part of the Principal Project Company's responsibilities under the Project Agreement through the construction of the Infrastructure Facility and the Infrastructure Facility Terms.

6.8. Project Financing. Lead Developer must competitively procure and obtain sufficient debt financing for the development and timely delivery of the Project consistent with the Financial Proposal and in compliance with the Financing Management Plan described in the attached Appendix B-2, if approved by City; provided that if a Lead Developer's finance plan for the Infrastructure Facility and the Housing and Commercial Component is approved by the City at Performance Milestone 34, Lead Developer must then competitively procure and obtain the debt financing described in that City-approved finance plan (the "**Finance Plan**").

6.9. HCC Predevelopment Work. Lead Developer must use commercially reasonable, good faith efforts to perform all predevelopment activities needed to timely develop, design, finance, fund, construct, operate and maintain the Housing and Commercial Component as described in the Technical Proposal (the "**Proposed HCC**"), as may be modified pursuant to Section 9.2 (*HCC Change*) or Section 9.3 (*Changes Proposed by City*). Such predevelopment activities include, but are not limited to, the activities described in this Section 6.9 (*HCC Predevelopment Work*).

(a) HCC Interface Requirements. The Housing and Commercial Component must meet the following requirements (the "**HCC Interface Requirements**"):

(i) the Housing and Commercial Component must timely fund its share of the Common Infrastructure design, construction, operation and maintenance costs (based on PCIH);

(ii) the development, financing and construction of the Housing and Commercial Component must not delay Substantial Completion of the Infrastructure Facility, which must occur by the Outside Delivery Date;

(iii) the Housing and Commercial Component must achieve Substantial Completion within one year following Substantial Completion of the Infrastructure Facility; and

(iv) the construction of the Housing and Commercial Component must not interfere with or put at risk the Bus Yard Component or its transit operations, as determined by City, in its sole discretion.

A. The following Housing and Commercial Component construction activities are examples of activities that City currently expects would interfere with or impede the SFMTA's transit operations after Substantial Completion of the Infrastructure Facility. Lead Developer may propose solutions to prevent such activities from interfering with or impeding SFMTA's transit operations, but City shall no have no obligation to accept or agree to those solutions.

(1) Any disturbance or temporary obstruction of building access for individuals, SFMTA vehicles, or Infrastructure Facility supporting services such as deliveries or waste retrieval as a result of Housing and Commercial Component construction activities, construction materials or equipment delivery, or staging of equipment or materials (a written request may be made to City for an exception at least six months in advance of any such proposed activity taking place, which City will review and respond in writing, in its sole discretion);

(2) Any damage to the Infrastructure Facility resulting from ongoing Housing and Commercial Component construction;

(3) Any changes to the Infrastructure Facility building or systems or disturbance to active Infrastructure Facility building operations or building systems, as a result of Housing and Commercial Component design integration; and

(4) Any mobilization for the start of construction.

B. The following Housing and Commercial Component construction activities are examples of activities that City currently expects would not interfere with or impede the SFMTA's transit operations after Substantial Completion of the Infrastructure Facility, to the extent they do not result in any of the activities described in Section 6.9(a)(iv)(A)

and provided the following activities are completed no later than one year after Substantial Completion of the Infrastructure Facility:

(1) For completion of Housing and Commercial Component construction activities occurring above the completed Infrastructure Facility roof deck, any HCC construction activities that do not negatively impact the roof deck or the SFMTA operations being performed within the Infrastructure Facility, subject to structural analysis and design performed by the Lead Developer during the PDA phase to address potential impact loads from accidental loading;

(2) For completion of Housing and Commercial Component construction activities occurring below the completed Infrastructure Facility roof deck, interior finishes such as the installation of drywall, casework, tile, painting, final inspections and completion of punchlist items; and

(3) Demobilization of Housing and Commercial Component construction occurring above or below the completed Infrastructure Facility roof deck.

(b) HCC Development Plan. At the meeting described in Performance Milestone 1F, Lead Developer shall present its draft plan for (i) verifying feasibility and constructability of the Proposed HCC or any other housing that meets the Technical Requirements, (ii) securing Regulatory Approvals and financing for the Proposed HCC, (iii) constructing and achieving Substantial Completion of the Proposed HCC in a manner that meets the HCC Interface Requirements and the HCC Schedule, and (iv) performing the feasibility and financing analysis described in Section 6.9(g) (*Feasibility Analysis*). The plan is subject to the review and approval of City and the plan, if approved by City, will be the "**HCC Development Plan**". The HCC Development Plan must include the HCC Schedule and the HCC Term Sheet and Lead Developer's proposed collaborative approach to work with City to achieve the Proposed HCC in compliance with the HCC Interface Requirements. Lead Developer shall provide its draft HCC Term Sheet to City no later than thirty (30) days after the meeting described in Performance Milestone 1F.

(c) HCC Schedule. The "**HCC Schedule**" will be a schedule that provides the key Proposed HCC milestones and their timing, including but not limited to (i) the Parties' review, negotiation and completion of the HCC Development Plan, the HCC Term Sheet, the HCC Agreement, and any other Project Documents required for the development, design, financing, construction, operation and maintenance of the Housing and Commercial Component, (ii) the dates for securing the needed Regulatory Approvals and financing, and (iii) the construction stages and milestones related to the Proposed HCC through its Substantial Completion, together with the anticipated Substantial Completion of the Infrastructure Facility. The HCC Schedule will also be used by the City to assist it with ensuring the development, financing, design, and construction of the Housing and Commercial Work will meet the HCC Interface Requirements and to help City plan for and manage its corresponding activities. Lead Developer will present a draft HCC Schedule to City at Performance Milestone 1F, which draft must incorporate the Housing and Commercial Component schedule included in FS Form F-PR of the Financial Proposal. Lead Developer shall update and submit the HCC Schedule at regular intervals and, at a minimum, at Performance Milestones 16 and 28.

(d) HCC Term Sheet. The "**HCC Term Sheet**" will outline the key terms of the HCC Agreement, which must conform with the relevant provisions of the Proposal (unless otherwise agreed to or modified under Section 9.2 (*HCC Change*) or through the final design process and approved by City) and the Technical Requirements. The HCC Term Sheet will be non-binding and conditioned on the completion of CEQA review and the Planning Commission's certification of the EIR, the Parties' successful negotiation of the Transaction

Documents and, and approval of the negotiated Transaction Documents by the SFMTA Board and, as applicable, the Board of Supervisors and any other City boards or commissions, each acting in its sole discretion. Except as otherwise mutually agreed by the Parties, the HCC Term Sheet must reflect the Proposal, comply with the Project Objectives and the Technical Requirements for the Housing and Commercial Component, and address the following terms related to the Housing and Commercial Component:

(i) A description of the real property interest in the parcel(s) ("**Premises**") to be transferred to the Housing Project Company, which City will continue to own in fee;

(ii) The approved activities at the Premises;

(iii) A description of the Proposed HCC, including a summary of its size, layout, proposed buildings, and the private and public open spaces;

(iv) The details of each building, including that building's number of affordable residential units and any market rate units listed by bedroom type and Area Median Income tier, the proposed rent and tenant income level restrictions and utility allowances for the affordable residential units, the minimum and average size of residential units by bedroom type, the affirmative marketing strategy, tenant preferences, resident services plan, and management plan, the proposed location and square footage of commercial and other space, and the financing strategy for constructing and operating the commercial space and the affordable and any market rate residential units;

(v) The public benefit program, the transportation demand management plan if required under the SFMTA's Transportation Demand Management Program, or if a transportation demand plan is not required, the approach to facilitating public transit use by residents or other users of the Housing and Commercial Component, and the program of public right of way improvements;

(vi) The proposed efforts to achieve labor harmony;

(vii) A description of the needed Regulatory Approvals and the anticipated timing for applying for and securing those Regulatory Approvals;

(viii) A description of the anticipated financing and tax credits, including the timing that financing would be available, the timing of any application for financing and any applicable tax credits, the additional approvals needed for that financing or tax credits, and the relative availability of that financing or tax credits;

(ix) A description of the Housing Project Company's contingency plans if the Housing Project Company cannot timely obtain the Regulatory Approvals, financing and (if applicable) tax credits needed for delivery of the Proposed HCC, and include (1) a requirement that, if any change is needed to the project to be constructed under the applicable HCC Agreement, the Housing Project Company first obtain City's approval and any necessary Regulatory Approvals, and (2) a description of the process for obtaining those approvals.

(x) The proposed form of the HCC Agreement to grant the Housing Project Company a long-term real property interest in the Premises, the commencement and expiration of that interest, any conditions precedent to the commencement of that interest, and proposed payments equal to the value of that interest to City (provided a Housing Project Company may first recover the development costs for its Affordable Units, with the HCC Term Sheet describing the anticipated timing for recovering those development costs);

(xi) The conditions precedent to the execution of the HCC Agreement, HCC Financial Close, and the commencement of the HCC Term;

(xii) City participation in any transfer that results in the Housing Project Company (or any of its subtenants or assignees) receiving proceeds after deducting its costs of financing, developing, design, construction and improvement of the Premises and the transaction costs for that transfer (but excluding the lease or sublease of individual residential or commercial units) and calculation and allocation of cost savings resulting from any refinancing of the Housing and Commercial Component construction costs, if any;

(xiii) The method of paying the Housing and Commercial Component share of the Common Infrastructure costs, which will be based on the PCIH, and security for such payment, including the method for paying such costs between Substantial Completion of the Infrastructure Facility and any later Substantial Completion of any portion of the HCC;

(xiv) The security for financial close of any funding to be used to finance any market-rate building to be constructed at the Premises;

(xv) Commercially reasonable standard mortgagee protection provisions, to the extent any lender will take a security interest in any real property interest of the Premises or ownership interest in the Housing and Commercial Component improvements at the Premises;

(xvi) Insurance requirements and the Parties' respective rights and obligations with respect to damage and destruction;

(xvii) A description of capital reserves, security deposit, financing security, and the forms of payment and performance bonds;

(xviii) The sole responsibility and cost of the Housing Project Company (or its assignee) for designing, financing, building, operating, and maintaining the Premises and Housing and Commercial Component during the Housing Term and paying (or obtaining any available abatements) all property taxes and assessments levied against or related to the Housing and Commercial Component during the Housing Term;

(xix) Housing Project Company's obligations with respect to (A) the environmental condition of the Premises and any hazardous materials released at the Premises and (B) the environmental condition of the Common Infrastructure and any hazardous materials released at the Common Infrastructure, which shall be based on the PCIH;

(xx) Restrictions on assignment, subletting and other transfers of the HCC Agreement or the Housing Project Company's interest, including any restrictions on equity transfers or change of control of the Housing Project Company, and a requirement that the Guarantor (being the Guarantor as of the date of execution of this Agreement) or its Affiliate shall, until such time as the Housing and Commercial Component achieves Substantial Completion, be responsible for the delivery of the HCC (but not the financing of the HCC) and its integration with the Infrastructure Facility, by contract, or by other means, unless otherwise agreed to by City in its sole discretion. For the avoidance of doubt, the Housing Project Companies will have primary responsibility for delivering the Housing and Commercial Component and the Guarantor's (or its Affiliate's) responsibility hereunder does not require the provision of guarantees, security or other financial obligations for the delivery of the HCC on behalf of the Housing Project Companies or otherwise;

(xxi) The obligation to achieve Substantial Completion of the Housing and Commercial Component within one year following Substantial Completion of the Infrastructure Facility;

(xxii) Housing Project Company's obligation to ensure that, as of the date for Substantial Completion of the Housing and Commercial Component, it shall be free of defects, including design defects, errors and omissions, except as may be set out in the Housing and Commercial Component punch list (which shall be fully resolved as of final acceptance of the Housing and Commercial Component);

(xxiii) Remedies for defaults, including mortgagee protection rights of lenders and any termination rights for City;

(xxiv) The surrender condition of the Premises, including all improvements then located on the Premises, and any application of reserve funds and transfer of occupants' security deposits at the end of the Housing Term; and

(xxv) Any other fundamental terms, including any applicable stakeholder input, that will serve as a basis for negotiating the HCC Agreement.

(e) Execution of HCC Term Sheet. If the Parties mutually agree to a final version of the HCC Term Sheet by the date specified for that agreement in the HCC Schedule, Lead Developer will execute the HCC Term Sheet. If City elects to submit the HCC Term Sheet to the SFMTA Board or any other City body, Lead Developer must attend any meetings held by the SFMTA Board and, if applicable, any other City body considering the HCC Term Sheet. Lead Developer must also be prepared, at City's request, to provide supporting materials and present the HCC Term Sheet and Proposed HCC at any of those meetings. If either the SFMTA Board or, if applicable, any other City body, does not endorse the submitted HCC Term Sheet, then the Parties may mutually agree to modify the HCC Term Sheet and have it resubmitted for endorsement. City will execute the mutually-approved HCC Term Sheet within seven (7) Business Days of endorsement (if at all) of the HCC Term Sheet by the SFMTA Board or later endorsement (if at all) by any other City body, if applicable. The endorsed HCC Term Sheet is subject to modification pursuant to Section 9.2 (*HCC Change*) and Section 9.3 (*Changes Proposed by City*), and City may elect to submit modified versions of the HCC Term Sheet to the SFMTA Board or any other City body. The Parties acknowledge that any executed HCC Term Sheet is intended only to set forth general principles for negotiation of the HCC Agreement and the other HCC Transaction Documents. The HCC Agreement and each of the other HCC Transaction Documents will be subject to review and approval by the Parties, their respective legal counsel, the SFMTA Board, and as applicable, by the Board of Supervisors, with both boards acting in their sole discretion. Regardless of whether the HCC Term Sheet is executed by City, City cannot be bound by the HCC Agreement or any of the other HCC Transaction Documents until they are approved by the SFMTA Board and as applicable, the Board of Supervisors or any other City board or commission, each in their respective sole discretion, and executed by City, which will not occur until CEQA review for the Project is complete.

(f) Financing. Lead Developer must timely pursue the sources of Housing and Commercial Component funding listed in its Financial Proposal, and any additional sources of funding that it identifies during the PDA Term, in compliance with the HCC Schedule, the Financing Management Plan described in the attached Appendix B-2, and the Finance Plan, if any. Lead Developer shall also be responsible for ensuring compliance with all the conditions and requirements of that funding, including any that apply to actions taken by Lead Developer during the PDA Term. If the Financial Proposal includes MOHCD loans, Lead Developer shall comply with, and structure any Housing Project Company developing Affordable Units to be funded with the MOHCD loans in compliance with, the underwriting guidelines for MOHCD

predevelopment loans, which can be located at https://sfmohcd.org/housing-development-forms-documents. At the kick-off meeting described in Performance Milestone 1, MOHCD will discuss the materials Lead Developer will need to submit to MOHCD to apply for a predevelopment loan with respect to the Affordable Units that qualify for a MOHCD predevelopment loan. Lead Developer will promptly respond to MOHCD requests for information needed to timely submit and process the predevelopment loan application. Lead Developer acknowledges and agrees that City shall have no obligation to provide funding for any aspect of the Housing and Commercial Component.

(g) Feasibility Analysis. Lead Developer must timely develop and deliver a Housing and Commercial Component feasibility and financing analysis, plans, and commitments consistent with the Financial Proposal and in compliance with the HCC Schedule, the Financing Management Plan described in the attached Appendix B-2, and the Finance Plan, if any. The Financing Management Plan will account for tax credits that Lead Developer anticipates in regard to the construction of the Affordable Units. Although the Housing and Commercial Component share (based on PCIH) of the Common Infrastructure costs will be the Housing Project Company's responsibility, Lead Developer has the sole discretion in allocating those costs among the Affordable Units and the Housing and Commercial Component market rate residential units and non-residential units. The materials described in this subsection and the timelines included in those materials must reflect the Project Schedule and the HCC Schedule and comply with the HCC Interface Requirements.

(h) Additional HCC Materials. The Design Deliverables include certain plans, drawings and specifications for the Housing and Commercial Component. If Lead Developer elects to prepare any other plans, drawings and specifications for the Housing and Commercial Component (the "**Additional HCC Materials**") during the PDA Term, Lead Developer must submit the Additional HCC Materials to City for approval, in its proprietary capacity as owner of the Project Site and to confirm compliance with the Technical Requirements, before the Additional HCC Materials are submitted to any Regulatory Agency (including City acting in its proprietary capacity) for review or approval. City shall review and respond to any Additional HCC Materials submitted within the time periods specified in the HCC Development Plan. Lead Developer acknowledges and agrees that any Additional HCC Materials will, to the extent applicable, reflect the HCC Schedule milestones for the development, financing, construction, and Substantial Completion of the Housing and Commercial Component. Lead Developer shall be responsible, at its sole cost and expense, for the development of all Additional HCC Materials, which Lead Developer must ensure are: (i) assignable to any housing developer for the Affordable Units or the Housing and Commercial Component market rate residential units, as necessary, that holds an interest in the proceeds of any construction loan for those Affordable Units or market rate residential units, and (ii) comply with Applicable Law (including but not limited to Chapter 7 of the San Francisco Environment Code), the Technical Requirements, and, if applicable, MOHCD's design requirements for housing funded with MOHCD funds.

6.10. Local Business Enterprise Plan. Lead Developer must timely develop a program for utilizing Local Business Enterprises (as defined in Chapter 14B of the San Francisco Administrative Code) that must be consistent with the policy goals and purpose of Chapter 14B of the San Francisco Administrative Code to ensure participation by Local Business Enterprises and non-discrimination in the design, construction, and ongoing asset management of the Project during the term of the Project Agreement (the "**LBE Plan**"). Within twenty-eight (28) days of the Commencement Date, Lead Developer must meet with City to commence LBE Plan discussions. Lead Developer acknowledges City may require an LBE Plan that differs from the Local Business Enterprise assumptions Lead Developer used for the purposes of the Proposal, as described in Technical Submittal 28 of the Technical Proposal. Lead Developer must obtain the approval of City to the LBE Plan no later than Performance Milestone 17. In addition, during

the PDA Term, Lead Developer will strive to incorporate Local Business Enterprises participation in appropriate Work activities. If Lead Developer wishes to engage and receive credit for its use of Local Business Enterprises during the PDA Term, it will need the prior written consent of City's Contract Monitoring Division, which can be withheld in the sole discretion of City's Contract Monitoring Division.

6.11. Design-Build Contract. Lead Developer must timely prepare the contract for the design and construction of the Facility in compliance with the requirements of this Agreement (the **"Design-Build Contract"**) and its related materials, including the process for obtaining competitive bids and selecting the design-builder, all of which are subject to City's prior approval and must be performed in consultation with City. Lead Developer may procure more than one Design-Build Contract and contractor, provided that the Infrastructure Facility is designed and built by a single design-build contractor pursuant to a single Design-Build Contract, and provided Lead Developer takes responsibility for all integration and interface risks resulting from the use of more than one Design-Build Contract and contractor. The Design-Build Contract must incorporate the 100% Schematic Design Package described in Appendix B-2 to the extent approved by City at Performance Milestone 28, be subject to the applicable requirements of the Project Agreement and the HCC Agreement, as applicable, incorporate the applicable requirements set forth in Appendix M, and, except as otherwise mutually agreed by the Parties, incorporate the Technical Requirements applicable to the work to be performed under the Design-Build Contract. No Development Team Member or its Affiliates can submit a bid for the Design-Build Contract; provided, however, that IBI Group, A California Partnership and Y.A. studio can each be a subcontractor to any entity that submits a Design-Build Contract bid.

6.12. Infrastructure Facility Maintenance. Table 1 in Division 7 (*Asset Management Program Requirements*) of the Technical Requirements summarizes the Infrastructure Facility Maintenance scope of work, which is to be provided on a 24/7/365 basis. In consultation with City, Lead Developer must timely refine and finalize the scope of the Infrastructure Facility Maintenance and develop the Asset Management Program, as required in the PDA Management Plan and the attached Appendix B-2, all of which are subject to City's prior approval and must be performed in consultation with City. City's goal is to pass the risk of life-cycle renewal and replacement to provide cost certainty, transparency, and optimized performance of the Infrastructure Facility to the Principal Project Company. This is important for the financial feasibility and operations of the Bus Yard Component and Housing and Commercial Component and their coexistence as part of a vertically integrated Facility.

City expects that the Housing Term will be longer than the Infrastructure Facility Term. In recognition of this likely fact and to address the relevant risks, after the Infrastructure Facility Term ends, City will ensure that the Infrastructure Facility continues to be maintained with substantially the same scope and performance standards as the Infrastructure Facility Maintenance specified in the Asset Management Program by electing, in its sole discretion, to (a) self-perform the Infrastructure Facility Maintenance, (b) contract it to a maintenance provider, (c) retain the Principal Project Company to continue providing it, or (d) pursue any other option . After the Infrastructure Facility Term ends, the share of the Infrastructure Facility Maintenance Costs allocated to the Housing and Commercial Component must be paid to City for the remainder of the Housing Term.

6.13. IFM Contract. Lead Developer must timely prepare the contract for the performance of the Infrastructure Facility Maintenance during the Infrastructure Facility Term in compliance with the requirements of this Agreement (the "**IFM Contract**") and the related contract materials, including the process for obtaining competitive bids for the IFM Contract and selecting the IFM Contract contractor, as further described in the attached Appendix B-2. The IFM Contract must be subject to the applicable requirements of the Project Agreement,

incorporate the scope of the Infrastructure Facility Maintenance to be provided by the Principal Project Company and the applicable requirements set forth in Appendix M and, except as otherwise mutually agreed by the Parties, incorporate the Technical Requirements applicable to the work to be performed under the IFM Contract. Except for Lead Developer, no Development Team Member or its Affiliates can submit a bid for the IFM Contract.

6.14. Interface Agreements and Direct Agreements. During the PDA Term, City expects that Lead Developer will develop the form of interface agreements with respect to the Asset Management Program services to be performed by or for the Principal Project Company and the Housing Project Company, which agreements will be among Principal Project Company and/or the Housing Project Company and other parties identified by Lead Developer with City's prior consent during the PDA Term, unless City otherwise agrees, in writing and in its sole discretion, to those forms being developed pursuant to the Project Agreement. City will develop during the PDA Term the forms of direct agreements among City, Principal Project Company or the Housing Project Company, as applicable, and parties providing financing for the Project, unless City otherwise agrees, in writing and in its sole discretion, to those forms being developed pursuant to the Project Agreement.

The interface agreements and direct agreements shall be substantially the same in type, form, and content as those customary for joint development and design-build-finance-maintain procurements, and will be subject to the prior written approval of City in its sole discretion.

6.15. Pricing and Fixed Budget Limit; Determining the Final Price

(a) Update with Contractor Pricing. At Performance Milestone 31, Lead Developer must submit to City the forms included as Attachment 4 to Appendix B-2, ("Best-value Contractor Recommendation Form and Final Price and Cost Savings Form"), which will reflect the Design-Build Contract pricing for the Infrastructure Facility and IFM Contract pricing provided by the contractors recommended for award of the Design-Build Contract for the Infrastructure Facility and IFM Contract, respectively, the 30% cost saving amount, if applicable, and any deduction for the Continuation Payment if made by City.

(b) Pricing Lower than Fixed Budget Limit + Insurance + Escalation. If the Best-Value Contractor Recommendation Form submitted at Performance Milestone 31 shows any reduced cost to design and build the Infrastructure Facility or perform the Infrastructure Facility Maintenance when compared to the total amount set forth in FS Form A8 delivered at Performance Milestone 27A, then the Final Price shall be determined in accordance with the Final Price Form and Cost Savings Form included in Appendix B-2.

(c) Pricing Higher than Fixed Budget Limit + Insurance + Escalation.

(i) If the materials submitted at Performance Milestone 31 show any increased pricing to design and build the Infrastructure Facility or perform the Infrastructure Facility Maintenance when compared to the total amount set forth in FS Form A8 delivered at Performance Milestone 27A, then the Parties will enter into good faith negotiations for the ninety (90) day period immediately following Performance Milestone 31, subject to extension by mutual agreement, to identify and agree to changes to the Infrastructure Facility or the Infrastructure Facility Maintenance requirements to bring the costs within the total amount set forth in FS Form A8 delivered at Performance Milestone 27A. If the Parties do not, within the ninety (90) day period, or such extended period as agreed by the Parties, (A) reach agreement on modifications to the Infrastructure Facility or the Infrastructure Facility Maintenance requirements to bring the costs within the total amount set forth in FS Form A8 delivered at Performance Milestone 27A, or (B) agree to reprocure the Design-Build Contract for the Infrastructure Facility and/or the IFM Contract in accordance with Section 6.15(c)(ii), then City

may elect to terminate this Agreement in accordance with Article 16 (*Termination*), in which case Lead Developer will be entitled to the Termination Payment, provided Lead Developer demonstrates that it used commercially reasonable efforts to stay within the Fixed Budget Limit and otherwise meets the conditions for payment of the Termination Payment.

(ii) During the ninety (90) day negotiation period described in Section 6.15(c)(i), the Parties may agree that Lead Developer will reprocure the Design-Build Contract for the Infrastructure Facility and/or the IFM Contract, on terms mutually agreed by the Parties. If the pricing for any new bids received by Lead Developer exceeds the total amount set forth in FS Form A8 delivered at Performance Milestone 27A, the Parties will enter into good faith negotiations for the ninety (90) day period commencing on the due date for the new bid(s), subject to extension by mutual agreement. If the Parties reach agreement within the specified time period(s) on modifications to the Infrastructure Facility or the Infrastructure Facility Maintenance requirements to bring the costs within the total amount set forth in FS Form A8 delivered at Performance Milestone 27A, then the Final Price shall be the sum of the LD Predevelopment Cost, plus the Design-Build Contract price for the Infrastructure Facility and the IFM Contract price based on the scope and terms negotiated in good faith by the Parties. If the Parties do not reach agreement, within the ninety (90) day period specified in Section 6.15(c)(ii), or such extended period as agreed by the Parties, on modifications to the Infrastructure Facility or the Infrastructure Facility Maintenance requirements to bring the costs within the total amount set forth in FS Form A8 delivered at Performance Milestone 27A, then City may elect to terminate this Agreement in accordance with Article 16 (*Termination*).

(d) Final Price. If a Final Price is determined pursuant to Section 6.15(b) (*Pricing Lower than Fixed Budget Limit + Insurance + Escalation*) or Section 6.15(c) (*Pricing Higher than Fixed Budget Limit + Insurance + Escalation*), Lead Developer will include the Final Price in the Finance Plan submitted to City at Performance Milestone 32.

(e) Adjustments to Final Price Prior to Commercial Close. The Final Price will be adjusted for the period beginning on the date that is thirty (30) days prior to the due date for the Design-Build Contract and IFM Contract proposals and ending on the "**Setting Date**", being the date that is fifteen (15) days prior to the date of Commercial Close, to account for the following events:

(i) Reprocurement Due to Unavoidable Delay or a Regulatory Appeal Delay. If the Parties mutually agree to extend the Predevelopment Period beyond November 30, 2024 as result of an Unavoidable Delay or a Regulatory Appeal Delay, the Parties will adjust the Final Price and modify the escalation amount set forth in FS Form A8 delivered at Performance Milestone 27A by adding the Reprocurement Amount (defined as follows), if applicable, and modifying the escalation amount given in the modified FS Form D submitted at Performance Milestone 32 to extend the assumed mid-point of construction by the number of days between November 30, 2024 and the extended date of Commercial Close. E.g., if Commercial Close occurs on January 30, 2025, the assumed mid-point of construction will be July 31, 2026. If an Unavoidable Delay or a Regulatory Appeal Delay occurs after Performance Milestone 32 and is not resolved until after the bid validity period for the Design-Build Contract for the Infrastructure Facility or the IFM Contract, the "**Reprocurement Amount**" shall be Lead Developer's actual costs to reprocure the Design-Build Contract for the Infrastructure Facility or IFM Contract, as applicable.

(ii) Changes to Applicable Law. City accepts an LD Proposed Change due to a change in Applicable Law.

(iii) LD or Principal Project Company Required Insurance Pricing. City agrees to the reasonable costs presented by Lead Developer for insurance coverages to be

provided by Lead Developer or the Principal Project Company based on the insurance requirements set forth in the draft Project Agreement provided by City to Lead Developer at Performance Milestone 29A provided the proposed coverages do not duplicate coverages already included in the Design-Build Contract for the Infrastructure Facility or the IFM Contract.

(iv) Regulatory Approval Conditions. The Planning Commission, the SFMTA Board, or the Board of Supervisors imposes Regulatory Approval conditions on the Infrastructure Facility or the Infrastructure Facility Maintenance.

(v) LD Predevelopment Cost. City approves an IF Reimbursement Request pursuant to Section 9.2(g) (*IF Reimbursement Notice*).

6.16. Early Works. As further described in in the attached Appendix B-2, Lead Developer must also submit its analysis on the necessity of commencing Early Works and the process for procuring the contractor(s) that would perform the Early Works. If approved and accepted by City, which approval may be subject to completion of CEQA review for the Project if the Early Work is determined to not have independent utility from the Project, Lead Developer will procure the Early Works contractor(s) in compliance with the process approved by City and, if approved by the SFMTA Board, execute an Early Works Agreement based on terms mutually agreed by the Parties. If Lead Developer enters into an Early Works Agreement in compliance with this Section 6.16 (*Early Works*), Lead Developer will ensure the Early Works is performed and, once executed by City, timely perform its obligations under that Early Works Agreement.

6.17. Formation of Principal Project Company and Housing Project Company. Lead Developer must cause the Principal Project Company and the Housing Project Company to be a legal entity that is funded to the satisfaction of City and has become a City vendor with a valid business tax registration number from the Business Tax Division of the City's Tax Collector at least thirty (30) days before Commercial Close, or any other date mutually selected by the Parties.

6.18. Utilities. Except as otherwise specified in this Section 6.18 (*Utilities*), Lead Developer is solely responsible for obtaining and implementing all new utility services needed for the Facility, and must submit the appropriate applications to obtain gas (if permitted under Applicable Law), electricity, water, internet (except as otherwise specified in the Technical Requirements), and all other utilities needed to develop and operate the Project, as further described in the attached Appendix B-2. Lead Developer acknowledges that under San Francisco Administrative Code Section 99, electric service to the Project Site must be provided by the San Francisco Public Utilities Commission ("**SFPUC**") unless it determines it is not feasible for it to provide electricity to the Project Site. As further described in Division 5 (*Battery-Electric Bus Supplemental Criteria*) of the Technical Requirements, the SFMTA submitted two Applications for Electric Service for the Facility to the SFPUC on April 14, 2021 ("**SFPUC Applications**"). Within twenty-eight (28) days of the Commencement Date (concurrent with Performance Milestone 6), Lead Developer must assume the primary applicant role to the SFPUC Applications. Lead Developer must notify City if it foresees substantial changes in the Facility electrical service approach, as outlined in the SFPUC Applications, that would require an amendment to the SFPUC Applications. Lead Developer will cooperate with City to take all actions needed to further the SFPUC Applications and obtain electrical service for the Project.

6.19. Construction Permits. Lead Developer must not submit any construction or site permit application for the Project Site to City's Department of Building Inspection without the prior consent of City, which may be subject to the completion of CEQA review for the Project.

6.20. CEQA.

(a) Project Sponsor. The SFMTA, as project sponsor, filed an environmental review application for the Project with the Planning Department on November 20, 2019 (the "**CEQA Application**"). The Planning Department issued a preliminary project assessment for the Project (Case No. 2019-02188ENV) on May 22, 2020 (the "**Preliminary Project Assessmen**t"), and a draft Environmental Impact Report for the Project (Case No. 2019-02188ENV) on June 30, 2021 (the "**Draft EIR**"), and the SFMTA anticipates the EIR will be submitted to the Planning Commission for certification in mid-2023. The SFMTA will continue to be the project sponsor for purposes of CEQA, with the close collaboration of and support from Lead Developer and pay the Planning Department charges for its environmental review of the Project.

(b) Lead Developer Support. If the SFMTA intends to submit any materials to the Planning Department with respect to its CEQA review of the Project, Lead Developer must provide the SFMTA (or if directed by the SFMTA, the Planning Department) with its comments to those materials. Lead Developer must also collaborate with the SFMTA with respect to all comments and requests from the Planning Department with respect to its CEQA review of the Project, and provide the Planning Department and the SFMTA with all supporting materials needed for the Draft EIR and EIR (including but not limited to drawings, analyses, data points, and project features, and revisions of the requested materials) within fifteen (15) days of the SFMTA's or the Planning Department's request for those comments or materials; provided, however, that if those comments or materials cannot be reasonably provided within that fifteen (15) day period, Lead Developer must provide them to the SFMTA and the Planning Department as soon as reasonably possible.

To facilitate efficient transfer of information after the Commencement Date, City will add LD Project Director and LD Project Manager to the list of approved Project agents to be identified in the submitted CEQA Application. Lead Developer must include City on all Planning Department communications pertinent to CEQA review of the Project, delivering all written communications to the SFMTA at the same time they are delivered to the Planning Department, and inviting the SFMTA to join all meetings and calls with the Planning Department. At the request of the Planning Department, the SFMTA engaged SWCA Environmental Consultants ("**SWCA**") to provide project scoping and environmental analysis to support the CEQA review process under an agreement (Contract No. SFMTA-2018-03) dated January 17, 2018, as amended (as amended, the "**SWCA Contract**"). The SFMTA will continue to retain SWCA, or any alternative environmental consultant acceptable to the Planning Department, to perform the environmental analysis required by the Planning Department for the Project's CEQA review process. If Lead Developer elects to have the Draft EIR or the EIR modified to accommodate an HCC Change to reduce the size of the Proposed HCC, then Lead Developer shall pay the costs of SWCA's and any other consultant's work to effect that modification.

(c) Hearings and Meetings. SFMTA staff will take the lead in coordinating hearings and meetings for the CEQA review of the Project and the certification, if at all, of the EIR. Notwithstanding the SFMTA's lead role for coordinating hearings and meetings, Lead Developer must provide any supporting materials reasonably requested by the SFMTA for those hearings and meetings on or before the tenth Business Day immediately following its receipt of the SFMTA's request. In addition, Lead Developer must be available to attend and respond to questions at those hearings and meetings.

(d) Conformity with CEQA Project Description and Draft EIR; MMRP. Lead Developer agrees to endeavor to design and plan the Facility in a manner that is consistent with the Project description in the Draft EIR, as well as the draft mitigation measures set forth in the

draft EIR, subject to the review and findings of the Planning Department; provided if the EIR is certified by the Planning Commission during the PDA Term, Lead Developer must design and plan the Facility in a manner that is consistent with the Project description in the EIR and comply with any MMRP, to the extent any MMRP requirements apply during the PDA Term. Nothing in this Agreement shall be construed to preclude Lead Developer from proposing, or City and other public agencies from considering or approving Project designs, modifications, or alternatives that avoid or mitigate significant adverse environmental impacts. If the Planning Commission certifies the EIR, the Parties anticipate the Planning Commission would adopt the MMRP at that time. Lead Developer acknowledges and agrees that the MMRP, if adopted, may differ from the draft mitigation measures in the Draft EIR and it will modify its designs and plans accordingly to reflect the requirements of the MMRP.

6.21. Regulatory Approvals. The Parties acknowledge that approvals, permits, determinations, and authorization from governmental agencies acting in their regulatory capacity, including but not limited to those required from City acting in its regulatory capacity, and utility companies, are required for the development of the Project (each, a "**Regulatory Approval**"). Regulatory Approvals shall include any certification or adoption of environmental review for the Project prepared pursuant to CEQA and adoption of any CEQA findings that must be made by City or a responsible agency, as required by CEQA. The Parties' respective obligations for the CEQA review of the Project are set forth in Section 6.20 (*CEQA*). The Parties' respective obligations for the other Regulatory Approvals are described below.

(a) Transaction Document Approvals. SFMTA staff will take the lead in coordinating hearings and meetings for any approval of the Transaction Documents from all applicable City Regulatory Agencies (and their individual members and committees). Notwithstanding the SFMTA's lead role for coordinating hearings and meetings, the Lead Developer must provide any supporting materials reasonably requested by the SFMTA for those hearings and meetings on or before the tenth (10th) Business Day immediately following its receipt of the SFMTA's request. In addition, Lead Developer must be available to attend and respond to questions at those hearings and meetings.

(b) General Regulatory Approvals. "**General Regulatory Approvals**" means all Regulatory Approvals other than those needed for CEQA review of the Project and to authorize City's execution of the Transaction Documents.

(i) Lead Developer is solely responsible for determining and obtaining, during the PDA Term, only those General Regulatory Approvals required to perform the Work, to achieve the Phase 2 Floating Milestone, and to achieve the following objectives set forth in Section 6.1(a): (A) develop the Project in compliance with this Agreement and the PDA Management Plan approved by City, (B) reach Commercial Close before the expiration of the Predevelopment Period, and (C) reach IF Financial Close by November 30, 2024. In obtaining such General Regulatory Approvals, Lead Developer shall incorporate any Project modifications or requirements required for those General Regulatory Approvals, and timely pursue such General Regulatory Approvals; provided that SFMTA staff will take the lead in coordinating General Regulatory Approval hearings and meetings for the Project with the applicable City Regulatory Agencies (and their individual members and committees) and the SFMTA will pay the Planning Department's charges for any entitlement application review that Lead Developer requests from the Planning Department for the Project during the PDA Term, including the special use district, conditional use authorization, San Francisco General Plan amendment, and General Referral and design review. The SFMTA, as the City department with jurisdiction over the Project Site, will also collaborate with Lead Developer on its strategy for seeking the General Regulatory Approvals from all applicable City departments and City Regulatory Agencies and at Lead Developer's request, SFMTA staff will join in Lead Developer's meetings with the various City departments to discuss the General Regulatory Approvals at mutually agreeable times.

(ii) Lead Developer must not seek any General Regulatory Approvals for anything that does not comply with the requirements and processes described in the Technical Requirements or fall within the scope of the Project described in the Draft EIR, unless otherwise approved of in writing by City, which approval will be in its sole discretion. Lead Developer understands and agrees the SFMTA's status as a department of City shall in no way limit the obligation of Lead Developer, at Lead Developer's own cost and initiative, to obtain all the General Regulatory Approvals from the applicable Regulatory Agencies. If any Regulatory Agency does not initially approve any General Regulatory Approval pursued by Lead Developer, Lead Developer shall use commercially reasonable efforts to make the changes required by the Regulatory Agency for that General Regulatory Approval, to the extent it is possible to do so while complying with the other requirements of this Agreement.

(iii) Before submitting any application or request for any General Regulatory Approval, Lead Developer first must present the basis upon which Lead Developer proposes to obtain all the required Regulatory Approvals (the "**Regulatory Approval Strategy**") to the City for the Director of Transportation's review and approval. City may suggest revisions or changes to the proposed Regulatory Approval Strategy, which Lead Developer must consider in good faith. Lead Developer acknowledges and agrees that maintaining professional working relations with Regulatory Agencies is critical to the SFMTA's management of San Francisco ground transportation, including other current or future SFMTA projects. Accordingly, Lead Developer must use its best efforts throughout the PDA Term to take no actions relating to the Project that does not comport to the approved Regulatory Approval Strategy, would significantly and adversely affect the SFMTA's relationship with any other Regulatory Agency, or would adversely affect the SFMTA's management of San Francisco ground transportation or any current or future SFMTA projects unless otherwise approved of in writing by City, which approval will be in its sole discretion.

(iv) Before filing an application for any General Regulatory Approval that is not described in the Regulatory Approval Strategy approved by City, Lead Developer must obtain the Director of Transportation's authorization, which will not be unreasonably withheld or delayed. Lead Developer agrees that City's withholding or delay in approving any application for a General Regulatory Approval will be reasonable if the application would adversely affect the SFMTA's management of San Francisco ground transportation or any current or future SFMTA projects, does not substantially conform to the Preliminary Term Sheet, the HCC Term Sheet, or any subsequent Project Document or design document to which City and Lead Developer agreed, or requires City to be a co-permittee to the application as owner of the Project Site.

(c) No Lobbying; Proprietary Capacity. The approval of various City departments (including, but not limited to, the Planning Department, MOHCD, and SFPW) and other City Regulatory Agencies (including, but not limited to the Planning Commission, the SFMTA Board, and the Board of Supervisors) will be required for the Project. The City Project Manager and the SFMTA staff working on the Project on behalf of City in its proprietary capacity will collaborate with Lead Developer regarding its Project discussions with other City staff with respect to the Project, and Lead Developer will promptly and substantively respond to any communications or requests for information that it receives from City staff; provided, however, that Lead Developer understands and agrees that although the SFMTA is a department of City, City staff and executives have no authority or influence over any officials, departments, boards, commissions, agencies, or other entities responsible for the issuance of any Regulatory Approvals (individually defined as "**Regulatory Agency**" and collectively as "**Regulatory Agencies**") including but not limited to City officials, departments, boards, commissions or agencies acting in City's regulatory capacity. Accordingly, there is no guarantee or a presumption that any of the Regulatory Approvals will be issued by the appropriate Regulatory Agency. Other than as described in Section 5.3 (*Approval of Project Agreement and Other*

Transaction Documents) as to the approval of the Transaction Documents by the SFMTA Board of Directors and the Board of Supervisors, to the extent applicable, City's sole obligation under this Agreement with respect to the Regulatory Approvals shall be to review the submitted Regulatory Approval Strategy and CEQA and General Regulatory Approvals Plan described in Appendix B-2, and act as the project sponsor for the CEQA review with the support of Lead Developer pursuant to Section 6.20(a) (*Project Sponsor*).

Lead Developer acknowledges City is acting in its proprietary capacity under this Agreement and understands and agrees no City staff has an obligation to advocate, promote or lobby any Regulatory Agency and/or any governmental official (including any City official) for any Regulatory Approval or for approval of the Project, the Project Agreement, the HCC Term Sheet, or any other Transaction Documents, and any such advocacy, promotion or lobbying shall be done by Lead Developer at Lead Developer's sole cost and expense. Lead Developer hereby waives any claims against City, and fully releases and discharges City to the fullest extent permitted by law, from any liability relating to the failure of City or any Regulatory Agency from issuing any required Regulatory Approval or from issuing any approval of the Project.

(d) Costs. Subject to Lead Developer's costs to perform its obligations under Section 6.20(b) (*Lead Developer Support*) and Section 6.21(b) (*General Regulatory Approvals*), during the PDA Term, City will be responsible for City's costs associated with the Regulatory Approvals required under CEQA and for the approval of the Transaction Documents. Lead Developer will be solely responsible for applying for, obtaining, and paying all costs associated with all Regulatory Approvals, and Lead Developer, at its sole cost and expense, will comply with the terms of all Regulatory Approvals and shall pay and discharge any fines or penalties imposed as a result of Lead Developer's failure to comply with any Regulatory Approval, for which City will have no monetary or other liability.

(e) Cooperation. The Parties agree to cooperate with one another to expeditiously aid in (i) Lead Developer's efforts to obtain the General Regulatory Approvals in accordance with this Agreement and (ii) City's efforts, acting in its proprietary capacity, to seek the necessary CEQA approvals for the Project and the approvals of the SFMTA Board and, as applicable, the Board of Supervisors and any other City boards or commissions, to the Transaction Documents.

(f) Third-Party Challenge.

(i) "**Third-Party Challenge**" means any administrative, legal or equitable action or proceeding instituted by any party other than City or Lead Developer challenging the validity or performance of any provision of this Agreement, the Project, any Regulatory Approvals made by City acting as a Regulatory Agency (including the adoption or certification of the EIR), other actions taken pursuant to CEQA, or any action taken by City or Lead Developer in furtherance of this Agreement, or any combination thereof relating to all or any portion of the Project. The Parties agree to proceed with due diligence and cooperate with one another to defend and resolve any Third-Party Challenge to the extent reasonably possible. Lead Developer shall assist and cooperate with City at Lead Developer's own expense in connection with any Third-Party Challenge. The City Attorney's Office may use its own legal staff or outside counsel in connection with defense of the Third-Party Challenge, at the City Attorney's sole discretion.

(ii) Subject to Section 6.21(f)(iii): (A) if a Third-Party Challenge solely arises from any aspect of the Housing and Commercial Component, Lead Developer shall reimburse City for its actual costs in defense of the action or proceeding, including but not limited to the time and expenses of the City Attorney's Office (at the non-discounted rates then charged by the City Attorney's Office) and any consultants (collectively, the "**City Challenge**

Costs"), within thirty (30) days of receiving an invoice for those costs from City; provided, however, Lead Developer shall have the right to monthly invoices for all the City Challenge Costs with respect to that Third-Party Challenge; and (B) if a Third-Party Challenge arises with respect to the Bus Yard Component and the Housing and Commercial Component, or cannot be clearly ascribed to solely the Bus Yard Component, Lead Developer shall reimburse City by an amount equal to the City Challenge Costs multiplied by the PCIC within thirty (30) days of receiving an invoice for those costs from City; provided, however, Lead Developer shall have the right to monthly invoices for all the City Challenge Costs with respect to that Third-Party Challenge.

(iii) Notwithstanding Section 6.21(f)(ii), Lead Developer will not be responsible for reimbursing City for City Challenge Costs relating to any Third Party Challenge to Regulatory Approvals made by City acting as a Regulatory Agency (including the adoption or certification of the EIR), or other actions taken pursuant to CEQA, except to the extent the Third Party Challenge is directly related to Lead Developer's failure to comply with this Agreement.

(iv) If this Agreement terminates before a Third-Party Challenge is resolved, the Parties shall jointly seek to have the Third-Party Challenge dismissed and Lead Developer shall have no obligation to reimburse City for any defense costs that City incurs after the dismissal.

(v) The filing of any Third-Party Challenge shall not delay or stop the Lead Developer's performance of its obligations under this Agreement unless the third party obtains a court order preventing the activity or City elects to require that action.

6.22. Correction of Defective Work Materials. In addition to the other remedies that are available to City under this Agreement or Applicable Law and at no cost to City, at City's request, Lead Developer must correct or revise, or cause the Lead Developer Agents, as applicable, to correct or revise, as applicable, any Work Materials that are defective due to the negligent acts, errors or omissions of Lead Developer or any of Lead Developer Agents. City's inspection of (or failure to inspect), review (or failure to review), acceptance of any of the Work Materials or any Termination Payment made under this Agreement cannot be construed to relieve any Lead Developer Related Entity of Lead Developer's obligations and responsibilities under this Agreement for any negligent acts, errors or omissions nor operate as a waiver of any of City's rights under this Agreement or any cause of action arising out of the performance of this Agreement. Subject to the terms of Section 21.3 (*Limitation of Liability*), Lead Developer will be and remain liable to City for all Losses caused by Lead Developer's failure to comply with the terms and conditions of this Agreement or by the negligent acts, errors or omissions of any Lead Developer Related Entities in the performance of this Agreement in accordance with Applicable Law. Lead Developer must use its professional judgment, care and prudence in approving and accepting any Work Materials prepared by any Lead Developer Agents and take all action necessary to ensure the Work Materials prepared by any Lead Developer Agents are correct and accurate.

6.23. Guaranty.

(a) The Guarantor shall provide and maintain the Guaranty, in the form of Appendix J, in full force and effect throughout the PDA Term.

(b) Lead Developer shall periodically report to City regarding the financial capacity of the Guarantor. If, at any point during the PDA Term, the Guarantor's financial capacity is materially negatively affected, as determined by City in its sole discretion, City may require, and Lead Developer shall provide, one or more additional guarantees so that the combined financial capacity of the Guarantor and the additional guarantors provides equivalent

security to City as the Guaranty provided as of the Effective Date. Each such Guaranty shall be substantially in the form provided in Appendix J, together with appropriate evidence of authorization, execution, delivery and validity of such Guaranty.

6.24. MME Expansion Project.

(a) During the period preceding Performance Milestone 6B, City and Lead Developer will each use commercially reasonable good faith efforts to negotiate the terms of the MME Construction Agreement based on the MME Construction Agreement Terms included in Appendix K. The obligation to negotiate in good faith requires the Parties to communicate with each other with respect to those issues for which agreement has not been reached, and in such communication to follow reasonable negotiation procedures, including meetings, telephone, virtual meetings, and correspondence.

(b) If the Parties mutually agree to terms for the MME Construction Agreement on or before Performance Milestone 6B, the Parties will execute and deliver the MME Construction Agreement within five (5) Business Days of the SFMTA Board's approval of the MME Construction Agreement.

(c) If the Parties do not mutually agree to terms for the MME Construction Agreement on or before Performance Milestone 6B, if the SFMTA Board does not approve the MME Construction Agreement, or if the Parties do not execute and deliver the MME Construction Agreement within five (5) Business Days of the SFMTA Board's approval of the MME Construction Agreement, then City may, in its sole discretion, separately procure a contractor to deliver the MME Expansion Project.

7. PREDEVELOPMENT MANAGEMENT

7.1. Development Team. Lead Developer, and the Persons described in the attached Appendix I as its controlling and other Equity Members, the Affordable Housing Developer, the Housing Developer, the Design Consultant, the Construction Management Consultant, and Infrastructure Facility Maintenance Consultant (each, a "**Development Team Member**" and collectively, the "**Development Team**") will serve those respective roles for Lead Developer's performance of its obligations under this Agreement. Lead Developer must not make any changes to the Development Team or the roles assigned to each Development Team Member in the attached Appendix I without the prior written consent of City, which may be withheld in its sole discretion. If a Development Team Member notifies Lead Developer that it is withdrawing from the Project or the Guarantor intends to withdraw from the Project, Lead Developer shall immediately notify City. If Lead Developer and City do not mutually agree to the replacement for the withdrawing Development Team Member or Guarantor within fifteen (15) days of the withdrawal of that Development Team Member or Guarantor (the "**Selection Period**"), City shall have the right to terminate this Agreement by delivering written notice of such termination to Lead Developer within ten (10) days of the expiration of the Selection Period. If City timely delivers a termination notice to Lead Developer under this Section 7.1 (*Development Team*), this Agreement shall terminate on the date of such delivery.

7.2. Key Personnel; Organization. In addition to the Development Team, Appendix I describes the additional persons that will be instrumental to Lead Developer's predevelopment activities for the Project (collectively, the "**Key Personnel**"). During the PDA Term, Lead Developer must retain the Key Personnel to implement the Lead Developer's obligations under this Agreement and to manage other Lead Developer personnel working on that implementation. Except for any termination of employment, retirement, death, injury or other similar circumstances, Lead Developer must not change any Key Personnel without City's prior written approval, which shall not be unreasonably withheld or conditioned. Lead Developer's proposed

replacement of any Key Personnel for any reason is subject to City's prior written approval, which shall not be unreasonably withheld or conditioned. If Lead Developer intends to replace any Key Personnel, it shall first notify City in writing of the proposed replacement, the reason for the proposed replacement, the person it proposes as a replacement, and certify that the proposed replacement person complies with the requirements for the position that person would fill described in Appendix I (a "**Proposed Replacement Notice**"). Within five (5) Business Days of receiving a Proposed Replacement Notice, City shall notify Lead Developer if it approves of the proposed replacement. If Lead Developer and City do not mutually agree to the replacement for the withdrawing Key Personnel individual within fifteen (15) Business Days of the withdrawal of that individual (the "**Selection Period**"), City shall have the right to terminate this Agreement by delivering written notice of such termination to Lead Developer within ten (10) Business Days of the expiration of the Selection Period. If City timely delivers a termination notice to Lead Developer under this Section 7.2 (*Key Personnel; Organization*), this Agreement shall terminate on the date of such delivery.

7.3. Project Directors and Project Managers.

(a) For Lead Developer. Brian Middleton ("**LD Project Manager**") is the person responsible for managing Lead Developer's day-to-day activities of the Project on a full-time basis, including ongoing communications and coordination with City and acting as the main point of contact between City and Lead Developer. Stuart Marks ("**LD Project Director**") is authorized to make decisions and bind Lead Developer, and is the person responsible for overseeing Lead Developer's rights and obligations under the PDA and Lead Developer's contractual rights and obligations with the Development Team Members. Lead Developer must obtain the prior written approval of City to any change in the LD Project Director or the LD Project Manager, which approval will not be unreasonably withheld.

(b) For City. Tim Kempf ("**City Project Manager**") will be the person responsible for managing City's day-to-day activities of the Project on a full-time basis, including ongoing communications and coordination with Lead Developer and acting as the main point of contact between City and Lead Developer. Kerstin Magary ("**City Project Director**") is authorized to make decisions and bind City, and is the person responsible for overseeing City's rights and obligations under the PDA. City must give written notice to Lead Developer of any change in the City Project Director or the City Project Manager.

7.4. Communication. The LD Project Director must keep the City Project Director fully informed on all matters concerning the Work and shall keep records of all material aspects, with weekly meetings on the status of the Performance Milestones.

7.5. Cost Reports and Audits.

(a) Quarterly Cost Reports. On the first day of each January, April, July, and October in the PDA Term, Lead Developer must submit a written report of all LD Predevelopment Cost (segregated into those incurred in connection with the Housing and Commercial Component, those incurred in connection with the Bus Yard Component, those incurred in connection with the Common Infrastructure) incurred by it in the three-month period immediately preceding the date of the applicable report, together with reasonable supporting materials documenting those costs.

(b) Audits. Lead Developer agrees to maintain and make available to City, during regular business hours, accurate books and accounting records relating to the LD Predevelopment Cost (segregated into those incurred in connection with the Housing and Commercial Component, those incurred in connection with the Bus Yard Component, those incurred in connection with the Common Infrastructure). Lead Developer will permit City to

audit, examine and make excerpts and transcripts from such books and records, and to make audits of all invoices, materials, payrolls, records or personnel and other data related to all other matters covered by this Agreement, whether funded in whole or in part under this Agreement. Lead Developer shall maintain such data and records in an accessible location and condition for a period of not fewer than five years after final payment under this Agreement or until after final audit has been resolved, whichever is later. The State of California or any Federal agency having an interest in the subject matter of this Agreement shall have the same rights as conferred upon City by this Section 7.5(b) (*Audits*). Lead Developer shall include the same audit and inspection rights and record retention requirements in all subcontracts.

7.6. Community Outreach and Public Relations.

(a) SFMTA Public Outreach and Engagement Program. City will lead the stakeholder outreach to the following parties (the "**SFMTA Outreach Parties**"): SFMTA staff, the SFMTA Citizens' Advisory Council, other SFMTA working and advisory groups, the SFMTA Board, the Board of Supervisors (and its committees and members), City departments, and other City Regulatory Agencies. This outreach (the "**SFMTA Public Outreach and Engagement Program**") will be to educate the SFMTA Outreach Parties and address any of their questions regarding the Bus Facility Component. Lead Developer must not initiate any outreach for matters within the SFMTA Public Outreach and Engagement Program. Lead Developer must forward any questions or information requests it receives from the SFMTA Outreach Parties for matters within the scope of the SFMTA Public Outreach Program (other than those raised by a Regulatory Agency in connection with a General Regulatory Approval) to a SFMTA Project Communications Team Contact (defined in Section 7.6(d) (*SFMTA Project Communications Team Meetings and Contacts*)) and notify the questioner or requester that it is doing so.

(b) Lead Developer Support. Lead Developer must use commercially reasonable efforts to support the SFMTA Public Outreach and Engagement Program by taking the following actions:

(i) Attending meetings scheduled by the SFMTA with members of the public and any of the SFMTA Outreach Parties to describe the Bus Facility Component, the Common Infrastructure, the Infrastructure Facility Maintenance, or the Housing and Commercial Component, provided the SFMTA shall provide at least five (5) Business Days' prior notice of such meetings to Lead Developer;

(ii) Providing supporting materials for those meetings, as requested by the SFMTA;

(iii) Collaborating with the SFMTA on any written materials provided by the SFMTA to Lead Developer for the SFMTA Public Outreach and Engagement Program; and

(iv) If the SFMTA requests Lead Developer to provide supporting materials for the meetings described in the foregoing subsection (i) or input on any materials described in the foregoing subsection (iii), Lead Developer must make commercially reasonable efforts to provide those materials or that input within three (3) Business Days following its receipt of the SFMTA's request; if such supporting materials cannot be reasonably provided within such three (3) Business Day period, then Lead Developer must provide them as soon as reasonably possible.

(c) Lead Developer Outreach Plan. As described in Appendix B-2, Lead Developer must develop a Public Outreach and Engagement Plan (the "**LD Outreach Plan**") for

City's review. Once approved by City, Lead Developer must comply with the processes and requirements of the LD Outreach Plan. Lead Developer will work collaboratively with City to ensure that the goals of the LD Outreach Plan are met, and address any needed changes to LD Outreach Plan during the PDA Term.

(d) SFMTA Project Communications Team Meetings and Contacts.

(i) Within five (5) days of the Commencement Date, Lead Developer will organize and hold a one-day (minimum 3-hour) collaboration session with SFMTA staff members and consultants that have worked on Project stakeholder outreach and engagement (the "**SFMTA Project Communications Team**") to discuss the following: (A) stakeholder identification process (e.g. type of stakeholders and their level of involvement), (B) mapping the public participation spectrum for each phase of the Project, including the design phase, the phase for public meetings and hearings for the Regulatory Approvals, the construction phase, and the operations phase, (C) planning the details of the engagement process, (D) best practices stemming from prior outreach and engagement efforts, (E) expected outreach and engagement budget, (F) resources needed to implement community outreach events, (G) dealing with and managing stakeholder conflict, and (H) reviewing and assessing the process to demonstrate achievements and to identify lessons learned for informing future engagement exercises.

(ii) Within thirty-five (35) days of the Commencement Date, Lead Developer will organize and hold another collaboration session (minimum 2-hours) with the SFMTA Project Communications Team to discuss proposed public outreach and engagement events and the timeline around key decision points for public input, and to confirm the scope of work outlined by Lead Developer. City will review, vet, and approve all outreach content proposed by Lead Developer, and Lead Developer must incorporate stakeholder input into the Project in a manner satisfactory to City. The SFMTA will have the right to, at its election, attend every stakeholder engagement event held by Lead Developer, and Lead Developer will provide agenda allotment to the SFMTA at these events to provide SFMTA news and service updates and other announcements not otherwise pertinent to the Project.

(iii) Media and Communications Team Contacts. At or before the meeting described in the foregoing subsection (i), (A) City must designate at least two (2) SFMTA staff members authorized to receive notices and communicate with Lead Developer about all public outreach program matters (each, the "**SFMTA Project Communications Team Contact**") and designate at least two (2) SFMTA staff members authorized to receive notices and communicate with Lead Developer about all media matters (each, the "**SFMTA Media Contact**"), and (B) Lead Developer must designate at least one person (the "**LD Project Communications Team Contact**") who will be authorized to receive notices and communicate with City about the public outreach program matters and designate at least one person (the "**LD Media Contact**") who will be authorized to receive notices and communicate with City about all media matters. Either Party shall have the right to change the persons designated as their respective Communications Team Contact and Media Contact by delivering written notice of that change to the other Party.

(e) Lead Developer Public Outreach. In addition to complying with the Public Outreach and Engagement Requirements included in Division 9 (*SFMTA's Communications Division's Public Outreach and Engagement Requirements*) of the Technical Requirements, any City-approved LD Outreach Plan, and any outreach requirements required for the General Regulatory Approvals, Lead Developer must adhere to the following practices:

(i) Establish an appropriate budget to fund the SFMTA Public Outreach and Engagement Program and Lead Developer's obligations under this Section 7.6 (*Community Outreach and Public Relations*) to safely and effectively engage with Project

stakeholders through each Project phase described in Section 7.6(d)(i)(B) (i.e. Project led events, community tabling events, sponsoring community events, collateral mailers, newspaper, radio and online ads, brochures, flyers, posters/signage, website/digital content, stakeholder giveaways, hand sanitizers, t-shirts, tote bags, water bottles, and other forums for educating the public).

(ii) Ensure that stakeholder contact information and correspondence is sent weekly to the SFMTA Project Communications Team Contact in order to update their stakeholder database.

(iii) Propose, plan, and schedule regular stakeholder updates by email, physical mailers, or in-person or virtual meetings when appropriate. These various communications channels are intended to keep Project stakeholders informed as the Project progresses. The proposed schedule of in-person and/or virtual meetings may be based on time, such as quarterly, and or may track to key Project milestones or community decision points for the Project.

(f) Potrero Yard Neighborhood Working Group. Commencing on the Commencement Date, Lead Developer will take the lead in facilitating, attending and sufficiently funding regular Potrero Yard Neighborhood Working Group meetings and activities during the PDA Term. Prior to the Effective Date, the Potrero Yard Neighborhood Working Group generally met on a monthly basis.

(g) Media Presence and Project Publicity. Unless City agrees otherwise in writing, Lead Developer must obtain the SFMTA Media Contact's consent prior to all Project press releases and press conferences. Lead Developer shall notify City as early as possible regarding Lead Developer's plan to issue press releases or hold press conferences and provide City with sufficient time to review and comment on those plans.

(h) Press Contacts. Lead Developer must not speak with the press or social media about the Project, its negotiations with City or submittals to City, or Lead Developer's proposed development concepts, plans, phasing or uses (collectively, "**Press Matters**") that have not been approved by City in writing for public release.

A "**Press Release**" means any written press release, advertisement, or other formal communication to any media outlet (including newspapers, local blog, radio and television stations, and web sites). Lead Developer agrees it will provide the SFMTA Media Contact with a draft copy of any Press Release with no less than five (5) Business Days' prior notice before its proposed release and will not issue any Press Release that has not been approved by the SFMTA Media Contact. City will have the right to issue its own separate Press Releases.

The LD Outreach Plan will govern Lead Developer's Press Releases and Lead Developer's media contacts unless City gives Lead Developer written notice (a "**Noncompliance Notice**") that Lead Developer has not kept City informed of Lead Developer media's activities with respect to the Project as required in the LD Outreach Plan. As of the date of a Noncompliance Notice, Lead Developer may not issue, nor permit or authorize any other party to issue, any Press Release relating to the Project, its negotiations with City or submittals to City, or Lead Developer's proposed development concepts, plans, phasing or uses that have not been approved by the SFMTA Media Contact in writing for public release.

(i) Press Conference or Media Activity.

(i) Lead Developer agrees not to hold any press conference or media activities regarding any Press Matters without first inviting the SFMTA Media Contact to be present, or have another SFMTA representative to be present, at the press conference or media activity and obtaining the SFMTA Media Contact's consent to the press conference or media activity. Lead Developer must provide the SFMTA Media Contact with no less than five (5) Business Days' prior notice of the date and time of any proposed press conference or media activity and state in detail the purpose of the press conference or media activity and the topics to be discussed ("**Conference/Media Summary**"). The SFMTA Media Contact must review the Conference/Media Summary promptly and advise Lead Developer of any comments by 5:00 p.m. on the day before the press conference/media activity. If the SFMTA Media Contact does not respond within two (2) Business Days of receiving the Conference/Media Summary, the Conference/Media Summary will be deemed approved.

Lead Developer must make reasonable efforts to schedule the press conference or media activity to accommodate the schedules of the SFMTA representatives designated to attend by the SFMTA Media Contact. If City reasonably believes the proposed press conference/media activity would adversely affect its interests, then City shall have the right to withhold its consent to Lead Developer holding the press conference or media activity, even if the press conference or media activity may further Lead Developer's interests.

(ii) City is entitled to withhold its consent to a Press Release, proposed press conference or media activity by Lead Developer, or a Conference/Media Summary if the SFMTA believes it would adversely affect the SFMTA's relationship with the public or a Regulatory Agency or adversely affect a Regulatory Agency's decision regarding any Regulatory Approvals. If the SFMTA Media Contact reviews a Press Release or Conference/Media Summary and believes that revisions or changes are advisable and appropriate, Lead Developer must make the those suggested revisions or changes irrespective of whether it may further Lead Developer's interests.

(iii) Lead Developer must timely notify the SFMTA Media Contact of media inquiries regarding the Project received by Lead Developer and Lead Developer's proposed response. The SFMTA Media Contact can waive any of the notice periods required under this Section 7.6 (*Community Outreach and Public Relations*) in writing or by telephone.

7.7. Monthly and Quarterly Report. No later than the first day of each month and each calendar quarter during the PDA Term, Lead Developer must prepare and submit to City a meaningful summary (as described for progress reporting in Section 2.1.1.2 (*Progress Reporting*) of Appendix B-2) of its major activities during the previous month or quarter, as applicable, to achieve each of the Performance Milestones for it required under Appendix B-1, and to prepare and deliver the Project Management Deliverables and Design Deliverables required under Appendix B-2.

7.8. Weekly Meetings. The LD Project Manager and City Project Manager will meet weekly to discuss Project coordination and the status of CEQA review for the Project, the Transaction Documents, Project financing, Regulatory Approvals, Design Documents, the status of any Early Works, Project feasibility, the Performance Milestones, and other Project-related matters, unless a weekly meeting is waived or rescheduled by mutual agreement. The LD Project Manager will coordinate for the LD Project Director, appropriate Key Personnel and other Lead Developer Agents, and the City Project Manager will coordinate for the City Project Director and other appropriate City staff working on the Project with respect to City's proprietary capacity under this Agreement, to attend those weekly meetings as applicable. The

LD Project Manager and City Project Manager may, by mutual agreement, hold two weekly meetings to divide the topics for discussion between those meetings.

7.9. Data Room. Lead Developer must set up and manage an industry-standard virtual data room to store Project documents (including Project Documents) and materials to be shared between the Parties and with other parties approved by City to receive those documents and materials.

7.10. Assignment of Work Materials. Lead Developer must ensure its contracts with any Lead Developer Agent for the creation or submission of any Work Materials must include provisions automatically assigning the Work Materials created under those contracts to City if there is a Termination. Lead Developer must provide a copy of each contract for Work Materials between Lead Developer and that Lead Developer Agent. Work Materials will be assigned to City in accordance with Section 16.6 (*Assignment of Work Materials*). Lead Developer's obligations under this Section 7.10 (*Assignment of Work Materials*) shall survive any termination of this Agreement.

8. CITY PREDEVELOPMENT OBLIGATIONS

In addition to City's other obligations under this Agreement, City must comply with the predevelopment obligations described in this Article 8 (*City Predevelopment Obligations*) acting solely in its proprietary capacity and not in its regulatory capacity.

8.1. Design and Plan Development. City will timely provide written comments to the draft Design Deliverables it receives from Lead Developer in the manner described in the Design Management Plan in the attached Appendix B-2 (if approved by City) and by the Performance Dates described for those comments in Appendix B-1; provided, however, that once any draft Design Deliverables are submitted to City by Lead Developer for City review, City shall have no less than twenty-eight (28) days to review and provide written comments on such drafts to Lead Developer.

8.2. Cooperation in Developing the Transaction Documents. City will deliver the draft Project Agreement and any other Transaction Documents for which it elects to prepare the initial draft, and provide comments to the drafts of the Project Agreement and the other Transaction Documents within the time periods specified for those comments in the attached Appendix B-2.

8.3. Cooperation in Financing Efforts. City must use good faith efforts to reasonably cooperate in Lead Developer's efforts to secure the Project financing described in the City-approved Finance Plan ("**Approved Financing**") by timely responding to requests for information and attending meetings with potential lenders as reasonably requested by Lead Developer. City will use reasonable efforts to timely provide its comments on the draft Approved Financing agreements, the terms of which agreements shall be consistent with the requirements of the HCC Term Sheet and the final form of Project Agreement. City's full faith and credit and taxing power will not be pledged to secure any Approved Financing, nor can any Approved Financing constitute general indebtedness of City. Any Approved Financing agreements that require City's signature will be subject to the approval of the SFMTA Board and, if applicable, the Board of Supervisors, each acting in their sole discretion.

8.4. Housing and Commercial Component Feasibility Analysis and Financing. City will provide comments to the Housing and Commercial Component feasibility and financing analyses, plans, and commitments it receives from Lead Developer in the manner described in the attached Appendix B-2.

8.5. Design-Build Contract. City will provide comments to the draft Design-Build Contract materials it receives from Lead Developer, including the procurement materials and Lead Developer's proposed process for obtaining competitive bids for the Design-Build Contract and selecting the Design-Build Contract contractor in the manner described in the attached Appendix B-2.

8.6. Asset Management Program. City will collaborate with Lead Developer to ensure the Infrastructure Facility Maintenance will be sufficient to support the SFMTA's operations and maintenance of the Bus Yard Component. In addition to that collaboration, City will provide comments to the drafts of the scope of the Principal Project Company's Infrastructure Facility Maintenance it receives from Lead Developer in the manner described in the attached Appendix B-2.

8.7. Energy Management Program. City will collaborate with Lead Developer in its efforts to develop the Energy Management Program.

8.8. IFM Contract. City will provide comments to the draft IFM Contract materials it receives from Lead Developer, including the procurement materials and Lead Developer's proposed process for obtaining competitive bids for the IFM Contract and selecting the IFM Contract contractor in the manner described in the attached Appendix B-2.

8.9. Early Works. City will provide comments to the Early Works analysis it receives from Lead Developer and, if it approves and accepts the Early Works analysis, which approval may be subject to completion of CEQA review for the Project, execute an Early Works Agreement that addresses the City's requirements for the Early Works.

8.10. General Regulatory Approval Cooperation. City agrees, subject to its rights under Section 6.21 (*Regulatory Approvals*), to: (a) reasonably cooperate with Lead Developer in filing for, processing, and obtaining all General Regulatory Approvals in accordance with the Regulatory Approval Strategy; and (b) respond within a commercially reasonable time to requests for coordination, consultation, and scheduling additional meetings regarding the Project, including matters relating to any General Regulatory Approval if City would be the co-applicant. This Section 8.10 (*General Regulatory Approval Cooperation*) does not limit or otherwise constrain City's discretion, powers, and duties as a Regulatory Agency.

9. CHANGES TO THE PROJECT

9.1. Infrastructure Facility or Infrastructure Facility Maintenance Changes Proposed by Lead Developer.

(a) LD Proposed Change. Lead Developer may, at any time during the PDA Term, propose a modification to the Infrastructure Facility or the Infrastructure Facility Maintenance requirements as described in the Technical Proposal or the Technical Requirements (an "**LD Proposed Change**") due to: (i) any change in Applicable Law that occurs after June 20, 2022; (ii) the imposition of Regulatory Approval conditions on the Infrastructure Facility or Infrastructure Facility Maintenance by the Planning Commission, the SFMTA Board, or the Board of Supervisors (a "**Regulatory Change**"); (iii) any Project Site condition revealed through Lead Developer's due diligence investigation of the Project Site that differs materially from the conditions disclosed in the Reference Documents; or (iv) any modification that Lead Developer reasonably believes is in the best interests of City or the Project.

(b) LD Proposed Change Processes. Any LD Proposed Change that, if accepted by City, would (i) increase the design and construction costs or the Infrastructure Facility Maintenance costs of the Infrastructure Facility, or (ii) alter the Technical Requirements,

must be presented to City, for City's review and approval or disapproval, through the LD Change Request procedures set forth in Section 9.1(c) (*LD Change Request*). Lead Developer may present all other LD Proposed Changes, being those not included in item (i) or (ii) of this Section 9.1(b) (*LD Proposed Change Processes*), to City through the weekly Project meetings required pursuant to Section 7.8 (*Weekly Meetings*). City may, in its sole discretion, take the following actions with respect to any LD Proposed Change presented at a weekly Project meeting: (A) approve, (B) disapprove, or (C) request that Lead Developer submit an LD Change Request for such LD Proposed Change. City's approval, disapproval or request for an LD Change Request with respect any LD Proposed Change presented at a weekly meeting will be documented in the meeting minutes. City's approval of LD Proposed Changes at weekly meetings shall be summarized and included in the monthly and quarterly reports required under Section 7.7 (*Monthly and Quarterly Report*).

(c) LD Change Request.

(i) To propose an LD Proposed Change that, if accepted by City, would (A) increase the design and construction costs or the Infrastructure Facility Maintenance costs of the Infrastructure Facility, or (B) alter the Technical Requirements, Lead Developer must submit a written, detailed description of the LD Proposed Change and a narrative justification supporting the LD Proposed Change (an "**LD Change Request**").

(ii) The LD Change Request must include the following: (A) narrative overview of the LD Proposed Change and how it differs from the Project, (B) rationale for the LD Proposed Change, (C) impact analysis, including environmental, social, economic, community, traffic, safety, operations and maintenance or third-party impacts (positive and negative) of the LD Proposed Change, (D) cost analysis, including any additional costs or savings to the Project resulting from the LD Proposed Change, (E) specifications and plan drawings, as applicable, and (F) any additional information relevant to adjudicating a decision on the LD Proposed Change.

(iii) Within ten (10) Business Days of receiving an LD Change Request, City will notify Lead Developer, in writing, if it agrees to the LD Change Request, disapproves or tentatively disapproves the LD Change Request, or needs additional information regarding the LD Change Request, and the reasons for any tentative disapproval, disapproval, or additional information request. Any such request for additional information from City must detail the specific information City needs from Lead Developer to consider the LD Change Request. If City requests additional information for an LD Change Request, City will, within ten (10) Business Days of receiving that additional information, notify Lead Developer if it approves the LD Change Request, tentatively disapproves the LD Change Request, or needs additional information regarding the LD Change Request. The Parties shall agree in good faith to any necessary extensions to the review periods in this Section 9.1(c)(iii) to accommodate particularly complex LD Proposed Change or combination of LD Proposed Changes.

(iv) If City disapproves an LD Change Request because City reasonably determines it is not an LD Proposed Change as defined, Lead Developer can request a meeting of the Parties to further discuss that LD Change Request within ten (10) Business Days of receiving City's written notice of its disapproval. Within ten (10) Business Days of that meeting, City will notify Lead Developer if City approves, tentatively disapproves, or disapproves the LD Change Request and the reasons for any tentative disapproval or disapproval.

(v) Any LD Proposed Change presented to City through the LD Change Request procedures will not take effect until approved in writing by City, which approval shall not be unreasonably withheld with respect to LD Proposed Changes categorized within items (i) through (iii) of Section 9.1(a) (*LD Proposed Change*); the approval of LD

Proposed Changes described in item (iv) of Section 9.1(a) (*LD Proposed Change*) are within the City's sole discretion.

(vi) Lead Developer agrees that it would be reasonable for City to withhold its approval of any LD Proposed Change that City determines would (i) materially alter the Infrastructure Facility or the Infrastructure Facility Maintenance as described in the Technical Proposal or the Technical Requirements, (ii) materially increase City's costs or other liability with respect to the Project, (iii) materially and adversely affect the SFMTA's operations at or use of the Bus Yard Component, (iv) delay Substantial Completion of the Infrastructure Facility beyond the Outside Delivery Date, (v) materially reduce the number of residential units or reduce the number of any Affordable Units from that shown in the Technical Proposal, or (vi) materially increase City's risk from that shown in the Preliminary Term Sheet (or if an HCC Term Sheet is signed, from that shown in the HCC Term Sheet), materially differ from the Project Objectives, or any other aspect of the Project important to City.

(d) LD Proposed Changes will not result in an increase to the Fixed Budget Limit, except to the extent specifically permitted in Section 2.5(b)(ii) (*LD Proposed Change*).

9.2. HCC Change.

(a) Basis for HCC Changes. The Proposed HCC must comply with the applicable Project Objectives and the Technical Requirements and must be developed in a manner that meets the HCC Interface Requirements. However, the Parties recognize that the Proposed HCC can only be achieved in compliance with the HCC Interface Requirements with sufficient and timely financing, funding, and Regulatory Approvals. If Lead Developer reasonably determines that (i) it cannot feasibly obtain the financing, funding, or Regulatory Approvals needed to construct the Proposed HCC, or (ii) it can obtain the necessary financing, funding, and Regulatory Approvals but cannot reasonably comply with the conditions of any of the Regulatory Approvals despite using cost effective means or cannot comply with the HCC Interface Requirements, then Lead Developer may propose a change to the Proposed HCC (an "**HCC Change**"). An HCC Change may, but is not required to, consist of the Housing and Commercial Component contingency plan included in Technical Submittal 28 (PDA Management Plan) and Financial Submittal 11 (Housing and Commercial Component Organizational, Financial, and Operations Plan) of the Proposal.

(b) HCC Change Request. To request an HCC Change, Lead Developer must submit a written request (an "**HCC Change Request**") that includes (i) an overview of the HCC Change and how it differs from the Proposed HCC, (ii) the rationale for the HCC Change, including a detailed description of why the Proposed HCC is no longer determined to be feasible, (iii) an impact analysis, including environmental, social, economic, community, traffic, safety, operations and maintenance or third-party impacts (positive and negative) of the HCC Change, if applicable, (iv) a cost analysis, including any additional costs or savings to the Infrastructure Facility or Proposed HCC resulting from the HCC Change, if applicable, (v) if the HCC Change would reduce the level of affordability or number of Affordable Units of the Proposed HCC, an analysis (with supporting backup documentation) showing that the Proposed HCC, if modified by the HCC Change, will have the highest level of affordability and number of Affordable Units that is feasible, including a detailed description of the methods Lead Developer considered to preserve the level of affordability and number of Affordable Units in the Proposed HCC and why those methods were not feasible, (vi) specifications and plan drawings, if applicable, and (vii) any additional information relevant to adjudicating a decision on the HCC Change.

(c) City Review. City shall not unreasonably withhold its consent to an HCC Change Request. The Parties agree it shall be reasonable for City to withhold its consent to an HCC Change Request if City determines (i) the matters described in the HCC Change Request

do not qualify for an HCC Change, or (ii) the matters described in the HCC Change Request qualify for an HCC Change, but the Proposed HCC, as modified by the proposed HCC Change, would (A) fail to comply with the Technical Requirements, (B) fail to meet the HCC Interface Requirements or the Project Objectives, (C) fail to meet the affordable rental unit requirements of California Government Code Section 54221(f)(1)(F)(i) or California Government Code Section 54221(f)(1)(F)(ii), or if higher, the requirements of San Francisco Planning Code Section 415.6(a), (D) materially increase City's costs or other liability; or (E) fail to reach Substantial Completion no later than one year after Substantial Completion of the Infrastructure Facility.

(d) Response to HCC Change Request. Within fifteen (15) Business Days of receiving an HCC Change Request, City will notify Lead Developer, in writing, if it approves or disapproves of the HCC Change Request or needs additional information, and the reasons for any disapproval or additional information request. If City requests additional information for an HCC Change Request, City will, within fifteen (15) Business Days of receiving that additional information, notify Lead Developer if it approves or disapproves of the HCC Change Request or needs additional information regarding the HCC Change Request.

(e) Approved HCC Change. If City approves an HCC Change, the Proposed HCC will be modified by that HCC Change as of Lead Developer's receipt of City's written approval of the HCC Change. Any costs or time resulting from an approved HCC Change will not be a LD Predevelopment Cost or otherwise be allocated to the Bus Yard Component. If the HCC Change results in removal or reduction of the Housing and Commercial Component from the Project, the LD Predevelopment Cost shall be reduced accordingly, and the amount of that reduction shall be negotiated in good faith by the Parties.

(f) Disapproved HCC Change. If City reasonably disapproves an HCC Change Request under Section 9.2(c)(i), there will be no change to the Proposed HCC for that HCC Change Request. If City reasonably disapproves an HCC Change Request under Section 9.2(c)(ii) but it is feasible to construct a modified Proposed HCC that would (i) comply with the applicable Project Objectives, the Technical Requirements, and the HCC Interface Requirements, (ii) meet the affordable rental unit requirements of California Government Code Section 54221(f)(1)(F)(i) or California Government Code Section 54221(f)(1)(F)(ii), or if higher, the requirements of San Francisco Planning Code Section 415.6(a), and (iii) reach Substantial Completion no later than one year after Substantial Completion of the Infrastructure Facility without materially increasing City's costs or other liability, then Lead Developer will submit a revised HCC Change Request for that modified version. If City reasonably disapproves an HCC Change Request under Section 9.2(c)(ii) and it is not feasible to construct a modified Proposed HCC that would (x) comply with the applicable Project Objectives, the Technical Requirements, and the HCC Interface Requirements, (y) meet the affordable rental unit requirements of California Government Code Section 54221(f)(1)(F)(i) or California Government Code Section 54221(f)(1)(F)(ii), or if higher, the requirements of San Francisco Planning Code Section 415.6(a), and (z) reach Substantial Completion no later than one year after Substantial Completion of the Infrastructure Facility without materially increasing City's costs or other liability, then the Project will be modified to only be comprised of the Bus Yard Component.

(g) IF Reimbursement Notice. If Lead Developer submits an HCC Change Request after Performance Milestone 27A due to a Regulatory Approval condition of the Planning Commission, the SFMTA Board, or the Board of Supervisors, and the Project is modified to only be comprised of the Bus Yard Component pursuant to Section 9.2(f) (*Disapproved HCC Change*), then the LD Predevelopment Cost will be increased by any additional, documented costs incurred by Lead Developer (subject to City approval, which will not be unreasonably withheld) to modify the Design Deliverables for a Facility that will only be comprised of the Bus Yard Component. To request City's approval of any such costs, Lead Developer must submit a written request (an "**IF Reimbursement Notice**") that has a detailed

description of the Design Deliverables modifications together with invoices evidencing the costs for those modifications. Within fifteen (15) Business Days of receiving an IF Reimbursement Notice, City will notify Lead Developer, in writing, if it approves or disapproves of the IF Reimbursement Request or needs additional information, and the reasons for any disapproval or additional information request. If City requests additional information for an IF Reimbursement Notice, City will, within fifteen (15) Business Days of receiving that additional information, notify Lead Developer if it approves or disapproves of the Request or needs additional information regarding the IF Reimbursement Notice.

9.3. Changes Proposed by City.

(a) City may propose modifying the Preliminary Term Sheet and the HCC Term Sheet, if any, in the applicable draft Transaction Documents, and may also propose modifying the Technical Requirements, the Proposal, or any other aspect of the Project ("**City Proposed Change**") at any time, in each case without notice to any Guarantor. To propose a City Proposed Change, City must submit a written, detailed description of that City Proposed Change and a narrative justification for the City Proposed Change. Within five (5) Business Days of receiving notice of a City Proposed Change, Lead Developer must notify City in writing if it accepts the City Proposed Change or requests a meeting of the Parties to discuss the City Proposed Change. Any failure to timely respond to a City Proposed Change will be deemed Lead Developer's acceptance of that City Proposed Change. If Lead Developer timely requests a meeting of the Parties with respect to a City Proposed Change, the Parties will meet within ten (10) Business Days of City's receipt of that meeting request from Lead Developer. If City elects to pursue the City Proposed Change after that meeting, it must deliver written notice of that election to Lead Developer and the Project will be accordingly modified by the City Proposed Change. Pursuant to Section 2.5 (*Fixed Budget Limit; Adjustments; Allowances; Submittals*), any additional costs or time incurred by a City Proposed Change shall be equitably adjusted by the Parties, using the PCIC to the extent a City Proposed Change also benefits the Common Infrastructure or the Housing and Commercial Component.

(b) As of the execution of this Agreement, the Lead Developer anticipates the requirements of the Regulatory Approvals that will be needed for the Proposed HCC, and the construction timing of the Proposed HCC, will not have a material, negative impact on City's cost of the Infrastructure Facility, the timing for Substantial Completion of the Infrastructure Facility, or the operation of the Bus Yard Component after Substantial Completion of the Infrastructure Facility. However, the Parties acknowledge new information discovered during the PDA Term with respect to the timing, feasibility, and Regulatory Approval conditions and financing to deliver the Proposed HCC may affect that initial analysis. The primary objective of the Project is the timely delivery and operation of the Infrastructure Facility, but City recognizes that Lead Developer will expend time and funds to pursue its predevelopment obligations under this Agreement with respect to the Proposed HCC.

Accordingly, notwithstanding anything to the contrary in Section 9.3(a), City will not propose a City Proposed Change to modify or remove the Housing and Commercial Component and Common Infrastructure from the Project unless City reasonably determines (i) Lead Developer will not be able to obtain the Regulatory Approvals or financing needed for the timely construction of the Proposed HCC and timely payment of the Infrastructure Facility construction costs allocated to the Housing and Commercial Component, (ii) the Proposed HCC will delay Substantial Completion of the Infrastructure Facility beyond the Outside Delivery Date, (iii) the anticipated timing for Housing and Commercial Component construction activities will interfere with the SFMTA's transit operations at the Bus Yard Component after the Substantial Completion of the Infrastructure Facility, or (iv) the Proposed HCC will materially increase City's costs or liabilities with respect to the Project. A City Proposed Change to modify the Housing and Commercial Component may, but is not required to, consist of the Housing and

Commercial Component contingency plan included in Technical Submittal 28 (PDA Management Plan) and Financial Submittal 11 (Housing and Commercial Component Organizational, Financial, and Operations Plan) of the Proposal.

If any of the conditions of the foregoing paragraph are met, City can make a City Proposed Change to modify or remove the Housing and Commercial Component and Common Infrastructure from the Project through the procedure to effect a City Proposed Change under Section 9.3(a).

10. RECORDS

10.1. Definition of Material Adverse Change. The term "material adverse change" shall include any (i) bankruptcy, (ii) decrease in tangible net worth of 10% or greater of net assets, (iii) sale, merger, or acquisition exceeding 10% of the value of net assets prior to the sale, merger, or acquisition, (iv) downward change in credit rating, (v) inability to meet material conditions of loan or debt covenants, (vi) incurrence of a net operating loss, (vii) sustained charges exceeding 5% of the then net assets due to claims, changes in accounting, write-offs, or business restructuring; restructuring/reduction in salaried personnel exceeding 10% of its workforce or involving the disposition of assets exceeding 10% of the then net assets, (viii) or event know to the entity which represents a material change in financial position from previously submitted financial statements.

10.2. Material Adverse Change in Financial Position. Lead Developer shall, for itself and for each Equity Member, Housing Developer, Affordable Housing Developer, and Guarantor, notify City of, and shall provide an explanation for, any material adverse change in financial position that was not reflected in or differed from the financial position reflected in the latest financial statements submitted in its response to the RFQ and updated in the Proposal. If there is any such material adverse change, Lead Developer shall promptly provide City with an assessment regarding the effect of such change on Lead Developer's ability to complete its obligations under this Agreement.

10.3. Future Performance. Following its review of financial statements or certifications provided under this Article 10 (*Records*), City may, in its sole discretion, require Lead Developer to develop and implement a plan assuring City of Lead Developer's capacity to continue to perform its obligations under this Agreement. City shall have the right to review and approve, in its sole discretion, such plan, and may identify additional measures assuring future performance, including requiring additional guarantees in accordance with Section 6.23 (*Guaranty*). Lead Developer shall promptly and diligently carry out any approved plan in accordance with its terms.

11. INTELLECTUAL PROPERTY

11.1. Developed IP.

(a) Lead Developer acknowledges and agrees that the City shall own all Developed IP and the Lead Developer agrees to assign, and shall cause all Lead Developer Related Entities to assign, to City all rights, title and interest in and to the Developed IP including any deliverable and/or Work Materials upon Commercial Close, provided that to the extent this Agreement is terminated in accordance with Section 16, the Lead Developer will assign, and cause Lead Developer Related Entities to assign, to City all rights, title and interest in and to the Developed IP in connection with the assignment of Work Materials contemplated by Section 16.6 and subject to payment receipt by the Lead Developer of the applicable Termination Payment. In connection with the foregoing. Lead Developer agrees to execute, and shall cause all Lead Developer Related Entities to execute, such further documents and to do such further

acts as may be necessary to perfect, register, or enforce City's ownership of such rights, in whole or in part. If any Lead Developer Related Entity fails or refuses to execute any such documents, Lead Developer for itself and on behalf of any Lead Developer Related Entity hereby appoints City as the necessary Lead Developer Related Entity's attorney-in-fact (this appointment is irrevocable and is coupled with an interest) to act on Lead Developer Related Entity's behalf and to execute such documents. Lead Developer hereby forever waives and agrees never to assert, and shall cause any Lead Developer Related Entity to waive and never to assert, against City, its successors or licensees any and all "moral rights" (including claims based on 17 U.S.C. §§ 101-810 (the Copyright Act of 1976, as modified), specifically including 17 U.S.C. § 106A(a) (the Visual Artists Rights Act of 1990, "VARA")) that such Lead Developer Related Entity may have in Intellectual Property or deliverable and/or Work Materials following assignment thereof in accordance with this Agreement.

(b) Reserved.

(c) Lead Developer shall deliver to City all deliverables and/or Work Materials authored, created or developed under or for the purpose of the Agreement at time(s)/dates(s) pursuant to the Agreement.

11.2. Lead Developer IP.

(a) Lead Developer hereby grants, and shall cause each Lead Developer Related Entity to grant, to City an irrevocable, perpetual, non-exclusive, transferable, fully paid-up right and license to use, execute, perform, sublicense, exploit, , manufacture, distribute, reproduce, adapt, display, and prepare derivative works ("**Base License Rights**") of Lead Developer IP in connection with the Work or the Project. Lead Developer acknowledges and agrees that all rights, title or license(s) granted under this Article 11 (*Intellectual Property*) will survive any expiration or earlier termination of this Agreement without regard to convenience, default or other causation.

(b) Lead Developer shall identify and disclose to City all Lead Developer IP required by, incorporated in, or combined with the Work or the Project.

11.3. Third Party IP.

(a) Lead Developer shall secure license(s) in the name of City for the Base License Rights of Third Party IP, in connection with the Work or the Project, including a representation and warranty that Third Party IP does not infringe the rights, including Intellectual Property rights, of any Person. To the extent that the foregoing license rights or representation and warranty are refused by any owner of Third Party IP, Lead Developer shall secure City's prior written approval, in its reasonable discretion, for any license, the terms of which are acceptable to such owner of Third Party IP. For the avoidance of doubt, in no event shall Lead Developer incorporate Third Party IP into the Work, any Work Materials, or the Project without first securing such licenses.

(b) Lead Developer shall obtain from each owner of Third Party IP consent to have all necessary IP Materials related to Third Party IP, including but not limited to Source Code, documentation and/or related instructions and materials to execute Software deposited into an IP Escrow deposit requirements of Section 11.7 (*IP Escrow*). No Third Party IP shall be incorporated into the Work or the Project without City's prior written approval, in its sole discretion, to the extent the owner of the relevant Third Party IP has not provided such consent.

(c) COTS. Lead Developer shall secure license(s) in the name of City based on commercially available terms for the COTS, including any standard end user license

agreement. If the COTS license terms fail to provide the complete Base License Rights, Lead Developer shall provide (i) an outline of such license deficiencies and (ii) the identification of at least one (1) other COTS available for the same purpose, function or design. Lead Developer shall identify and disclose to City all COTS required by, incorporated in, or combined with the Work or the Project.

11.4. City IP and City Data.

(a) City hereby grants to Lead Developer a limited, non-exclusive license to use, execute, perform, exploit, manufacture, distribute, reproduce, adapt, display, sublicense (solely to the Development Team Design Consultant and to its design subconsultants listed in Appendix O (*List of Design Subconsultants*), and prepare derivative works from the Project IP, City IP, and City Data, and any deliverable and/or Work Materials incorporating such Intellectual Property, solely in connection with and limited to the Allowed Uses. "**Allowed Uses**" are: (a) incorporation into the Work Materials and/or the Project; and (b) performance, provision, furnishing and discharge of the Work under the Agreement. All rights not specifically granted in this Section 11.4(a) are reserved to City. For the avoidance of doubt, no rights to trademarks of City, whether registered or not, (the "**City Marks**") are granted to Lead Developer and Lead Developer may not incorporate, refer to, or otherwise use the City Marks for any marketing, promotional or advertising purposes without a separate trademark license agreement. Any sublicense permitted under this Section 11.4(a) shall include the same limitations, terms and conditions that apply with respect to the Lead Developer's license granted hereunder, and Lead Developer shall provide City with a copy of each such sublicense. Changes to the list of design subconsultants included in Appendix O may be made with the prior written consent of the City Project Director, and such changes shall be effective from the date of City's delivery of that written consent to Lead Developer (which consent shall include a copy of the revised Appendix O), or such later date stated in the notice delivering that consent.

(b) In addition to Lead Developer's obligations and restrictions related to City Data in this Agreement, Lead Developer acknowledges and agrees that all City Data, including the results or creation of any anonymization, de-identification, aggregation or other analysis of such City Data, whether physical or digital, is owned by City. Except as specifically provided in this Agreement, no Lead Developer Related Entity shall make use of City Data even if such use is for such Lead Developer Related Entity's internal use or analysis, whether or not commercial value is available or received, and/or such information or data is available in other, separate or cumulative sources.

(c) Notwithstanding any other term or condition of this Agreement, the rights and permissions granted under this Section 11.4 (*City IP and City Data*), including the rights and permissions of any sublicensees, shall terminate (i) upon the effective date of termination of this Agreement or (ii) upon 24-hour written notice by City to Lead Developer, whichever is earlier.

11.5. Delivery. Excluding COTS pursuant to Section 11.3(c), but in addition to any deliverable and/or Work Materials or other items to be delivered to City under this Agreement, Lead Developer shall deliver, or cause to be delivered, to City all IP Materials. Only to the extent that such delivery would eliminate or substantially limit the legal protections for, or commercial value of, such IP Materials, in such cases Lead Developer shall comply, and cause Lead Developer Related Entities to comply, with the IP Escrow deposit requirements of Section 11.7 (*IP Escrow*), below, provided that such delivery to City or deposit into IP Escrow(s) shall occur at the earlier of (x) when such deliverable and/or Work Materials is due under the Agreement terms, (y) within 60 days after the Effective Date of the Agreement or (z) 60 days prior to the effective date of termination.

11.6. Payment Inclusive. Lead Developer acknowledges and agrees that the sum of all payments made pursuant to the Agreement shall include all royalties, fees, costs and expenses arising from or related to the Software or any licenses granted under this Article 11 (*Intellectual Property*). For the avoidance of doubt, all fees, costs and expenses for IP Escrow(s) are included in such payments paid to Lead Developer by City under this Agreement.

11.7. IP Escrow.

(a) City and Lead Developer acknowledge that Lead Developer, Lead Developer Related Entities and/or owners of Third Party IP may not wish to deliver the required IP Materials directly to City pursuant to this Agreement as public disclosure could deprive the such owners of Intellectual Property commercial value. Lead Developer further acknowledges that City nevertheless must be guaranteed access to such IP Materials and the complete enjoyment of all rights, including Intellectual Property rights, granted pursuant to this Agreement, and must be assured that the IP Materials are delivered to City.

(b) In lieu of delivering the IP Materials directly to City pursuant to the Agreement, subject to the requirements of Section 11.5 (*Delivery*), Lead Developer, Lead Developer Related Entity or the owner of Third Party IP may from time to time elect to deposit relevant IP Materials with a neutral depository. In such event, City and Lead Developer (or the applicable Lead Developer Related Entity or other owner of Third Party IP) shall: (i) mutually select one or more escrow companies or other neutral depositories (each an "**IP Escrow Agent**") engaged in the business of receiving and maintaining escrows of Software Source Code or other Intellectual Property; (ii) establish one or more escrows (each an "**IP Escrow**") with the IP Escrow Agent on terms and conditions reasonably acceptable to City and Lead Developer for the deposit, retention, audit, upkeep and release of IP Materials to City pursuant to this Agreement; (iii) determine a date for each deposit of the IP Materials into the IP Escrow; and (iv) determine a process for releasing from escrow the IP Materials to be delivered to City pursuant to the Agreement. Lead Developer shall be responsible for the fees and costs of the IP Escrow Agent and IP Escrow(s).

(c) Any IP Materials deposited in IP Escrow(s) shall be released and delivered to City in any of the following circumstances ("**Release Conditions**"):

(i) this Agreement is terminated for any reason;

(ii) voluntary or involuntary bankruptcy of Lead Developer, Lead Developer Related Entity or the owner of Third Party IP; or

(iii) Lead Developer, Lead Developer Related Entity or the owner of Third Party IP is dissolved or liquidated or otherwise ceases to engage in the ordinary course of the business of manufacturing, supplying, maintaining, and servicing the software, product, part, or other item containing the relevant Intellectual Property.

(iv) City shall maintain the confidentiality of any IP Materials released pursuant to this Section 11.7(c) pursuant to Section 2.11 (*Proprietary or Confidential Information*) and shall enter into a non-disclosure agreement with any third party to whom City, in its sole discretion, grants access to such IP Materials to the extent that such IP Materials contain Confidential Information.

(d) **Audit & Verification.** Regardless of whether one of the Release Conditions occurs, City shall have the right to require the IP Escrow Agent to verify the relevance, completeness, currency, accuracy, and functionality of the IP Materials held by the IP Escrow in a manner and form as directed by City at the expense of Lead Developer not more

than once in any calendar year. In the event such testing demonstrates the IP Materials held by the IP Escrow does not correspond to the Work Materials and/or Project or pursuant to the Agreement, Lead Developer shall deposit the correct materials with the IP Escrow Agent within seventy-two (72) hours following notice by City.

11.8. Lead Developer Related Entities Lead Developer acknowledges and agrees that it shall direct, and be responsible for, the compliance of all Lead Developer Related Entities with the obligations and restrictions of this Article 11 (*Intellectual Property*) and shall incorporate the provisions of this Article 11 (*Intellectual Property*) into each agreement involving development, provision or acquisition of Intellectual Property or the creation or generation of any deliverable and/or Work Materials.

12. NO REPRESENTATION OR WARRANTY OF PROJECT VIABILITY

Lead Developer acknowledges and agrees that City has not made any representation or warranty regarding any matters relating to the Project Site, including but not limited to (i) the suitability of the Project Site for construction of the Project, (ii) the Project, (iii) if the SFMTA Board, Board of Supervisors, any other applicable City board or commission, and City's Mayor will approve the Transaction Documents, (iv) the ability to obtain CEQA approval for the Project, or (v) Lead Developer's ability to obtain the General Regulatory Approvals. Lead Developer further acknowledges and agrees that although City is a Regulatory Agency, it is entering into this Agreement in its proprietary capacity and not as a Regulatory Agency with certain police powers and in that proprietary capacity, it has no authority or influence over other City officials, departments, boards, commissions, or agencies or any other Regulatory Agency responsible for issuing required Regulatory Approvals (including City, in its regulatory capacity). Accordingly, no guarantee or presumption exists that any of the Regulatory Approvals will be issued by the appropriate Regulatory Agency, and City's status as a Regulatory Agency will not limit Lead Developer's obligation to obtain General Regulatory Approvals from appropriate Regulatory Agencies that have jurisdiction over the Project.

13. FINAL ACTION SUBJECT TO ENVIRONMENTAL REVIEW

City will not enter into any Transaction Document or request approval of them until City has completed environmental review with respect to the Project in compliance with the California Environmental Quality Act ("**CEQA**") and City's CEQA Procedures, as set forth in San Francisco Administrative Code Chapter 31. The Project will also require discretionary approvals by a number of government bodies after public hearings and environmental review. Nothing in this Agreement commits, or shall be deemed to commit City or any other public agency to approve or implement the Project or the Transaction Documents, and they may not do so until environmental review of the Project as required under Applicable Law has been completed and they are able to review and consider the information contained in the CEQA document and all other relevant information about the Project. Accordingly, all references to the "**Project**" in this Agreement shall mean the proposed Project subject to future environmental review and consideration by City and other public bodies.

City and any other public agencies with jurisdiction over any part of the Project each shall have the absolute discretion to (a) require modifications to the Project and/or implementation of specific measures to mitigate significant adverse environmental impacts; (b) select feasible alternatives that avoid significant adverse impacts of the Project, including the "no project" alternative; (c) reject all or part of the Project if the economic and social benefits of the Project do not outweigh otherwise unavoidable significant adverse impacts of the Project; (d) approve the Project upon a finding that the economic and social benefits of the Project outweigh otherwise unavoidable significant adverse environmental impact of the Project; and (e) deny the Project.

14. COMMERCIAL CLOSE

14.1. Achieving Commercial Close. If Lead Developer has obtained all necessary General Regulatory Approvals, CEQA review for the Project has been completed, the Transaction Documents have been mutually approved by the Parties, and the Transaction Documents have been approved by the SFMTA Board, the Board of Supervisors, and any other applicable City board or commission, each acting in its sole discretion, and all the other Performance Milestones have been timely achieved, Lead Developer shall cause the Principal Project Company and the Housing Project Company to execute and deliver the Transaction Documents. Such execution and delivery will occur on or before the tenth (10th) Business Day (the "**Scheduled Commercial Closing Date**") immediately following the date legislation adopted by the Board of Supervisors to approve the Transaction Documents is effective (the "**Project Approval Date**") or any earlier date mutually selected by the Parties, the Principal Project Company, and the Housing Project Company between the Project Approval Date and the Scheduled Commercial Closing Date.

14.2. Flexibility for Separate Commercial Closings. Notwithstanding Section 14.1 (*Achieving Commercial Close*), the IF Commercial Close and the HCC Commercial Close may occur at different times, provided that City has provided its prior written approval in its sole discretion.

15. PROHIBITED ACTIONS

15.1. Prohibited Payments. Lead Developer may not pay, or agree to pay, any fee or commission, or any other thing of value contingent on entering into this Agreement, any other Project Document, or any other agreement with City related to the Project, to any City or City employee or official or to any contracting consultant hired by City for the Project. By entering into this Agreement, Lead Developer certifies to City that Lead Developer has not paid or agreed to pay any fee or commission, or any other thing of value contingent on entering into this Agreement, any other Project Document, or any other agreement with City related to the Project, to any City employee or official or to any contracting consultant hired by City for the Project.

15.2. No Entry. Lead Developer expressly acknowledges and agrees that this Agreement does not give Lead Developer or any Lead Developer Agents the right to enter or access the Project Site. Any entry on the Project Site by Lead Developer or any of the Lead Developer Agents must be pursuant to terms and conditions of the Access Agreement.

15.3. Submitting False Claims. The full text of San Francisco Administrative Code Section 21.35, including the enforcement and penalty provisions, is incorporated into this Agreement by this reference. Pursuant to San Francisco Administrative Code Section 21.35, any contractor or subcontractor who submits a false claim shall be liable to City for the statutory penalties set forth in that section. A contractor or subcontractor will be deemed to have submitted a false claim to City if the contractor or subcontractor: (a) knowingly presents or causes to be presented to an officer or employee of City a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by City; (c) conspires to defraud City by getting a false claim allowed or paid by City; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to City; or (e) is a beneficiary of an inadvertent submission of a false claim to City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to City within a reasonable time after discovery of the false claim. Lead Developer agrees that all references to a contractor in San Francisco Administrative Code Section 21.35 apply to Lead Developer and all references to a subcontractor in San Francisco Administrative Code Section 21.35 apply to Lead Developer Agents and agents of Development Team Members.

16. TERMINATION

16.1. Termination for Convenience. In addition to its other termination rights in this Agreement, City shall have the right to terminate this Agreement at any time at its sole discretion by providing at least ten (10) days prior written notice of that termination to Lead Developer. Termination (or partial termination) of this Agreement shall not relieve any Guarantor of its obligation for any claims arising out of the Work performed.

16.2. Terminating Event. The occurrence of any of the following events (each, a "**Terminating Event**") will cause early termination of and extinguish this Agreement ("**Termination**"), without an opportunity for the Lead Developer to cure:

(a) City exercises its right to terminate this Agreement following an LD Event of Default;

(b) City exercises its right to terminate this Agreement for convenience;

(c) City issues a Discontinuation Notice;

(d) The PDA Term expires before Commercial Close occurs;

(e) Lead Developer exercises its right to terminate this Agreement following a City Event of Default;

(f) Lead Developer fails to comply with Article 15 (*Prohibited Actions*), Article 18 (*Assignment and Changes in Ownership of Lead Developer*), or Section 24.1 (*Nondiscrimination in City Contracts and Benefits Ordinance*).

16.3. Termination Payments. If this Agreement terminates before Commercial Close for any reason, City will have no obligation to reimburse or otherwise pay Lead Developer for any of Lead Developer's Project costs or expenses. Notwithstanding anything to the contrary in the foregoing sentence, City shall, in exchange for an executed release from Lead Developer satisfactory in form and substance to City, make the following payments (each, a "**Termination Payment**"), as applicable, to Lead Developer if this Agreement terminates before Commercial Close for any reason other than an LD Event of Default and Lead Developer has performed its obligations under Section 16.6(a). The executed release from Lead Developer shall release, waive, and discharge City and City Agents of and from all liabilities, obligations, claims, and demands whatsoever arising out of or under this Agreement. City's liability to Lead Developer with respect to any claims or Disputes arising from this Agreement shall not exceed Nine Million Nine Hundred Ninety Thousand Dollars ($9,990,000) plus the amount of the Continuation Payment, if paid. City's payment of any Termination Payment shall not affect any of City's rights under the Agreement with respect to completed Work, or relieve Lead Developer or any Guarantor from its respective obligations with respect thereto.

(a) Proposal Payment. If this Agreement terminates for any reason other than an LD Event of Default, then City will pay Lead Developer an amount equal to One Million Three Hundred and Fifty Thousand Dollars ($1,350,000) for Work Materials comprising the Proposal (the "**Proposal Payment**").

(b) PDA Phase 1. If this Agreement terminates for any reason other than an LD Event of Default after Lead Developer has timely submitted all the documents described as Performance Milestone 15, and those documents comply with the applicable requirements for them in the attached Appendix B-2, then, in addition to the Proposal Payment, City will pay Lead Developer an amount equal to the lesser of Lead Developer's Qualified Out-of-Pocket

Costs to provide the PDA Phase 1 materials ("**PDA Phase 1 Costs**") and Four Million Nine Hundred Ninety Thousand Dollars ($4,990,000). Lead Developer must submit commercially reasonable evidence of its PDA Phase 1 Costs to City before City is obligated to make any payment under this subsection (b).

(c) PDA Phase 2. If this Agreement terminates for any reason other than an LD Event of Default after Performance Milestone 16 and Lead Developer has timely delivered the materials described as Performance Milestone 27, and those materials comply with all the applicable requirements for them in the attached Appendix B-2, then, in addition to the Proposal Payment, City will pay Lead Developer an amount equal to the lesser of (A) the PDA Phase 1 Costs and Lead Developer's Qualified Out-of-Pocket Costs to provide those PDA Phase 2 materials ("**PDA Phase 2 Costs**") and (B) Seven Million Six Hundred Forty Thousand Dollars ($7,640,000). Lead Developer must submit commercially reasonable evidence of its PDA Phase 1 Costs and its PDA Phase 2 Costs to City before City is obligated to make any payment under this subsection (c).

(d) PDA Phase 3. If this Agreement terminates for any reason other than an LD Event of Default after Performance Milestone 28 and after Lead Developer has timely delivered the materials and evidence described as Performance Milestones 32 and 33, and those materials comply with all the applicable requirements for them in the attached Appendix B-2, then, in addition to the Proposal Payment, City will pay Lead Developer an amount equal to the lesser of (A) the PDA Phase 1 Costs, the PDA Phase 2 Costs and Lead Developer's Qualified Out-of-Pocket Costs to provide those PDA Phase 3 materials and perform those PDA Phase 3 activities ("**PDA Phase 3 Costs**") and (B) Eight Million Six Hundred Forty Thousand Dollars ($8,640,000). Lead Developer must submit commercially reasonable evidence of its PDA Phase 1 Costs, its PDA Phase 2 Costs, and its PDA Phase 3 Costs to City before City is obligated to make any payment under this subsection (d).

(e) Termination between Milestones. City's delivery of Notice to Proceed #1 to Lead Developer and each of the Performance Milestones described in the foregoing subsections (b)-(d) are "**Qualifying Payment Milestones**". If this Agreement terminates for any reason other than an LD Event of Default between any of the Qualifying Payment Milestones for any reason other than an LD Event of Default, City will make a partial termination payment (a "**Partial Payment**") for Lead Developer's Qualified Out-of-Pocket Costs for any Work Materials completed by Lead Developer for the Qualifying Payment Milestone that would have immediately followed the date this Agreement is terminated if (1) Lead Developer has delivered those Work Materials to City within ten (10) Business Days following the termination of this Agreement, (2) those Work Materials comply with all the requirements for them in the attached Appendix B-2, as modified to reflect the early delivery of those Work Materials, and (3) all third parties that prepared any of those Work Materials have consented in writing to the assignment of them to City.

Lead Developer must submit commercially reasonable evidence of its Qualified Out-of-Pocket Costs for these partially-completed Work Materials to City before City is obligated to make any payment under this subsection (e). The amount of the Partial Payment will be the higher of (i) the amount calculated by prorating the termination payment associated with the next Qualifying Payment Milestone at the time this Agreement terminates by the number of days between that next Qualifying Payment Milestone and the immediately preceding Qualifying Payment Milestone, and determining the prorated portion of that next Qualifying Payment Milestone termination payment as of the date of termination, and (ii) the value of the completed or partially completed Work Materials prepared for the PDA Phase during which this Agreement terminates, as reasonably determined by mutual agreement of the Parties based on the percentage of completion of those Work Materials relative to the total amount of Work Materials required during the applicable PDA Phase.

(f) Electronic Payments. Lead Developer agrees that City's obligation to make any Termination Payment to Lead Developer is conditioned on Lead Developer signing up to receive electronic payments through the City's Automated Clearing House (ACH) payments service/provider. The process to sign up for those electronic payments is described at www.sfcontroller.org/electronic-payments-ach-vendors.

(g) Survival. The Parties' respective rights and obligations under this Section 16.3 (*Termination Payments*) shall survive any termination of this Agreement.

16.4. Termination Notice; Effect of Termination. A Party shall exercise any termination right it has under this Agreement by delivering written notice to the other Party ("**Termination Notice**"). Following the delivery of a Termination Notice, this Agreement will terminate and each Party will be released from all liability under this Agreement except for any obligations that expressly survive the termination or expiration of this Agreement.

16.5. City's Rights Following Termination. If a Termination occurs, City, in its sole discretion, may take any action with respect to the Project Site, including the right to negotiate with another developer for the development of the Project Site, to elect not to pursue any project at the Project Site, or to undertake other efforts with the Project Site including pursuing a new procurement or issuing a new request for proposals. Lead Developer agrees that if this Agreement terminates on its own terms, City shall have the right to elect to negotiate with another Short-Listed Proposer to reprocure the Project, and use the Proposal and the Work Materials submitted by Lead Developer prior to Termination.

16.6. Assignment of Work Materials

(a) If there is a Termination, Lead Developer must take the following actions within the time periods specified in City's notice:

(i) assign, at no cost to City, all of its rights under its consulting contracts with Lead Developer Agents, including any rights to use all resulting Work Materials;

(ii) satisfy all outstanding fees relating to the Work Materials that are then due and payable or will become due and payable for services relating to the Project rendered by any of Lead Developer Agents providing any Work Materials up to the date of Termination and provide written evidence of satisfaction to City; and

(iii) deliver copies of all Work Materials in the possession of Lead Developer or a Development Team Member or, for materials not in the possession of Lead Developer or a Development Team Member, confirm, on request from the applicable Lead Developer Agents or City, those Lead Developer Agents are authorized to deliver or have delivered from the appropriate parties all Work Materials to City.

(b) If there is a Termination, and except as provided in Article 11 (*Intellectual Property*), including without limitation Lead Developer's payment of fees, and subject to Section 21.1(g), City's use, license or other exercise of rights of Intellectual Property subject to Article 11 (*Intellectual Property*) or Work Materials following a Termination shall be at City's risk and Lead Developer neither warrants nor represents that such Intellectual Property or Work Materials are suitable for use without modification for a subsequent purpose, project or procurement.

(c) Lead Developer's obligations under this Section 16.6 (*Assignment of Work Materials*) shall survive a Termination.

17. INSURANCE

17.1. Required Coverage During PDA Term. Without in any way limiting Lead Developer's liability pursuant to Article 21 (*Indemnity; Disclaimers; Limitation of Liability*), Lead Developer must maintain or cause to be maintained in force insurance in the following amounts and coverages during the PDA Term:

(a) Commercial General Liability Insurance with limits not less than $1,000,000 each occurrence for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations.

(b) Commercial Automobile Liability Insurance with limits not less than $1,000,000 each occurrence, "Combined Single Limit" for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable.

(c) Workers' Compensation, in statutory amounts, with Employers' Liability limits not less than $1,000,000 for each accident, injury, or illness; provided that Lead Developer shall not be required to carry workers' compensation coverage as long as Lead Developer has no employees.

(d) Professional Liability Insurance, applicable to Lead Developer's profession, with limits not less than $1,000,000 for each claim with respect to negligent acts, errors or omissions in connection with the Work.

17.2. Endorsements. The insurance described in Section 17.1 (*Required Coverage During PDA Term*) shall include the following endorsements:

(a) The Commercial General Liability policy and the Commercial Automobile Liability Insurance policy must be endorsed to name as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees.

(b) The Workers' Compensation policy(ies) shall be endorsed with a waiver of subrogation in favor of City for all work performed by Lead Developer, its employees, agents and subcontractors under this Agreement.

(c) The Commercial General Liability policy shall provide that such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that the insurance applies separately to each insured against whom a claim is made or suit is brought.

(d) The Commercial Automobile Liability Insurance policy shall provide that such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that the insurance applies separately to each insured against whom claim is made or suit is brought.

17.3. Other Insurance Requirements. The insurance described in Section 17.1 (*Required Coverage During PDA Term*) are subject to the following requirements:

(a) Thirty (30) days' advance written notice shall be provided to City of cancellation, intended non-renewal, or reduction in coverages, except for non-payment for which no less than ten (10) days' notice shall be provided to City. Notices shall be sent to City address set forth in Article 23 (*Notices*) below.

(b) Should any of the required insurance be provided under a claims-made form, Lead Developer shall maintain such coverage continuously throughout the PDA Term and, without lapse, for a period of three years beyond the end of the PDA Term, to the effect that, should occurrences during the PDA Term give rise to claims made after the end of the PDA Term, such claims shall be covered by such claims-made policies.

(c) Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general annual aggregate limit shall be double the occurrence or claims limits specified above.

(d) Should any required insurance lapse during the PDA Term, City shall have no obligation to make any termination payments to Lead Developer until City receives satisfactory evidence of reinstated coverage as required by this Agreement, effective as of the lapse date. If insurance is not reinstated, City may, at its sole option, terminate this Agreement effective on the date of such lapse of insurance.

(e) Before commencing any Work, Lead Developer shall furnish to City certificates of insurance and additional insured policy endorsements with insurers with ratings comparable to A-, VIII or higher, that are authorized to do business in the State of California, and that are satisfactory to City, in form evidencing all coverages set forth above. Approval of the insurance by City shall not relieve or decrease Lead Developer's liability hereunder.

(f) If Lead Developer will use any Lead Developer Related Entity to provide Work, Lead Developer shall require the Lead Developer Related Entity to provide all necessary insurance and to name the City and County of San Francisco, its officers, agents and employees and Lead Developer as additional insureds.

18. ASSIGNMENT AND CHANGES IN OWNERSHIP OF LEAD DEVELOPER

18.1. Restrictions on Assignment. Lead Developer acknowledges that City is entering into this Agreement on the basis of the special skills, capabilities, and experience of Lead Developer, the Development Team and the Key Personnel. This Agreement is personal to Lead Developer and, except as provided in this Agreement, may not be assigned, transferred, conveyed, or otherwise disposed of without City's prior consent, which may be withheld in City's sole and absolute discretion; provided, however, that Lead Developer can assign this Agreement to an entity that (i) has Lead Developer as its sole or controlling member or shareholder, (ii) has the minimum assets required for the respondents to the RFP, and (iii) has assumed Lead Developer's agreements with the Development Team Members) and (iv) has the same Guarantor with respect to the Project (an "**Approved Subsidiary**"). Any assignment, transfer, conveyance, or other disposition of this Agreement in violation of this Section 18.1 (*Restrictions on Assignment*) will be an incurable LD Event of Default under this Agreement.

18.2. Restrictions on Changes in Ownership of Lead Developer. A Change of Control of Lead Developer or an Equity Transfer that results in any Equity Member ceasing to own (directly or indirectly) the same percentage of the issued share capital, partnership or membership interests, as applicable, in Lead Developer that it owned (directly or indirectly) as of Effective Date, shall be subject to City's prior written approval in City's sole discretion.

19. DEFAULT

19.1. LD Event of Default. The occurrence of any of the following events will constitute a default by Lead Developer under this Agreement after the expiration of the applicable cure period, if any (each, an "**LD Event of Default**"):

(a) Any fraudulent act, misrepresentation or willful misconduct by any Lead Developer Related Entity with respect to the Proposal, the Project or this Agreement;

(b) Lead Developer fails to achieve any of the Performance Milestones to be achieved by Lead Developer in the manner and by the Performance Dates described in the attached Appendix B-1, as the Performance Dates may be extended or stayed in accordance with Section 2.9 (*Suspension of Obligations*), Section 2.10 (*Exclusive Negotiations; City's Reserved Rights*), or Section 3.1 (*PDA Term; Predevelopment Period Extensions*), or Section 3.3 (*Unavoidable Delays and Regulatory Appeal Delays*), as applicable, or extended by City in its sole discretion, if such failure is not cured within ten (10) Business Days after City's notice to Lead Developer, but if the default cannot reasonably be cured within the ten (10) Business Day cure period, Lead Developer will not be in default of this Agreement if Lead Developer commences to cure the default within the ten (10) Business Day cure period and diligently and in good faith prosecutes the cure to completion;

(c) Lead Developer fails to comply with any other provision of this Agreement or any Early Works Agreement if not cured within ten (10) Business Days after City's notice to Lead Developer, but if the default cannot reasonably be cured within the ten (10) Business Day cure period, Lead Developer will not be in default of this Agreement if Lead Developer commences to cure the default within the ten (10) Business Day cure period and diligently and in good faith prosecutes the cure to completion;

(d) Any of the representations, warranties or covenants made by Lead Developer or any Guarantor in Section 22.1 (*Lead Developer Representations and Warranties*) are not true in any material respect throughout the PDA Term;

(e) A voluntary or involuntary action is filed (i) to have Lead Developer adjudicated insolvent and unable to pay its debts as they mature or a petition for reorganization, arrangement or liquidation under any bankruptcy or insolvency law, or a general assignment by Lead Developer, for the benefit of creditors, or (ii) seeking Lead Developer's reorganization, arrangement, liquidation, or other relief under any law relating to bankruptcy, insolvency, or reorganization or seeking appointment of a trustee, receiver, or liquidator of Lead Developer or any substantial part of Lead Developer's assets or any of the foregoing events occurs with respect to any of the members of Lead Developer, any of the Development Team Members, or any Guarantor, and, in respect of any involuntary action, such action has not been dismissed within 60 days of being filed;

(f) There is an uncured event of default under any Early Works Agreement or the Access Agreement by Lead Developer or any of the Lead Developer Agents;

(g) There is a change in the Development Team or Key Personnel without City's consent;

(h) Lead Developer, its parent company, or their respective members or shareholders, or any of the Development Team Members are debarred or prohibited from doing business with any federal, state or local government agency; or

(i) Lead Developer fails to comply with Article 15 (*Prohibited Actions*) or Section 24.1 (*Nondiscrimination in City Contracts and Benefits Ordinance*); or

(j) Any Guarantor revokes or attempts to revoke its obligations under its Guaranty or otherwise takes the position that such instrument is no longer in full force and effect, and Lead Developer fails to cure such LD Event of Default cured within five (5) Business Days after City's notice to Lead Developer by providing City with alternative security and/or a new

guarantor, which security and/or new guarantor must be in a form satisfactory to City, in its sole discretion.

19.2. City Event of Default. The occurrence of any of the following events will constitute a default by City under this Agreement after the expiration of the applicable cure period, if any (each, a "**City Event of Default**"):

(a) City's failure to comply with any provision of this Agreement if the failure is not cured within ten (10) Business Days after Lead Developer's notice to City; but if the default cannot reasonably be cured within the ten (10) Business Day cure period, City will not be in default of this Agreement if City commences to cure the default within the ten (10) Business Day cure period and diligently and in good faith prosecutes the cure to completion.

(b) A voluntary or involuntary action is filed (i) to have City adjudicated insolvent and unable to pay its debts as they mature or a petition for reorganization, arrangement or liquidation under any bankruptcy or insolvency law, or a general assignment by City for the benefit of creditors, or (ii) seeking City's reorganization, arrangement, liquidation, or other relief under any law relating to bankruptcy, insolvency, or reorganization or seeking appointment of a trustee, receiver, or liquidator of City or any substantial part of City's assets.

(c) Any representation or warranty made by City under this Agreement is false, misleading or inaccurate when made, in each case in any material respect, or omits material information when made.

20. REMEDIES

20.1. City's Remedies. Following an LD Event of Default, City may (a) terminate this Agreement by delivery of notice to Lead Developer and, as the termination date specified in that notice (which may be on the delivery of the notice), Lead Developer and City will both be released from all liability under this Agreement (except for those obligations that survive Termination), (b) seek to enforce Lead Developer's indemnity obligations, (c) seek to enforce any Guarantor obligations under the Guarantees, (d) obtain copies and/or assignments of the Work Materials to which City is entitled. These remedies are not exclusive, but are cumulative with any remedies now or later allowed by law or in equity. If an LD Event of Default occurs, Lead Developer and any Guarantor shall be jointly and severally liable to City for all Losses incurred by the City and the City Agents.

20.2. Lead Developer's Remedies. Following a City Event of Default, Lead Developer will have the option, as its sole and exclusive remedy at law or in equity, to terminate this Agreement by delivery of notice to City and, as the termination date specified in that notice (which may be on the delivery of the notice), Lead Developer and City will both be released from all liability under this Agreement (except for those provisions that survive Termination, including City's obligations to make any payments to Lead Developer pursuant to Section 16.3 (*Termination Payments*). Lead Developer waives any and all rights it may now or later have to pursue any other remedy or recover any other damages on account of any City breach or default, including loss of bargain, special, punitive, compensatory or consequential damages. No member, official, agent or employee of City will be personally liable to Lead Developer, or any successor in interest (if and to the extent permitted under this Agreement), due to a City Event of Default or for any amount that may become due to Lead Developer or successor or on any obligations under the terms of this Agreement.

21. INDEMNITY; DISCLAIMERS; LIMITATION OF LIABILITY

21.1. Lead Developer's Duty to Indemnify. To the fullest extent permitted by law, and related to facts and circumstances arising from and after the Effective Date, Lead Developer agrees to indemnify and hold City and the City Agents (collectively, the "**Indemnified Parties**") harmless, and at City's request, defend them from and against any Losses that the Indemnified Parties may incur as a result, directly or indirectly, of any of the following:

(a) Any injury to or death of a person, including employees of any Indemnified Parties or any Lead Developer Related Entity, and any loss of or damage to property, in each case arising out of Lead Developer's performance of this Agreement, including, but not limited to, Lead Developer's use of facilities or equipment provided by City or others;

(b) Breach by any Lead Developer Related Entity of Applicable Law, including but not limited to privacy or personally identifiable information, health information, disability and labor laws or regulations;

(c) Strict liability imposed by any law or regulation arising out of Lead Developer's performance of this Agreement;

(d) Breach by any Lead Developer Related Entity of any of its obligations or any representation, warranty or covenant under the Agreement or any Early Works Agreement, including Lead Developer's execution of subcontracts or Development Team agreements not in accordance with the applicable requirements of this Agreement;

(e) Any Lead Developer Related Entity's failure to obtain or comply with the terms and conditions of any Regulatory Approval;

(f) Any fraud, criminal conduct, intentional misconduct, recklessness, bad faith, gross negligence, negligence or other culpable act or omission of any Lead Developer Related Entity; and

(g) Any infringement, or alleged infringement, of the proprietary rights, including Intellectual Property rights, of any third party based on or related to the Work, Project, or any Work Materials (i) as delivered to the City, (ii) as intended for use by the City, and (iii) as combined or integrated with City hardware, systems and software for which any Lead Developer Related Entity had a reasonable opportunity to investigate or discover."

The foregoing indemnification includes, without limitation, reasonable fees of attorneys, consultants and experts and related costs and City's costs of investigating any claims against City. In addition to Lead Developer's obligation to indemnify City, Lead Developer specifically acknowledges and agrees that it has an immediate and independent obligation to defend City from any claim which actually or potentially falls within this indemnification provision, even if the allegations are or may be groundless, false or fraudulent, which obligation arises at the time such claim is tendered to Lead Developer by City and continues at all times thereafter.

This indemnification shall apply regardless of whether or not a claim, suit, action, loss or liability was caused in part or contributed to by an Indemnified Party. However, without affecting the rights of City under any provision of this Agreement, Lead Developer shall not be required to indemnify and hold harmless City for liability to the extent caused by (i) the negligence, reckless or willful misconduct, bad faith or fraud of an Indemnified Party; or (ii) City's breach of any of its material obligations under this Agreement. In instances where City is shown to have been actively negligent, reckless, engaged in willful misconduct or acting in bad faith or with fraud and where such City actions account for only a percentage of the liability

involved, the obligation of Lead Developer will be for that entire portion or percentage of liability not attributable to such actions of City.

With respect to Work performed by a design professional as defined in Civil Code Section 2782.8, this indemnification shall apply only to the extent permitted by said Section 2782.8.

Lead Developer's obligations under this Section 21.1 (*Lead Developer's Duty to Indemnify*) will survive the expiration or earlier Termination of this Agreement.

21.2. Disclaimer and Acknowledgement.

(a) Disclaimer. Except as otherwise provided in this Agreement, City does not represent or warrant, and hereby disclaims: (i) that the information contained in the Reference Documents and in any other reference information is either complete or accurate or suitable for use or that such information is in conformity with the requirements of any Regulatory Approvals or other governmental approvals or rules; (ii) that any itemized list set forth in the Technical Requirements is accurate or complete; (iii) responsibility for the condition of the Project Site; and (iv) responsibility for any Regulatory Agency's failure to issue any required Regulatory Approval.

(b) Acknowledgement. Lead Developer, on behalf of itself and the Lead Developer Related Entities, and each of their respective successors and assigns, hereby acknowledges (i) City's disclaimers set forth in Section 21.2(a) (*Disclaimer*); (ii) that Lead Developer previously received the Reference Documents through the RFP, and they were provided for general or reference information only and without any warranty as to their accuracy, completeness or fitness for any particular purpose; and (iii) agrees that the Lead Developer Related Entities shall have no recourse to City for any claim arising out of or relating to the matters set forth in Section 21.2(a) (*Disclaimer*).

21.3. Limitation of Liability

(a) Except as provided in Section 21.3(b), Lead Developer's liability to City for damages, including direct, indirect and consequential damages, arising out of Lead Developer's performance of the Agreement (or failure to perform hereunder) shall be limited to Nine Million Nine Hundred Ninety Thousand Dollars ($9,990,000) plus the amount of the Continuation Payment if paid.

(b) The limitation of damages set forth in Section 21.3(a) does not apply to or limit any right of recovery City may have respecting the following:

(i) Losses arising out of fraud, criminal conduct, intentional misconduct, recklessness, bad faith, or gross negligence on the part of any Lead Developer Related Entity;

(ii) Lead Developer's indemnities set forth in Section 21.1 (*Lead Developer's Duty to Indemnify*), or elsewhere in the Agreement, for third party claims;

(iii) Losses arising out of any release of hazardous materials by any Lead Developer Related Entity; and

(iv) Any liability for any type of damage or loss, to the extent such loss or damage is covered by insurance required under this Agreement or for which Lead Developer was required to provide insurance if coverage is not in force, or is covered by the actual amount of

insurance applicable to the Project and the Work (regardless of whether required to be carried hereunder), whichever is greater.

22. REPRESENTATIONS AND WARRANTIES

22.1. Lead Developer Representations and Warranties. Lead Developer represents, warrants and covenants to City (and will cause its members, on behalf of themselves, to represent, warrant and covenant to City) as follows, as of the date hereof and throughout the PDA Term:

(a) Valid Existence; Good Standing. Lead Developer is a limited liability company organized under the laws of the State of Delaware. Lead Developer's sole manager and sole member is Plenary Americas US Holdings Inc., which is a corporation duly incorporated and validly existing under the laws of the State of Delaware. Lead Developer has the requisite power and authority to own its property and conduct its business as presently conducted. Lead Developer and its sole manager and sole member have each made the necessary filings with, and are all good standing in, the State of California.

(b) Business Licenses. Lead Developer and its manager have obtained all licenses required to conduct its business in San Francisco and Lead Developer, its manager, and its member are not in default of any fees or taxes due to the City and County of San Francisco.

(c) Authority. Lead Developer and its manager each have the requisite power and authority to execute and deliver this Agreement and the agreements contemplated hereby and to carry out and perform all of the terms and covenants of this Agreement and the agreements contemplated hereby to be performed by Lead Developer.

(d) No Limitation on Ability to Perform. Neither Lead Developer's operating agreement nor any Applicable Law prohibit Lead Developer's entry into this Agreement or its performance hereunder. No consent, authorization or approval of, and no notice to or filing with, any governmental authority, Regulatory Agency or other Person is required for the due execution and delivery of this Agreement by Lead Developer and Lead Developer's performance hereunder, except for consents, authorizations and approvals which have already been obtained, notices which have already been given and filings which have already been made. There are no undischarged judgments pending against Lead Developer, and Lead Developer has not received notice of the filing of any pending suit or proceedings against Lead Developer before any court, Regulatory Agency, or arbitrator, which might materially adversely affect the enforceability of this Agreement or the business, operations, assets or condition of Lead Developer.

(e) Valid Execution. The execution and delivery of this Agreement and the performance by Lead Developer hereunder have been duly and validly authorized. When executed and delivered by City and Lead Developer, this Agreement will be a legal, valid and binding obligation of Lead Developer.

(f) Defaults. The execution, delivery and performance of this Agreement (i) do not and will not violate or result in a violation of, contravene or conflict with, or constitute a default by Lead Developer under (1) any agreement, document or instrument to which Lead Developer is a party or by which Lead Developer is bound, (2) any Law applicable to Lead Developer or its business, or (3) the operating agreement of Lead Developer, and (ii) do not result in the creation or imposition of any lien or other encumbrance upon the assets of Lead Developer, except as contemplated hereby.

(g) Financial Matters. Lead Developer is not in default under, and has not received notice asserting that it is in default under, any agreement for borrowed money, Lead

Developer has not filed a petition for relief under any Chapter of the U.S. Bankruptcy Code, there has been no event that has materially adversely affected Lead Developer's ability to meet its obligations hereunder, and to the best of Lead Developer's knowledge, no involuntary petition naming Lead Developer as debtor has been filed under any Chapter of the U.S. Bankruptcy Code.

(h) Warranty of LD Development Program. Lead Developer warrants to City that all the Work will be performed with the degree of skill and care that is required by current, good and sound professional procedures and practices, and in conformance with generally accepted professional standards prevailing at the time they are performed so as to ensure that all performed Work is correct and appropriate for the purposes contemplated in this Agreement.

(i) Guarantor Valid Existence; Good Standing. Guarantor is duly organized and validly existing under the laws of the State of Delaware, with full power, right, and authority to own its properties and assets and carry on its business as now conducted or proposed to be conducted.

(j) Enforceability of Guaranty. The Guaranty constitutes the legal, valid and binding obligation of the Guarantor, enforceable in accordance with its terms, subject only to applicable bankruptcy, insolvency and similar laws affecting the enforceability of the rights of creditors generally and the general principles of equity.

(k) Valid Execution of Guaranty. The execution, delivery and performance of the Guaranty have been duly authorized by all necessary action of Guarantor and will not result in a breach of or a default under Guarantor's organizational documents or any indenture or loan or credit agreement or other material agreement or instrument to which Guarantor is a party or by which its properties and assets may be bound or affected.

22.2. City Representations and Warranties.

(a) Valid Existence; Good Standing. City is a municipal corporation created and validly existing under the laws of the State of California.

(b) Authority. City has the requisite power and authority to execute and deliver this Agreement and the Access Agreement and to perform all of the terms and covenants of this Agreement and the agreements contemplated hereby to be performed by City, subject to the terms and conditions of this Agreement.

(c) Valid Execution. The execution and delivery of this Agreement and the performance by City hereunder have been duly and validly authorized. When executed and delivered by City and Lead Developer, this Agreement will be a legal, valid and binding obligation of City.

(d) Defaults. The execution, delivery and performance of this Agreement do not and will not violate or result in a violation of, contravene or conflict with, or constitute a default by City under (i) any agreement, document or instrument to which City is a party or by which City is bound, (ii) any law applicable to City, or (ii) the City's Charter.

(e) Source of Funds. City has adequate sources of funds to perform the payment obligations of City under this Agreement, subject to the requirements of Section 24.15 (*Certification of Funds*).

22.3. Survival. The representations and warranties herein will survive any termination of this Agreement.

23. NOTICES.

Any notice given under this Agreement must be in writing delivered in person, by commercial courier, next business day delivery requested, or by registered, certified mail or express mail, return receipt requested, with postage prepaid, to the mailing addresses below. All notices under this Agreement will be deemed given, received, made or communicated on the date personal receipt actually occurs or, if mailed, on the delivery date or attempted delivery date shown on the return receipt. For the convenience of the Parties, copies of notices may also be given by email to the email address given below but email notice will not be binding on either Party.

The effective time of a notice will not be affected by the receipt of the email copy of the notice. Any mailing address, or email address, may be changed at any time by giving written notice of the change in the manner provided above at least ten (10) days before the effective date of the change.

City:	San Francisco Municipal Transportation Agency 1 South Van Ness, 8th Floor San Francisco, CA 94103 Attn: Kerstin Magary Email: Kerstin.magary@sfmta.com
With a copy to:	Office of the City Attorney City Hall, Room 234 1 Dr. Carlton B. Goodlett Place San Francisco, California 94102-4682 Attn: Real Estate & Finance Group Re: Potrero Yard Modernization Project Email: Carol.R.Wong@sfcityatty.org
Lead Developer:	Potrero Neighborhood Collective LLC 555 W Fifth Street, Suite 3150 Los Angeles, CA 90013 Attn: Stuart Marks Re: Potrero Modernization Project Email: Stuart.Marks@plenarygroup.com
With a copy to:	Brian Middleton Potrero Neighborhood Collective LLC 555 W Fifth Street, Suite 3150 Los Angeles, CA 90013 Email: Brian.Middleton@plenarygroup.com
With a copy to:	Chris Jauregui Potrero Neighborhood Collective LLC 555 W Fifth Street, Suite 3150 Los Angeles, CA 90013 Email: Chris.Jauregui@plenarygroup.com

24. CITY REQUIREMENTS

Lead Developer has reviewed, understands, and is ready, willing, and able to comply with the terms and conditions of this Article 24 (*City Requirements*), which summarizes special City requirements as of the Effective Date, each of which is fully incorporated by reference. Lead Developer acknowledges that City requirements in effect when any Transaction Documents are executed will be incorporated into the Transaction Documents, as applicable, and will apply to all contractors, subcontractors, and any other Lead Developer Related Entities, as applicable. City requirements of general applicability will apply to the Project even if not summarized below.

The following summary is for Lead Developer's convenience only; Lead Developer is obligated to become familiar with all applicable requirements and to comply with them fully as they are amended from time to time. City ordinances are currently available on the web at www.sfgov.org. References to specific laws in this Article 24 (*City Requirements*) refer to the San Francisco Municipal Code unless specified otherwise. Capitalized terms used in this Article 24 (*City Requirements*) and not defined in this Agreement will have the meanings assigned to them in the applicable Section of the San Francisco Municipal Code.

24.1. Nondiscrimination in City Contracts and Benefits Ordinance.

(a) Non-Discrimination in Contracts. Lead Developer shall comply with the provisions of Chapters 12B and 12C of the Administrative Code, which are incorporated into this Agreement by this reference. Lead Developer shall incorporate by reference in all Subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the Administrative Code and shall require all subcontractors to comply with such provisions. Lead Developer is subject to the enforcement and penalty provisions in Chapters 12B and 12C.

(b) Non-Discrimination in the Provision of Employee Benefits. Lead Developer does not as of the date of this Agreement, and will not during the PDA Term, in any of its operations in San Francisco, on real property owned by San Francisco, or where work is being performed for City elsewhere in the United States, discriminate in the provision of employee benefits between employees with domestic partners and employees with spouses and/or between the domestic partners and spouses of such employees, subject to the conditions set forth in San Francisco Administrative Code Section 12B.2.

24.2. Requiring Health Benefits for Covered Employees. All undefined, initially-capitalized terms used in this Section 24.2 (*Requiring Health Benefits for Covered Employees*) shall have the meanings given to them in Administrative Code Chapter 12Q (the "**HCAO**"). If the HCAO applies to this Agreement, Lead Developer shall comply with the requirements of the HCAO. For each Covered Employee, Lead Developer shall provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO. If Lead Developer chooses to offer the health plan option, such health plan shall meet the minimum standards set forth by the San Francisco Health Commission. Information about and the text of the HCAO, as well as the Health Commission's minimum standards, is available on the web at http://sfgov.org/olse/hcao. Lead Developer is subject to the enforcement and penalty provisions in the HCAO. Any Subcontract entered into by Lead Developer shall require any Subcontractor with 20 or more employees to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section 24.2 (*Requiring Health Benefits for Covered Employees*).

24.3. Minimum Compensation Ordinance. If San Francisco Administrative Code Chapter 12P applies to this Agreement, Lead Developer shall pay covered employees no less than the minimum compensation required by San Francisco Administrative Code Chapter 12P

("**Chapter 12P**"), including a minimum hourly gross compensation, compensated time off, and uncompensated time off. Lead Developer is subject to the enforcement and penalty provisions in Chapter 12P. Information about and the text of the Chapter 12P is available on the web at http://sfgov.org/olse/mco. Lead Developer is required to comply with all of the applicable provisions of Chapter 12P, irrespective of the listing of obligations in this Section 24.3 (*Minimum Compensation Ordinance*). By signing and executing this Agreement, Lead Developer certifies that it complies with Chapter 12P.

24.4. Prevailing Rate of Wages and Working Conditions.

(a) Covered Services. Lead Developer agrees it will pay, and require the Lead Developer Agents to pay, the Prevailing Rate of Wages for any Project construction, asset management work or other covered work or improvements performed by Lead Developer or the Lead Developer Agents ("**Covered Services**"), including any trade work for the Project performed by or for Lead Developer during the PDA Term. The provisions of Section 6.22(e) of the San Francisco Administrative Code are incorporated as provisions of this Agreement as if fully set forth herein and will apply to any Covered Services performed by Lead Developer and the Lead Developer Agents.

(b) Determining the Prevailing Rate of Wages. The latest Prevailing Rate of Wages for private employment on public contracts as determined by the San Francisco Board of Supervisors and the Director of the California Department of Industrial Relations, as such prevailing wage rates may be changed during the PDA Term, are hereby incorporated as provisions of this Agreement. Copies of the Prevailing Rate of Wages as fixed and determined by the Board of Supervisors are available from the Office of Labor Standards and Enforcement ("**OLSE**") and on the Internet at http://www.dir.ca.gov/DLSR/PWD and http://sfgov.org/olse/prevailing-wage. Lead Developer agrees that it and the Lead Developer Agents will pay no less than the Prevailing Rate of Wages, as fixed and determined by the Board of Supervisors, to all workers who perform Covered Services and are employed by Lead Developer or the Lead Developer Agents.

(c) Subcontract Requirements. As required by Section 6.22(e)(5) of the San Francisco Administrative Code, Lead Developer shall insert in every subcontract or other arrangement, which it may make for the performance of Covered Services under this Agreement, a provision that said subcontractor shall pay to all persons performing labor in connection with Covered Services under said subcontract or other arrangement not less than the highest general the Prevailing Rate of Wages as fixed and determined by the Board of Supervisors for such labor or services.

(d) Posted Notices. As required by Section 1771.4 of the California Labor Code, Lead Developer shall post job site notices prescribed by the California Department of Industrial Relations ("**DIR**") at all job sites where Covered Services are to be performed.

(e) Payroll Records. As required by Section 6.22(e)(6) of the San Francisco Administrative Code and Section 1776 of the California Labor Code, Lead Developer shall keep or cause to be kept complete and accurate payroll records for all trade workers performing Covered Services. Such records shall include the name, address and social security number of each worker who provided Covered Services on the project, including apprentices, his or her classification, a general description of the services each worker performed each day, the rate of pay (including rates of contributions for, or costs assumed to provide fringe benefits), daily and weekly number of hours worked, deductions made and actual wages paid. Every subcontractor who shall undertake the performance of any part of Covered Services shall keep a like record of each person engaged in the execution of Covered Services under the subcontract. All such

records shall at all times be available for inspection of and examination by City and its authorized representatives and the DIR.

(f) Certified Payrolls. Certified payrolls shall be prepared pursuant to San Francisco Administrative Code Section 6.22(e)(6) and California Labor Code Section 1776 for the period involved for all employees, including those of subcontractors, who performed labor in connection with Covered Services. Lead Developer and each subcontractor performing Covered Services shall submit certified payrolls to City and to the DIR electronically. Lead Developer shall submit payrolls to City via the reporting system selected by City. The DIR will specify how to submit certified payrolls to it. City will provide basic training in the use of the reporting system at a scheduled training session. Lead Developer and all subcontractors that will perform Covered Services must attend the training session. Lead Developer and applicable subcontractors shall comply with electronic certified payroll requirements (including training) at no additional cost to City.

(g) Compliance Monitoring. Covered Services to be performed under this Agreement are subject to compliance monitoring and enforcement of prevailing wage requirements by the DIR and/or the OLSE. Lead Developer and any subcontractors performing Covered Services will cooperate fully with the DIR and/or the OLSE and other City employees and agents authorized to assist in the administration and enforcement of the prevailing wage requirements, and agrees to take the specific steps and actions as required by Section 6.22(e)(7) of the San Francisco Administrative Code. Steps and actions include but are not limited to requirements that: (i) Lead Developer will cooperate fully with the Labor Standards Enforcement Officer and other City employees and agents authorized to assist in the administration and enforcement of the Prevailing Wage requirements and other labor standards imposed on Lead Developer by the Charter and Chapter 6 of the San Francisco Administrative Code; (ii) Lead Developer agrees that the Labor Standards Enforcement Officer and his or her designees, in the performance of their duties, shall have the right to engage in random inspections of job sites and to have access to the employees of Lead Developer, employee time sheets, inspection logs, payroll records and employee paychecks; (iii) the contractor shall maintain a sign-in and sign-out sheet showing which employees are present on the job site; (iv) Lead Developer shall prominently post at each job-site a sign informing employees that the project is subject to the City's Prevailing Wage requirements and that these requirements are enforced by the Labor Standards Enforcement Officer; and (v) that the Labor Standards Enforcement Officer may audit such records of Lead Developer as he or she reasonably deems necessary to determine compliance with the Prevailing Wage and other labor standards imposed by the Charter and this Chapter and applicable to this Agreement. Failure to comply with these requirements may result in penalties and forfeitures consistent with analogous provisions of the California Labor Code, including Section 1776(g), as amended from time to time.

(h) Remedies. Should Lead Developer, or any subcontractor who shall undertake the performance of any Covered Services, fail or neglect to pay to the persons who perform Covered Services under this Agreement, subcontract or other arrangement for the Covered Services, the general prevailing rate of wages as herein specified, Lead Developer shall forfeit, and in the case of any subcontractor so failing or neglecting to pay said wage, Lead Developer and the subcontractor shall jointly and severally forfeit, back wages due plus the penalties set forth in San Francisco Administrative Code Section 6.22 (e) and/or California Labor Code Section 1775. City, when certifying any payment, which may become due under the terms of this Agreement, shall deduct from the amount that would otherwise be due on such payment the amount of said forfeiture.

24.5. Local Hire. Lead Developer agrees to comply with the Local Hiring Policy for Construction set forth in San Francisco Administrative Code Chapter 82 (the "**Local Hiring Policy**") in the performance of any Work that is construction, asset management, and other

covered work or improvement ("**Covered Work**"). Before starting any Covered Work, Lead Developer shall contact OEWD to verify the Local Hiring Policy requirements that apply to the Covered Work and Lead Developer shall comply with all such requirements. Failure to comply shall be deemed a breach of this Agreement, and Lead Developer may also be liable for penalties as set forth in the Local Hiring Policy. Without limiting the foregoing:

(a) For Covered Projects that exceed $750,000, Lead Developer shall comply with the applicable mandatory participation levels for Project Work Hours performed by Local Residents, Disadvantaged Workers, and Apprentices as set forth in Section 6.22(G)(4).

(b) For Covered Projects that exceed $1,000,000, Lead Developer shall prepare and submit to OEWD for approval a local hiring plan as set forth in Section 6.22(G)(6).

(c) Lead Developer shall comply with the applicable record keeping and reporting requirements and shall cooperate in City inspections and audits for compliance with the Local Hiring Policy.

Any capitalized term used in this Section 24.5 (*Local Hire*) that is not defined will have the meaning given to such term in the Local Hiring Policy.

24.6. First Source Hiring; SFMTA Trainee Hiring Program.

(a) First Source Hiring Program. Lead Developer must comply with the First Source Hiring Program requirements for the Work it performs under this Agreement set forth in the attached Attachment 2 and comply with the requirements of all of the provisions of Chapter 83 of the San Francisco Administrative Code for any Covered Work. Lead Developer is subject to the enforcement and penalty provisions in Chapter 83 for that work. Lead Developer and the Development Team Members must hire a minimum number of professional service trainees in the area of that party's expertise in any Covered Work. These hires count toward the First Source Hiring Program requirements. Trainees may be obtained through the City's One Stop Employment Center, which works with various employment and job training agencies/organizations or other employment referral source.

(b) SFMTA Trainee Hiring Program. As part of the SFMTA Employment Training Program, City requires that Lead Developer cause a minimum number of professional service trainees in the area of the expertise of Lead Developer or the Development Team members to be hired during the PDA Term. The Project Agreement and the HCC Agreements also must require the Principal Project Company and the Housing Project Company, respectively, to cause a minimum number of professional service trainees in the area of the expertise of the Principal Project Company and the Housing Project Company to be hired during the term of any agreement between City and Principal Project Company, and City and any Housing Project Company, for the Project. If a person hired by Lead Developer, a Development Team member, the Principal Project Company, or a Housing Project Company for the Project through the First Source Hiring Program also meets the trainee requirements described below, that person will be counted toward these trainee hiring requirements. Trainees may be obtained through the City's One Stop Employment Center, which works with various employment and job training agencies/organizations or other employment referral source.

Lead Developer must cause at least four (4) trainees to be hired during the PDA Term by the times and for the areas specified in the attached Attachment 1. Lead Developer must cause trainees for any professional services performed under any Early Works Agreement to be hired during the term of those agreements, using no less than the number of trainees required under the SFMTA Trainee Hiring Program (based on the projected cost of professional services under the applicable agreement). Any agreement between the Principal Project

Company and City, or between a Housing Project Company and City, for the Project, including the Project Agreement, and the HCC Agreement, must require that during the term of that agreement, the Principal Project Company and the Housing Project Company, respectively, cause trainees to be hired for any professional services performed for the Project under that agreement, using no less than the number of trainees required by the SFMTA Trainee Hiring Program (based on the projected cost of professional services under the applicable agreement).

The following requirements apply to the trainees:

1. The trainee must be hired by the party providing professional services for the Project.

2. No trainee may be counted towards meeting more than one contract requirement. For example, if City and Lead Developer enter into the PDA and an Early Works Agreement, any trainee hired for the PDA services would not count toward the trainee hiring requirement for the Early Works Agreement.

3. A trainee must meet enrollment qualifications established under the City's First Source Hiring Program as follows:

a. "Qualified" with reference to an economically disadvantaged individual shall mean an individual who meets the minimum bona fide occupational qualifications provided by the prospective employer to the San Francisco Workforce Development System in the job availability notices required by the First Source Hiring Program.

b. "Economically disadvantaged individual" shall mean an individual who is either (i) eligible for services under the Workforce Investment Act of 1988 (29 U.S.C. 2801 et seq.), as determined by the San Francisco Private Industry Council; or (ii) designated "economically disadvantaged" by the FS First Source Hiring Program HP administration, which means an individual who is at risk of relying upon, or returning to, public assistance.

c. "On-the-job training" means the hiring party hire the trainee on a full-time basis for at least 12 months or on a part-time basis for 24 months (using the full-time or part-time definition of the employer hiring that trainee), with prior approval offering him/her on-the-job training that allows the trainee to progress on a career path.

4. Before a trainee is hired, Lead Developer, the Principal Project Company, or the Housing Project Company, as applicable, shall submit for City's approval a description and summary of training proposed for that trainee, along with the rate of pay for the position.

5. The trainee's commitment does not require that he/she is used only on this Project; the trainee may also be used on other Lead Developer, Principal Project Company, or Housing Project Company projects that may be appropriate for the trainee's skill development.

Lead Developer must work with the SFMTA Employment Training Program during the PDA Term to develop a trainee plan (the "**PA Trainee Plan**") that will apply to the term of any agreement between the Principal Project Company and City for the Infrastructure Facility, and to the term of any agreement between Housing Project Company and City for the Housing and Commercial Component, and those agreements will include the obligation to hire trainees as described in the PA Trainee Plan.

24.7. Prohibition on Use of Public Funds for Political Activity. In performing the Work, Lead Developer shall comply with San Francisco Administrative Code Chapter 12G, which prohibits funds appropriated by City for this Agreement from being expended to

participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure. Lead Developer is subject to the enforcement and penalty provisions in Chapter 12G.

24.8. Consideration of Salary History. Lead Developer shall comply with San Francisco Administrative Code Chapter 12K, the Consideration of Salary History Ordinance or "Pay Parity Act." Lead Developer is prohibited from considering current or past salary of an applicant in determining whether to hire the applicant or what salary to offer the applicant to the extent that such applicant is applying for employment to be performed on this Agreement or in furtherance of this Agreement, and whose application, in whole or part, will be solicited, received, processed or considered, whether or not through an interview, in City or on City property. The ordinance also prohibits employers from (1) asking such applicants about their current or past salary or (2) disclosing a current or former employee's salary history without that employee's authorization unless the salary history is publicly available. Lead Developer is subject to the enforcement and penalty provisions in Chapter 12K. Information about and the text of Chapter 12K is available on the web at https://sfgov.org/olse/consideration-salary-history. Lead Developer is required to comply with all of the applicable provisions of 12K, irrespective of the listing of obligations in this Section 24.8 (*Consideration of Salary History*).

24.9. Consideration of Criminal History in Hiring and Employment Decisions.

(a) Lead Developer agrees to comply fully with and be bound by all of the provisions of Chapter 12T, "City Contractor/Subcontractor Consideration of Criminal History in Hiring and Employment Decisions," of the San Francisco Administrative Code ("**Chapter 12T**"), including the remedies provided, and implementing regulations, as may be amended from time to time. The provisions of Chapter 12T are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of the Chapter 12T is available on the web at http://sfgov.org/olse/fco. Lead Developer is required to comply with all of the applicable provisions of 12T, irrespective of the listing of obligations in this Section 24.9 (*Consideration of Criminal History in Hiring and Employment Decisions*). Capitalized terms used in this Section 24.9 (*Consideration of Criminal History in Hiring and Employment Decisions.*) and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12T.

(b) The requirements of Chapter 12T shall only apply to a Lead Developer's or its Agent's operations to the extent those operations are in furtherance of the performance of this Agreement, shall apply only to applicants and employees who would be or are performing work in furtherance of this Agreement, and shall apply when the physical location of the employment or prospective employment of an individual is wholly or substantially within the City of San Francisco. Chapter 12T shall not apply when the application in a particular context would conflict with federal or state law or with a requirement of a government agency implementing federal or state law.

24.10. Resource Efficiency Requirements. The Project will be subject to Chapter 7 of the San Francisco Environment Code. Accordingly, the Project must meet certain resource efficient requirements. Lead Developer agrees that it will design the Project to comply with Chapter 7 of the San Francisco Environment Code, as may be amended from time to time, or any similar law.

24.11. MacBride Principles Northern Ireland. City urges companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to abide by the MacBride Principles. City urges San Francisco companies to do business with corporations that abide by the MacBride Principles.

24.12. Notification of Limitations on Contributions. Lead Developer acknowledges its obligations under Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with, or is seeking a contract with, any department of City 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, for a grant, loan or loan guarantee, or for a development agreement, from making any campaign contribution to (i) a City elected official if the contract must be approved by that official, a board on which that official serves, or the board of a state agency on which an appointee of that official serves, (ii) a candidate for that City elective office, or (iii) a committee controlled by such elected official or a candidate for that office, at any time from the submission of a proposal for the contract until the later of either the termination of negotiations for such contract or twelve months after the date City approves the contract. The prohibition on contributions applies to (a) each prospective party to the contract, (b) each member of the contractor's board of directors, the contractor's chairperson, chief executive officer, chief financial officer and chief operating officer, (c) any person with an ownership interest of more than ten percent (10%) in the contractor, (d) any subcontractor listed in the bid or contract, and (e) any committee that is sponsored or controlled by the contractor. Lead Developer certifies that it has informed each such person of the limitation on contributions imposed by Section 1.126 by the time it submitted the Proposal, and has provided the names of the persons required to be informed to City.

24.13. Sunshine Ordinance. In accordance with Administrative Code Section 67.24(e), contracts, contractors' bids, leases, agreements, responses to requests for proposals, and all other records of communications between City and persons or firms seeking contracts will be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person's or organization's net worth or other proprietary financial data submitted for qualification for a contract, lease, agreement or other benefit until and unless that person or organization is awarded the contract, lease, agreement or benefit. Information provided to City that is within the scope of this Section 24.13 (*Sunshine Ordinance*) will be made available to the public upon request.

24.14. Conflicts of Interest. Lead Developer acknowledges that it is familiar with the provisions of San Francisco Charter, Article III, Chapter 2, Section 15.103 of the City's Campaign and Governmental Conduct Code, and California Government Code Sections 87100 *et seq*. and Sections 1090 *et seq*., certifies that it does not know of any facts that would constitute a violation of these provisions, and agrees that if Lead Developer becomes aware of any such fact during the PDA Term, Lead Developer will notify City immediately.

24.15. Certification of Funds. This Agreement is subject to the fiscal provisions of the City's Charter and the budget decisions of its Mayor and Board of Supervisors, each acting in its sole discretion. No funds will be available hereunder until prior written authorization certified by the City's Controller. The Controller cannot authorize payments unless funds have been certified as available in the budget or in a supplemental appropriation. This Agreement shall automatically terminate, without liability to City, if funds are not properly appropriated or certified by the Controller. City's obligations hereunder shall never exceed the amount certified by the Controller for the purpose and period stated in such certification. City, its employees and officers are not authorized to offer or promise any additional funding that would exceed the Termination Payment described in Section 16.3 (*Termination Payments*). Such additional funding requires lawful approval and certification by the Controller. Without such lawful approval and certification, City shall not be required to provide such additional funding.

24.16. Art Commission Design Review; Art Enrichment Allocation. The Facility will be subject to the requirements of San Francisco Charter Section 5.103 and Administrative Code Section 3.19. Lead Developer must work with the San Francisco Arts Commission, in

consultation with the City, to design and build the Facility in compliance with those requirements.

25. DISPUTE RESOLUTION PROCEDURES

25.1. General. All Disputes shall be subject to the Dispute Resolution Procedures set forth in this Article 25 (*Dispute Resolution Procedures*), except for any decision, determination, judgment or other action of City that the Agreement states is subject to City's sole or absolute discretion (in which case the decision, determination, judgment or other action shall be final, binding and not subject to dispute resolution and shall not constitute a basis for any claim for additional monetary compensation, time extension or any other relief); and except for any other matter for which the Agreement expressly provide otherwise. The Parties agree to use reasonable efforts to resolve any Disputes under this Article 25 (*Dispute Resolution Procedures*) as quickly as possible.

25.2. Claims. Any claim by Lead Developer must be submitted to City in writing within ten (10) days after the occurrence of the event or condition giving rise to the potential claim, and the written submittal shall include the reasons Lead Developer believes the claim is valid and shall identify any additional compensation and/or time claimed, the elements of the Work affected by the event or condition giving rise to the claim, Lead Developer's proposed interpretation of Agreement terms, and other legal, equitable, or contractual relief claimed. Lead Developer shall also furnish any additional information relating to the claim as City may require to evaluate the claim. Failure to comply with these requirements shall constitute a waiver by Lead Developer of any right, equitable or otherwise, to bring any such claim against City.

25.3. City Response to Lead Developer's Claim. Within thirty (30) days of receipt of a claim, City shall render a decision or the Parties shall mutually agree to a date by which City will render a decision with respect to the claim. If no decision is made and no date is agreed within thirty (30) days of City's receipt of the claim, the claim shall be deemed rejected by City.

25.4. Informal Dispute Resolution. If Lead Developer wishes to dispute City's decision under Section 25.3 (*City Response to Lead Developer's Claim*) (including a deemed rejection of a claim), or if a Dispute arises that does not involve a claim, the Parties shall use their best efforts to resolve such Dispute by submission of the Dispute to the City Project Director and the LD Project Director for resolution. If a Dispute cannot be resolved at this administrative level, then the Parties shall present the Dispute to the Director of Transportation or his duly authorized representative and to an equivalent executive officer with the Lead Developer for resolution. If the Dispute cannot be resolved at this executive level, the Parties may mutually agree to proceed in accordance with Section 25.5 (*Mediation*).

25.5. Mediation.

(a) Mediation Request. A Party may request non-binding mediation ("**Mediation**") by delivering a written request for Mediation ("**Mediation Request**") to the other Party. The Mediation Request must include a summary of the Dispute and the position of the Party submitting the request, together with any backup information or documentation that Party elects to provide. Within fifteen (15) days after receipt of the Mediation Request, the responding Party may agree to meet and confer promptly with the requesting Party to attempt to resolve the Dispute. In the absence of such agreement, or if the meet and confer does not resolve the matter promptly, the Party who requested Mediation may submit the Dispute for Mediation to JAMS in the City and County of San Francisco.

(b) Selection of Mediator and Process. The Parties will cooperate with JAMS and with one another in selecting a mediator from a JAMS panel of neutrals and in scheduling

the Mediation proceedings as quickly as feasible. The Parties agree to participate in the Mediation in good faith. Neither Party may commence or if commenced, continue, a civil action with respect to a Dispute submitted to Mediation until after the completion of the initial Mediation session. The initial Mediation session must occur within 30 days of the date that the Dispute was submitted for Mediation to JAMS, or within such other time period as may be agreed by the Parties. The Parties will each pay their own costs and expenses in connection with the Mediation, and the Party that requested Mediation will pay all costs and fees of the mediator. Without limiting the foregoing, the provisions of Sections 703.5 and 1115 through 1128 of the California Evidence Code, inclusive, will apply in connection with any Mediation.

(c) Use of Evidence. The provisions of Sections 1152 and 1154 of the California Evidence Code will apply to all settlement communications and offers to compromise made during the Mediation.

(d) Other Remedies. If the Dispute cannot be resolved through Mediation, each Party may pursue any rights and remedies available at law or under this Agreement.

25.6. Continuing Performance. Lead Developer shall proceed diligently with performance of this Agreement pending resolution of any Dispute, appeal, or action ensuing under this Agreement, including all Work that is the subject of any Dispute, except for any performance City determines in writing should be delayed, suspended, or terminated as a result of such Dispute. City will continue to perform its obligations for undisputed amounts.

26. MISCELLANEOUS

26.1. Compliance with Law. Lead Developer shall keep itself fully informed of the City's Charter, codes, ordinances and duly adopted rules and regulations of the City and of all state, and federal laws in any manner affecting the Project or the performance of this Agreement, and must at all times comply with such local codes, ordinances, and regulations and all applicable laws as they may be amended from time to time. To the extent the Finance Plan approved by City includes any federal or state funding that prohibit any of City's contracting requirements in Article 24 (*City Requirements*), City agrees such requirements will be waived.

26.2. California Law. This Agreement must be construed and interpreted in accordance with the laws of the State of California and the City's Charter.

26.3. Entire Agreement. This Agreement contains all of the representations and the entire agreement between the Parties with respect to the subject matter of this Agreement. Any prior correspondence, memoranda, agreements, warranties, or written or oral representations relating to its subject matter are superseded by this Agreement. No prior drafts of this Agreement or changes from those drafts to the executed version of this Agreement may be introduced as evidence in any litigation or other dispute resolution proceeding by any party or other person, and no court or other body should consider those drafts in interpreting this Agreement.

26.4. Amendments. No amendment to this Agreement will be valid unless it is in writing and signed by all of the Parties.

26.5. Severability. Except as otherwise specifically provided in this Agreement, a judgment or court order invalidating any provision of this Agreement, or its application to any person, will not affect any other provision of this Agreement or its application to any other person or circumstance, and the remaining portions of this Agreement will continue in full force and effect, unless enforcement of this Agreement as invalidated would be unreasonable or

grossly inequitable under all of the circumstances or would frustrate the purposes of this Agreement.

26.6. No Party Drafter; Captions. The provisions of this Agreement will be construed as a whole according to their common meaning and not strictly for or against any party in order to achieve the objectives and purposes of the Parties. Any caption preceding the text of any Section, paragraph or subsection or in the table of contents is included only for convenience of reference and will be disregarded in the construction and interpretation of this Agreement.

26.7. Interpretation. Whenever required by the context, the singular shall include the plural and vice versa, the masculine gender shall include the feminine or neuter genders, and vice versa, and defined terms encompass all correlating forms of the terms (e.g., the definition of "waive" applies to "waiver," waived," waiving"). In this Agreement, the terms "include," "included" and "including" will be deemed to be followed by the words "without limitation" or "but not limited to." Provisions in this Agreement relating to number of days are calendar days unless otherwise specified, but if the last day of any period to give notice, reply to a notice, or to undertake any other action does not occur on a Business Day, then the last day for undertaking the action or giving or replying to the notice will be the next succeeding Business Day.

26.8. Waiver. None of the following will constitute a waiver of any breach under, or of City's right to demand strict compliance with, this Agreement: (a) City's failure to insist upon Lead Developer's strict performance of any obligation under this Agreement; or (b) City's failure to exercise any right, power, or remedy arising from Lead Developer's failure to perform its obligations for any length of time. City's consent to or approval of any act by Lead Developer requiring City's consent or approval may not be deemed to waive or render unnecessary City's consent to or approval of any subsequent act by Lead Developer. Any waiver by City of any default must be in writing and will not be a waiver of any other default concerning the same or any other provision of this Agreement.

26.9. No Brokers. Each Party represents that it has not engaged a broker or finder in connection with this Agreement or any of the Transaction Documents.

26.10. Time is of the Essence. Time is of the essence for each provision of this Agreement, including performance of the Performance Milestones.

26.11. No Recording. Neither this Agreement nor any memorandum or short form thereof may be recorded by Lead Developer.

26.12. Notification of Legal Requests. Lead Developer shall immediately notify City upon receipt of any subpoenas, service of process, litigation holds, discovery requests and other legal requests ("**Legal Requests**") related to any City Confidential Information or City Data or that in any way might reasonably require access to the City Confidential Information or City Data, and in no event later than 24 hours after it receives the Legal Request. Lead Developer shall not respond to Legal Requests without first notifying City other than to notify the requestor that the information sought is potentially covered under a non-disclosure agreement. Lead Developer shall retain and preserve the City Confidential Information and City Data in accordance with the City's instruction and requests, including, without limitation, any retention schedules and/or litigation hold orders provided by the City to Lead Developer, independent of where the City Confidential Information or City Data is stored.

26.13. Joint and Several Liability. If Lead Developer is a joint venture or partnership, each venturer or partner will be jointly and severally liable for Lead Developer's obligations under this Agreement and City shall have no obligation to provide written notice of any Lead Developer default or failure under this Agreement to each venturer or partner.

26.14. Relationship of the Parties. Lead Developer, the Lead Developer Agents and their employees (collectively, the "**Developer Parties**") are and shall at all times be and remain independent from City and none shall be deemed to be an agent or an employee of City. Nothing in this Agreement shall be construed to place the Parties in the relationship of partners or joint ventures. Neither Party shall have any right or power to obligate or bind the other in any manner whatsoever. This Agreement is not intended nor shall it be construed to create any third-party beneficiary rights in any third party. City is not a fiduciary and has no special responsibilities to Lead Developer beyond the obligations expressly set forth in this Agreement.

26.15. Independent Contractor. Lead Developer acknowledges and agrees that at all times, each of the Developer Parties shall be deemed at all times to be an independent contractor and is wholly responsible for the manner in which they perform the services and work Lead Developer is required to perform under this Agreement. Lead Developer agrees that none of the Developer Parties will (i) represent or hold themselves out to be employees of the City at any time, (ii) have employee status with City, and (iii) be entitled to participate in any plans, arrangements, or distributions by City pertaining to or in connection with any retirement, health or other benefits that City may offer its employees. Lead Developer acknowledges and agrees it is liable for the acts and omissions of itself and any of the other Developer Parties. Lead Developer shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to the performance of any the Work by any of the Developer Parties. Nothing in this Agreement shall be construed as creating an employment or agency relationship between City and any of the Developer Parties. Any terms in this Agreement referring to direction from City shall be construed as providing for direction as to policy and the result of the Work only, and not as to the means by which such a result is obtained. City does not retain the right to control the means or the method by which any of the Developer Parties performs work under this Agreement. Lead Developer agrees to maintain and make available to City, upon request and during regular business hours, accurate books and accounting records demonstrating Lead Developer's compliance with this Section 26.15 (*Independent Contractor*). If City determines that Lead Developer or any of the other Developer Parties is not performing in accordance with the requirements of this Section 26.15 (*Independent Contractor*), City shall provide Lead Developer with written notice of that deficiency. Lead Developer shall remedy the deficiency within five (5) Business Days of Lead Developer's receipt of such notice; provided, however, that if City believes that an action of Lead Developer or any of the other Developer Parties warrants immediate remedial action by Lead Developer, City shall contact Lead Developer and provide Lead Developer in writing with the reason for requesting such immediate action. Lead Developer's failure to timely remediate, or cause any of the other Developer Parties to remediate, the deficiency described in the writing shall be a breach of Lead Developer's obligations under this Agreement.

26.16. Counterpart Signatures and Electronic Delivery. This Agreement may be executed in one or more counterparts, each of which shall be an original but all of which together shall be deemed to constitute a single agreement. A signature delivered on any counterpart by facsimile or other electronic means shall for all purposes be deemed to be an original signature to this Agreement.

[SIGNATURES ON FOLLOWING PAGE]

Lead Developer and City have executed this Agreement as of the last date written below.

LEAD DEVELOPER:

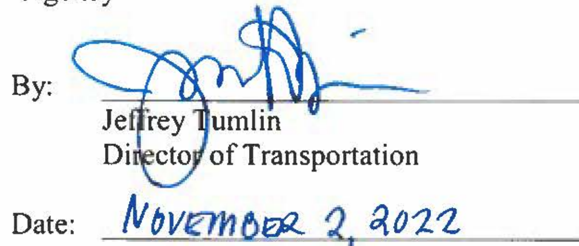
POTRERO NEIGHBORHOOD COLLECTIVE LLC, a limited liability company organized under the laws of the State of Delaware.

By: ______________________
Name: ______________________
Its: ______________________

Date: ______________________

CITY:

CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation, operating by and through the San Francisco Municipal Transportation Agency

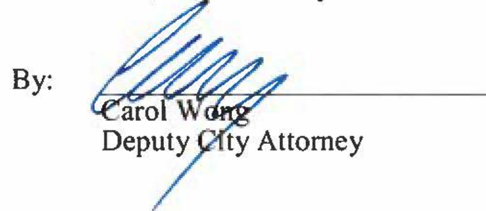


By: ______________________
Jeffrey Tumlin
Director of Transportation

Date: November 2, 2022

APPROVED AS TO FORM:

David Chiu, City Attorney



By: ______________________
Carol Wong
Deputy City Attorney

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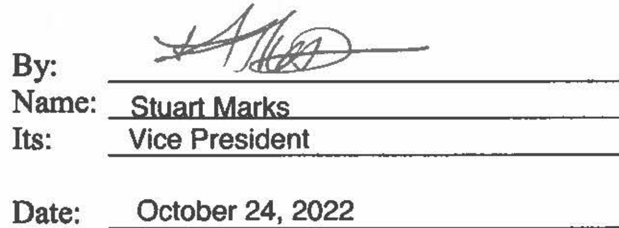


By: ______________________

Name: Stuart Marks

Its: Vice President

Date: October 24, 2022

CITY:

CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation, operating by and through the San Francisco Municipal Transportation Agency

By: ______________________

Jeffrey Tumlin
Director of Transportation

Date: ______________________

APPROVED AS TO FORM:

David Chiu, City Attorney

By: ______________________

Carol Wong
Deputy City Attorney

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. 221101-105

WHEREAS, The Potrero Yard Modernization Project (Project) includes the simultaneous development and construction of a facility (Facility) with a modern bus storage and maintenance component (Bus Yard Component) and, if feasible, a multi-family housing and commercial component (Housing Component); and,

WHEREAS, The San Francisco Municipal Transportation Agency (SFMTA) will deliver the Bus Yard Component under its Building Progress Program and, if feasible, pursue the Housing Component consistent with the citywide Public Land for Housing initiative, which encourages joint development opportunities for housing on public sites; and,

WHEREAS, Based on the Project's public and private features, staff have determined it is appropriate and in the City's best interest to deliver the Project utilizing a joint development procurement method; and,

WHEREAS, The joint development solution provides for a single point-of-responsibility for managing project complexity and contractors (e.g., design-build contractors, maintenance contactors for private housing development), financing, and successfully delivering the Project; and,

WHEREAS, The SFMTA and San Francisco Public Works (SFPW) partnered to procure a developer to design, build, and finance the Facility, operate the Housing Component, and maintain certain Facility infrastructure elements; and,

WHEREAS, In November 2019, the SFMTA submitted a project application for the Project to the San Francisco Planning Department (Planning Department) to initiate environmental review of the Project under the California Environmental Quality Act (CEQA); and,

WHEREAS, A Request for Qualifications for the Project was issued on August 21, 2020, and three of the responding teams (Potrero Mission Community Partners, Potrero Neighborhood Collective, and Potrero Yard Community Partners) were short-listed; and,

WHEREAS, On April 7, 2020, the SFMTA Board approved Resolution 200407-035, authorizing the SFMTA to use a joint development procurement method to deliver the Project and seek approval from the Board of Supervisors (BOS) for that method; and,

WHEREAS, On March 16, 2021, the BOS adopted Ordinance 38-21 to approve a joint development delivery method and a best-value selection of the developer for the Project and exempted various Project agreements from certain San Francisco Administrative Code requirements that are

inconsistent with the joint development delivery method, with the ordinance being signed by the Mayor and effective on April 25, 2021; and,

WHEREAS, A Request for Proposals for the Project (RFP) was released to the three short-listed teams on April 9, 2021 (RFP), with proposals due December 30, 2021, and all three short-listed teams submitting timely proposals; and,

WHEREAS, The Project's Draft Environmental Impact Report (DEIR) was published by the Planning Department on June 30, 2021, reviewed by the Historic Preservation Commission on August 4, 2021, and reviewed by the Planning Commission on August 26, 2021, and the public comment period closed on August 31, 2021, and the SFMTA anticipates bringing the Environmental Impact Report to the Planning Commission for approval in 2023, after including updated Project details, responding to all comments received to the DEIR, and otherwise complying with all relevant CEQA Guidelines; and,

WHEREAS, On March 1, 2022, the SFMTA Board adopted Resolution 220301-017 to approve the form of Predevelopment Agreement (Form PDA) for the Project, with a term that will not exceed 568 days, a potential termination payment that will not exceed $9,990,000, and if approved by the Board of Supervisors, a potential continuation payment of $4,000,000; and,

WHEREAS, In March of 2022, the SFMTA completed its evaluation of the submitted RFP proposals and determined that two proposers (Qualified Proposers) submitted responsive proposals that passed all administrative pass-fail criteria, and those Qualified Proposers were Potrero Mission Community Partners, led by John Laing Group and Edgemoor Infrastructure & Real Estate, and Potrero Neighborhood Collective (PNC), led by Plenary Americas US Holdings Inc. (Plenary); and,

WHEREAS, On May 26, 2022, the SFMTA exercised its RFP right to request proposal revisions ("Proposal Revisions") from the Qualified Proposers so they could better align their proposals with the SFMTA's stated Project goals and offer the best value to the SFMTA and City with respect to the Project; and,

WHEREAS, The Form PDA was modified in the request for Proposal Revisions to increase a continuation payment from $4,000,000 to $4,350,000; and,

WHEREAS, The SFMTA received a timely Proposal Revision from PNC on July 20, 2022, and based on evaluation of the submitted Proposal Revision, the SFMTA selected PNC as the preferred proposer to enter into the PDA on September 12, 2022, and after selecting PNC as the preferred proposer, the SFMTA further modified the Form PDA to include details and commitments from PNC's RFP proposal (Final PDA) and PNC submitted the required post-selection deliverables; and,

WHEREAS, On October 17, 2022, the SFMTA issued a notification of intent to award the Final PDA and issued a public announcement naming the PNC as the preferred proposer and as permitted in the RFP, PNC created Potrero Neighborhood Collective, LLC (Lead Developer), which has Plenary as its sole member, to be the developer under the Final PDA; and,

WHEREAS, The SFMTA is requesting the SFMTA Board of Directors to authorize the Director of Transportation to execute the Final PDA with the Lead Developer; and,

WHEREAS, The Final PDA sets the terms for the parties' negotiation of the future agreements for the delivery of the Project and outlines the Project predevelopment activities to be performed by the Lead Developer; and,

WHEREAS, The SFMTA can terminate the PDA at any time for convenience, and if the PDA terminates for any reason other than the Lead Developer's default or the parties' execution of the agreements for the delivery of the Project, the PDA includes a termination payment to the Lead Developer in the amount described in the form of PDA presented to the SFMTA Board, which shall not exceed $9,990,000; and,

WHEREAS, If there is final certification of the environmental impact report for the Project under CEQA and final adoption of the special use district, conditional use authorization, General Plan Referral, and related General Plan amendments needed for the Project, the Lead Developer's PDA obligations will suspend unless the SFMTA elects, in its sole discretion, to issue a notice for the Lead Developer to continue the PDA work (Continuation Notice); and,

WHEREAS, If the SFMTA issues the Continuation Notice, it must pay the Lead Developer a continuation payment of $4,350,000 (Continuation Payment) and the SFMTA cannot make the Continuation Payment without the prior approval from the Board of Supervisors under Section 9.118 of the San Francisco Charter, so the SFMTA will not issue the Continuation Notice without first obtaining the prior approval for the Continuation Payment from the Board of Supervisors; and,

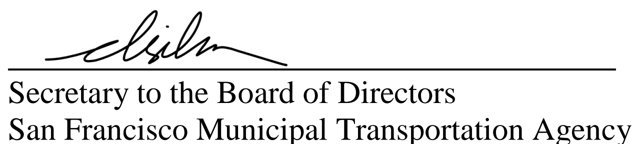
WHEREAS, The PDA should be executed as soon as possible to meet the November 30, 2027, deadline for substantial completion of the Bus Yard Component and the infrastructure it shares with the Housing Component; and,

WHEREAS, On October 6, 2022, the SFMTA, under authority delegated by the Planning Department, determined that the Potrero Yard Modernization Project Predevelopment Agreement is not a "project" under the California Environmental Quality Act (CEQA) pursuant to Title 14 of the California Code of Regulations Sections 15060(c) and 15378(b); and,

WHEREAS, A copy of the CEQA determination is on file with the Secretary to the SFMTA Board of Directors and is incorporated herein by reference; now, therefore, be it

RESOLVED, That the SFMTA Board of Directors authorizes the Director of Transportation to execute a Predevelopment Agreement with Potrero Neighborhood Collective, LLC for the Potrero Yard Modernization Project, with a term that will not exceed 568 days, a potential termination payment that will not exceed $9,990,000, and if approved by the Board of Supervisors, a potential continuation payment of $4,350,000.

I certify that the foregoing resolution was adopted by the San Francisco Municipal Transportation Agency Board of Directors at its meeting of November 1, 2022.



Secretary to the Board of Directors
San Francisco Municipal Transportation Agency

San Francisco Planning

49 South Van Ness Avenue, Suite 1400
San Francisco, CA 94103
628.652.7600
www.sfplanning.org

PLANNING COMMISSION MOTION NO. 21483

HEARING DATE: JANUARY 11, 2024

Record No.:	2019-021884ENV
Project Address:	2500 MARIPOSA STREET (SFMTA's Potrero Modernization Project)
Zoning:	P (Public) Zoning District 65-X Height and Bulk District
Block/Lot:	3971 / 001
Project Sponsor:	Chris Jauregui
Company:	Plenary Americas, Potrero Neighborhood Collective LLC
Address:	555 W. Fifth St., Suite 3150
City, State:	Los Angeles, CA
Property Owner/ Sponsor:	City and County of San Francisco, San Francisco Municipal Transportation Agency (SFMTA)
Address:	1 S. Van Ness Ave, 7th Floor
City, State:	San Francisco, CA 94103
Staff Contact:	Gabriela Pantoja, Senior Planner Gabriela.Pantoja@sfgov.org, (628) 652-7380 Jennifer McKellar, Senior Environmental Planner Jennifer.McKellar@sfgov.org, (628) 652-7380

ADOPTING FINDINGS PURSUANT TO THE CALIFORNIA ENVIRONMENTAL QUALITY ACT, INCLUDING FINDINGS OF FACT, FINDINGS REGARDING SIGNIFICANT AND UNAVOIDABLE IMPACTS, EVALUATION OF MITIGATION MEASURES AND ALTERNATIVES, AND A STATEMENT OF OVERRIDING CONSIDERATIONS RELATED TO APPROVALS FOR SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY (SFMTA) POTRERO YARD MODERNIZATION PROJECT LOCATED AT 2500 MARIPOSA STREET, LOT 001 ON ASSESSOR'S BLOCK 3971, WITHIN THE P (PUBLIC) ZONING DISTRICT AND 65-X HEIGHT AND BULK DISTRICT.

PREAMBLE

The SFMTA Potrero Modernization Project (hereinafter "Project") refers to either the Refined Project or the Paratransit Variant as described below at 2500 Mariposa Street, Assessor's Parcel Block 3971 Lot 001 (hereinafter "Project Site"), in the northeast portion of San Francisco's Mission District near the South of Market and Potrero Hill neighborhoods.

The Refined Project will replace SFMTA's Potrero Trolley Coach Division Facility at 2500 Mariposa St. to accommodate the expansion of the SFMTA's transit vehicle fleet, the modernization of bus maintenance, operation, and administrative services, expand and consolidate training operations at one site; and joint development uses including residential uses. The new, approximately 1,250,000 gross-square-foot, mixed-use building will occupy the 4.4-acre site and be 70 to 150 feet in height. It will contain a four-level, approximately 70-foot-tall transit facility (Transit Facility Component) plus a mix of commercial and residential uses in the remainder of the Project (Housing Component) as part of a joint development program between SFMTA and the Potrero Neighborhood Collective (PNC).

a) Transit Facility Component. The Transit Facility Component will occupy the basement to fourth floor levels and include vehicular and bus circulation areas (ramps, drive aisles), mechanical rooms, bus storage locations, bus wash stations, administrative and office spaces, lockers and showers, community rooms, and outdoor open space. A limited portion of the joint development will be located within the Transit Facility Component specifically the ground floor and include residential lobbies along Hampshire and Bryant Streets and retail spaces at the corners of 17th and Hampshire Street, and 17th and Bryant Streets.

b) Housing Component. The Housing Component will include the construction of a total of 513 dwelling units (117 Studios, 184 one-bedroom, 144 two-bedroom, 68 three-bedroom) along Bryant and Hampshire Streets. Along Bryant Street, the proposed housing component will run from the ground floor to the top floor and provide dwelling units that are intended for families and will be offered at a below market rate. Along Hampshire Street, the proposed housing component with the exception of a lobby at the ground floor will commence at the podium level and provide dwelling units intended for workforce and will be offered at a below market rate.

c) Phasing. The Project is proposed to be constructed in three distinct phases, which may or may not overlap. The first phase will include the construction of the Transit Facility Component and is expected to last three years. According to the Project Sponsor team, construction is expected to begin in late 2024 and finish in late 2027. The second phase will include the construction of the Housing Component along Bryant St. up to the fourth level, podium level. Construction for the second phase is expected span two years and start one to two years after the start of construction on the first phase. Lastly, the third phase will construct the remaining Housing Component atop the podium level (both the remaining housing along Bryant St. and workforce housing along Hampshire St.) and is expected to span two years and start no sooner than two years after the start of the first phase. Phases 2 and 3 may also be constructed after the completion of SFMTA's facility.

The Paratransit Variant in lieu of constructing portion of the Housing Component atop of the bus facility, the bus facility will expand to include portions of one additional level at the podium for the use of SFMTA's Paratransit Division. In such a case, the proposal would still construct that portion of the Housing Component along Bryant St. for a total of 103 dwelling units and retail spaces at the corners of 17th and Hampshire Street, and 17th and Bryant Streets. The additional square footage for the bus facility would replace the western-most portion of the Housing Component and include additional building massing for administrative and operation spaces, and paratransit storage, operation, and circulation areas including a covered ramp for SFMTA's Paratransit division.

On November 20, 2019, San Francisco Municipal Transportation Agency (SFMTA) (hereinafter "Property Owner") filed an Environmental Evaluation Application No. 2019-021884ENV (hereinafter “Application”) and applicable supplemental materials in related records with the Planning Department (hereinafter “Department”).

The Department is the Lead Agency responsible for the implementation of the California Environmental Quality Act, California Public Resources Code Sections 21000 et seq. (“CEQA”), the Guidelines for Implementation of CEQA, 14 California Code of Regulations Sections 15000 et seq. (“CEQA Guidelines”), and Chapter 31 of the San Francisco Administrative Code (“Chapter 31”).

Pursuant to and in accordance with the requirements of Section 21094 of CEQA and Sections 15063 and 15082 of the CEQA Guidelines, on August 19, 2020, the Department published a Notice of Preparation of an Environmental Impact Report and Notice of Public Scoping Meeting] (“NOP”) and initiated a 30-day public comment period.

On September 2, 2020, the Department held an advertised public meeting on the scope of the environmental analysis for the EIR, at which public comment was received. The period for commenting on the NOP ended on September 18, 2020.

On June 30, 2021, the Planning Department published a Draft Environmental Impact Report (“Draft EIR”) for the project. The Department provided public notice in a newspaper of general circulation of the availability of the Draft EIR, including an initial study, for public review and comment, and provided the date and time of the San Francisco Planning Commission (“Planning Commission”) public hearing on the DEIR; this notice was mailed or emailed to the Department’s lists of persons requesting such notice and of owners and occupants of sites within 300-foot radius of the project site, and decision-makers. This notice was also posted at and near the Project site by the Project Sponsor or consultant on June 30, 2021.

On August 26, 2021, the Planning Commission held a duly noticed public hearing on the Draft EIR, at which opportunity for public comment was given, and public comment was received on the Draft EIR. The period for commenting on the DEIR ended on August 31, 2021.

The Department prepared responses to comments on environmental issues received during the public review period for the Draft EIR, prepared revisions to the text of the Draft EIR in response to comments received or based on additional information that became available during the public comment period, and corrected errors in the Draft EIR.

On December 13, 2023, the Planning Department published a Responses to Comments document (RTC) that was posted to the Planning Department’s environmental review documents web page, distributed to the Commission, other decisionmakers, and all parties who commented on the DEIR, and made available to others upon request at the Department.

The Department prepared a final environmental impact report (hereinafter “Final EIR”), consisting of the Draft EIR, any consultations and comments received during the Draft EIR review process, any additional information that became available, and the RTC, all as required by law.

On January 11, 2024, the Planning Commission reviewed and considered the Final EIR and found that the contents of said report and the procedures through which the Final EIR was prepared, publicized, and reviewed comply

with the provisions of CEQA, the CEQA Guidelines, and Chapter 31. The Final EIR was certified by the Commission on January 11, 2024, by adoption of Motion No. 21482.

WHEREAS, the Commission has heard and considered the testimony presented to it at the public hearing and has further considered written materials and oral testimony presented on behalf of the applicant, Department staff, and other interested parties.

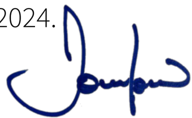
WHEREAS, the Commission reviewed and considered the Final EIR for the Project and Paratransit Variant and found the Final EIR to be adequate, accurate, and objective, thus reflecting the independent analysis and judgment of the Department and the Commission, and that the RTC presented no new environmental issues not addressed in the Draft EIR, and approved the Final EIR for the Project and Paratransit Variant in compliance with CEQA, the CEQA Guidelines, and Chapter 31.

WHEREAS, the Department prepared the CEQA Findings, attached to this Motion as Attachment A and incorporated fully by this reference, regarding the alternatives, mitigation measures, improvement measures, and environmental impacts analyzed in the FEIR, the overriding considerations for approving the Project and Paratransit Variant, and the proposed mitigation monitoring and reporting program ("MMRP") attached as Attachment B and incorporated fully by this reference, which includes both mitigation measures and improvement and public works standard construction measures. The Commission has reviewed the entire record, including Attachments A and B, which material was also made available to the public.

MOVED, that the Commission hereby adopts findings under the California Environmental Quality Act, including findings rejecting alternatives as infeasible and setting forth a Statement of Overriding Considerations, attached to this Motion as Attachment A, and adopts the Mitigation Monitoring and Reporting Program, attached as Attachment B, both fully incorporated into this Motion by reference, based on substantial evidence in the entire record of this proceeding.

The Department Commission Secretary is the Custodian of Records; all pertinent documents are located in the File for Case No. 2019-021884ENV, at the Planning Department, 49 South Van Ness Avenue, Suite 1400, San Francisco, California.

I hereby certify that the foregoing Motion was ADOPTED by the Commission at its regular meeting on January 11, 2024.



Jonas P. Ionin
Commission Secretary

AYES: Braun, Ruiz, Diamond, Imperial, Koppel, Moore, Tanner
NAYS: None
ABSENT: None
ADOPTED: January 11, 2024

49 South Van Ness Avenue, Suite 1400
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ATTACHMENT A

Potrero Yard Modernization Project

2500 Mariposa Street

California Environmental Quality Act Findings: Findings of Fact, Evaluation of Mitigation Measures and Alternatives, and Statement of Overriding Considerations

SAN FRANCISCO PLANNING COMMISSION

PREAMBLE

In determining to approve the Project, which refers to either the Refined Project or the Paratransit Variant described in Section I, below, the San Francisco Planning Commission (the "Commission") makes and adopts the following findings of fact and decisions regarding the Project description and objectives, significant impacts, significant and unavoidable impacts, mitigation measures, as well as improvement measures and Public Works Standard Construction Measures, and alternatives, and a statement of overriding considerations, based on substantial evidence in the whole record of this proceeding and pursuant to the California Environmental Quality Act, California Public Resources Code Section 21000 *et seq.* ("CEQA"), particularly Section 21081 and 21081.5, the Guidelines for Implementation of CEQA, 14 California Code of Regulations Section 15000 *et seq.* ("CEQA Guidelines"), Section 15091 through 15093, and Chapter 31 of the San Francisco Administrative Code ("Chapter 31"). The Commission adopts these findings in conjunction with the Approval Actions described in Section I(c), below, as required by CEQA, separate and apart from the Commission's certification of the Project's Final EIR, which the Commission certified prior to adopting these CEQA findings.

These findings are organized as follows:

Section I provides a description of the Project, the environmental review process for the Project, the City approval actions to be taken, and the location and custodian of the record.

Section II lists the Project's less-than-significant impacts or cumulative impacts that do not require mitigation.

Section III identifies potentially significant impacts or cumulative impacts that can be avoided or reduced to less-than-significant levels through mitigation and describes the disposition of the mitigation measures.

Section IV identifies significant Project-specific or cumulative impacts that would not be avoided or reduced to a less-than-significant level and describes any applicable mitigation measures as well as the disposition of

the mitigation measures. The Final EIR identified mitigation measures to address these impacts, but implementation of the mitigation measures will not reduce the impacts to a less-than-significant level.

Sections III and IV set forth findings as to the mitigation measures proposed in the Final EIR. The Draft Environmental Impact Report ("Draft EIR") and the Responses to Comments document ("RTC") together comprise the "Final EIR," or "FEIR." Attachment B to the Planning Commission Motion contains the Mitigation Monitoring and Reporting Program: Mitigation, Improvement and Public Works Standard Construction Measures ("MMRP"), which provides a table setting forth the full text of each mitigation measure listed in the Final Environmental Impact Report that is required to reduce a significant adverse impact.

Section V identifies the Project alternatives that were analyzed in the Final EIR and discusses the reasons for their rejection.

Section VI sets forth the Commission's Statement of Overriding Considerations pursuant to CEQA Guidelines Section 15093.

The MMRP (Attachment B) is required by CEQA Section 21081.6 and CEQA Guidelines Section 15091. The MMRP also specifies the party responsible for implementation of each mitigation measure and establishes monitoring actions and a monitoring schedule. For this project, the MMRP includes separate tables for other project requirements and design elements such as Standard Construction Measures and Improvement Measures agreed to by the project sponsor team, which consists of the San Francisco Municipal Transportation Agency (SFMTA), San Francisco Public Works (public works) and the Potrero Neighborhood Collective (PNC), a private development consortium.
These findings are based upon substantial evidence in the entire record before the Commission. The references set forth in these findings to certain pages or sections of the Draft EIR or the RTC, which together comprise the Final EIR, are for ease of reference and are not intended to provide an exhaustive list of the evidence relied upon for these findings.

Section I. Procedural Background and Project Description

A. Procedural Background

In April 2021, prior to publication and circulation of the Project Draft EIR on June 30, 2021, the San Francisco Municipal Transportation Agency (SFMTA) and San Francisco Public Works (Public Works) released a Request for Proposals (RFP) to procure and select a private development consortium to design, build, finance, and maintain the joint development for Potrero Yard. The proposed development consisted of a replacement transit facility component and a mixed-use component with residential, commercial, and childcare uses.

In October 2022, the City and County of San Francisco (City) awarded a contract to a private development consortium to enter into negotiations to refine the conceptual plans, obtain project approvals, construct the approved project, and manage the mixed-use component. During the procurement period, which ended in October 2022, the project sponsor team (SFMTA, public works, and the Potrero Neighborhood Collective (PNC)) developed a refined version of the Draft EIR Project incorporating various elements of the project variants described in the Draft EIR Project and analyzed for CEQA compliance, and presented it to the City Planning Department (Planning Department). Subsequently, the project sponsor team further refined the

proposed building design and program in response to feedback from the Planning Department's current Planning staff and through interdepartmental urban design and streetscape design review processes, resulting in the 50 Percent Schematic Design, the Refined Project. The project sponsor team also introduced a Paratransit Variant. These are described below (Project Description).

B. Project Description

A. Refined Project

The Refined Project will replace SFMTA's Potrero Trolley Coach Division Facility at 2500 Mariposa Street (Potrero Yard), in the northeast portion of San Francisco's Mission District near the South of Market and Potrero Hill neighborhoods. The Project will accommodate the expansion of the SFMTA's transit vehicle fleet, the modernization of bus maintenance, operation, and administrative services, expand and consolidate training operations at one site; and joint development uses including residential uses. The new, approximately 1,250,000 gross-square-foot, mixed-use building will occupy the 4.4-acre site and be 70 to 150 feet in height. It will contain a four-level, approximately 70-foot-tall transit facility (Transit Facility Component) plus a mix of commercial and residential uses in the remainder of the Project (Housing Component) as part of a joint development program between SFMTA and the Potrero Neighborhood Collective (PNC).

a) **Transit Facility Component.** The Transit Facility Component will occupy the basement to fourth floor levels and include vehicular and bus circulation areas (ramps, drive aisles), mechanical rooms, bus storage locations, bus wash stations, administrative and office spaces, lockers and showers, community rooms, and outdoor open space. A limited portion of the joint development will be located within the Transit Facility Component specifically the ground floor and include residential lobbies along Hampshire and Bryant Streets and retail spaces at the corners of 17th and Hampshire Street, and 17th and Bryant Streets.

b) **Housing Component.** The Housing Component will include the construction of a total of 513 dwelling units (117 Studios, 184 one-bedroom, 144 two-bedroom, 68 three-bedroom) along Bryant and Hampshire Streets. Along Bryant Street, the proposed housing component will run from the ground floor to the top floor and provide dwelling units that are intended for families and will be offered at a below market rate. Along Hampshire Street, the proposed housing component with the exception of a lobby at the ground floor will commence at the podium level and provide dwelling units intended for workforce and will be offered at a below market rate.

c) **Phasing.** The Project is proposed to be constructed in three distinct phases, which may or may not overlap. The first phase will include the construction of the Transit Facility Component and is expected to last three years. According to the Project Sponsor team, construction is expected to begin in late 2024 and finish in late 2027. The second phase will include the construction of the Housing Component along Bryant St. up to the fourth level, podium level. Construction for the second phase is expected span two years and start one to two years after the start of construction on the first phase. Lastly, the third phase will construct the remaining Housing Component atop the podium level (both the remaining housing along Bryant St. and

workforce housing along Hampshire St.) and is expected to span two years and start no sooner than two years after the start of the first phase. Phases 2 and 3 may also be constructed after the completion of SFMTA's facility.

B. Paratransit Variant

In lieu of constructing a portion of the Housing Component atop of the bus facility, the bus facility will expand to include portions of one additional level at the podium for the use of SFMTA's Paratransit Division. In such a case, the proposal would still construct that portion of the Housing Component along Bryant St. for a total of 103 dwelling units and retail spaces at the corners of 17th and Hampshire Street, and 17th and Bryant Streets. The additional square footage for the bus facility would replace the western-most portion of the Housing Component and include additional building massing for administrative and operation spaces, and paratransit storage, operation, and circulation areas including a covered ramp for SFMTA's Paratransit Division.

As noted above, in the Preamble section, the Project is defined as being either the Refined Project or the Paratransit Variant.

C. Project Objectives

The project sponsor team seeks to achieve the following objectives by undertaking the Project:

Basic Objectives

1. Rebuild, expand, and modernize the SFMTA's Potrero Bus Yard by 2027 to efficiently maintain and store a growing Muni bus fleet according to the SFMTA Fleet Plan and Facilities Framework schedule.

2. Construct the first SFMTA transit facility with infrastructure for battery electric buses to facilitate Muni's transition to an all-electric fleet, in accordance with San Francisco and California policy.

3. Construct a new public asset that is resilient to earthquakes and projected climate change effects, and provides a safe, secure environment for the SFMTA's employees and assets.

4. Improve working conditions for the SFMTA's workforce of transit operators, mechanics, and front-line administrative staff through a new facility at Potrero Yard.

5. Achieve systemwide master plan priorities by consolidating two currently scattered transit support functions at Potrero Yard: (a) improve and streamline transit operator hiring by consolidating SFMTA's operator training function in a new, state-of-the-art facility; and (b) support efficient Muni operations by consolidating the Street Operations division in a modern, convenient facility.

6. Implement inclusive and transparent stakeholder engagement in designing this project and completing the CEQA process.

7. Create a development that is financially feasible, meaning that the public asset can be funded by public means and public transportation funds are used only for the bus yard component.

Additional Objectives

8. Enhance safety and reduce conflicts between transit, commercial vehicles, bicyclists, drivers, and pedestrians in the project site vicinity.

9. Improve the architectural and urban design character of the project site by replacing the existing fences and blank walls with more active, transparent street walls, to the extent feasible.

10. Maximize the reuse of the 4.4-acre site in a central, mixed-use neighborhood by creating a mixed-use development and providing dense housing and striving to maximize the number of affordable units on the site.

11. Increase the City's supply of housing by contributing to the Mayor's Public Lands for Housing goals, the San Francisco General Plan Housing Element goals, and the Association of Bay Area Governments' Regional Housing Needs Allocation for the City by optimizing the number of dwelling units, including affordable housing, particularly near transit.

12. Support transit-oriented development and promote the use of public transportation through an innovative and comprehensive transportation demand management program.

13. Ensure that joint development is able to fund its own construction and ongoing management without reliance on City subsidy other than what is originally assumed as part of the project budget while ensuring that SFMTA's transportation funds are only allocated for the transit use.

14. Demonstrate the City's leadership in sustainable development by constructing an environmentally low-impact facility intended to increase the site's resource efficiency.

D. Project Approvals

The Project requires the following approvals:

Actions by the City Planning Commission

- Recommendation of approval of a General Plan Amendment which would amend the Urban Design Element by amending Urban Design Element Map 4 ("Urban Design Guidelines for the Height of Buildings") and Urban Design Element Map 5 ("Urban Design Guidelines for the Bulk of Buildings"). Urban Design Element Map 4 would be amended to state that Lot 001 in Assessor's Block 3971 has a height designation of 89-160 feet. Urban Design Element Map 5 would be amended to modify the bulk limits at the site to accommodate the Project's massing.

- Recommendation of approval of a proposed Planning Code Amendment which would add a new Special Use District—the Potrero Yard Special Use District—to the Planning Code permitting the Project's proposed uses at the site and imposing certain development standards upon the Project.

- Recommendation of approval of a proposed Zoning Map Amendment which would amend the City Zoning Map to reflect the new Potrero Yard Special Use District.
- Approval of Conditional Use Authorization for a Planned Unit Development for the Project's Residential Uses.
- Adoption of Findings of Fact, Evaluation of Mitigation Measures and Alternatives, and Statement of Overriding Considerations under CEQA.
- Adoption of Shadow Findings that net new shadow on Franklin Square Park by the Project would not be adverse to the use of Franklin Square Park.

Actions by the City and County Board of Supervisors

- Approval of a General Plan Amendment which would amend the Urban Design Element by amending Urban Design Element Map 4 ("Urban Design Guidelines for the Height of Buildings") and Urban Design Element Map 5 ("Urban Design Guidelines for the Bulk of Buildings"). Urban Design Element Map 4 would be amended to state that Lot 001 in Assessor's Block 3971 has a height designation of 89-160 feet. Urban Design Element Map 5 would be amended to modify the bulk limits at the site to accommodate the Project's massing.
- Approval of a proposed Planning Code Amendment which would add a new Special Use District—the Potrero Yard Special Use District—to the Planning Code permitting the Project's proposed uses at the site and imposing certain development standards upon the Project.
- Approval of a proposed Zoning Map Amendment which would amend the City Zoning Map to reflect the new Potrero Yard Special Use District.

Actions by City Public Works

- If sidewalks are used for construction staging and pedestrian walkways are constructed in the curb lanes, approval of a street space permit from the Bureau of Street Use and Mapping.
- Approval of an encroachment permit or a street improvement permit for signage and streetscape improvements.
- Approval of a new curb cut and removal of existing curb cuts.

Approvals by City Recreation and Parks Commission

- Review and comment to Planning Commission regarding shadowing of Franklin Square Park.

Approvals by City Department of Building Inspection

- Approval of demolition, grading, site/building permits, sign permits, and other ministerial approvals as needed.

E. **Environmental Review**

On November 20, 2019, SFMTA submitted an Environmental Evaluation Application for the Project to the Planning Department, initiating the environmental review process. The EIR process includes an opportunity for the public to review and comment on the Project's potential environmental effects and to further inform the environmental analysis.

On August 19, 2020, the Planning Department published a Notice of Preparation (NOP) of an EIR and Notice of Public Scoping Meeting (EIR Appendix A, Notice of Preparation of an Environmental Impact Report and Notice of Public Scoping Meeting, August 19, 2020), announcing its intent to solicit public comments on the scope of the environmental analysis and to prepare and distribute an EIR on the Project. The Planning Department distributed the Notice of Availability of an NOP and Notice of Public Scoping Meeting to the State Clearinghouse and relevant state and regional agencies; occupants of the site and adjacent properties; property owners within 300 feet of the project site; and other potentially interested parties, including neighborhood organizations that have requested such notice. A legal notice was published in the newspaper on Wednesday, August 19, 2020. Publication of the NOP initiated a 30-day public review and comment period that ended on September 18, 2020. Pursuant to CEQA section 21083.9 and CEQA Guidelines section 15206, the Planning Department held a public scoping meeting on September 2, 2020, to receive input on the scope of the environmental review for this Project. During the NOP review and comment period, eight comments were received. One speaker provided oral comments at the scoping meeting and seven comment letters and emails were submitted to the Planning Department. The comment letters received in response to the NOP and a copy of the transcript from the public scoping meeting are available for review at the Planning Department offices as part of Case File No. 2019-021884ENV. The Planning Department considered the comments made by the public in preparation of the Draft EIR for the project and project variants.

The Planning Department published the Draft EIR, including the Initial Study, on June 30, 2021. The Draft EIR identified a 62-day public comment period—from July 1, 2021 through August 31, 2021—to solicit public comment on the Draft EIR. A public hearing on the draft EIR was held before the San Francisco Planning Commission on August 26, 2021. Five public comments on the draft EIR were made in written form during the public comment period and four comments were made as oral testimony at the public hearing.

Additionally, there was a public hearing before the San Francisco Historic Preservation Commission on Wednesday, August 4, 2021. This hearing allowed the Historic Preservation Commissioners to provide comments on the Draft EIR, including the Initial Study, to the Planning Commission.

As described in Section I above, the Draft EIR project was refined (Refined Project) and a new variant added (Paratransit Variant) after publication of the Draft EIR. The Planning Department analyzed the Refined Project and the Paratransit Variant and determined that neither would result in the new significant environmental impacts or substantially increase the severity of the impacts presented in the Draft EIR. Nor do they add any new mitigation measures or alternatives that the project sponsor team has declined to implement.

Under section 15088.5 of the CEQA Guidelines, recirculation of an EIR is required when "significant new information" is added to the EIR after public notice is given of the availability of the Draft EIR for public review but prior to certification of the Final EIR. The term "information" can include changes in the project or environmental setting, as well as additional data or other information. New information added to an EIR is not

"significant" unless the EIR is changed in a way that deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect (including a feasible project alternative) that the project's proponents have declined to implement. "Significant new information" requiring recirculation includes, for example, a disclosure showing that:

(1) A new significant environmental impact would result from the project or from a new mitigation measure proposed to be implemented.

(2) A substantial increase in the severity of an environmental impact would result unless mitigation measures are adopted that reduce the impact to a level of insignificance.

(3) A feasible project alternative or mitigation measure considerably different from others previously analyzed would clearly lessen the significant environmental impacts of the project, but the project's proponents decline to adopt it.

(4) The Draft EIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded.

(CEQA Guidelines, § 15088.5, subd. (a).)

Recirculation is not required where the new information added to the EIR merely clarifies or amplifies or makes insignificant modifications in an adequate EIR.

On December 13, 2023, the Planning Department distributed a Responses to Comments (RTC) on the Draft EIR document for review to the Planning Commission as well as to the other public agencies and commissions, non-governmental organizations including neighborhood associations, and individuals who commented on the Draft EIR. The RTC document provides a complete description of the Refined Project and Paratransit Variant, an analysis of the physical environmental impacts of each compared to the Draft EIR Project, responds to the comments made on the Draft EIR during the 62-day review period, and revises Draft EIR text based on additional information and minor errata that became available or known subsequent to Draft EIR publication.

The Commission finds that none of the changes and revisions presented in the RTC substantially affects the analysis or conclusions presented in the Draft EIR; therefore, recirculation of the Draft EIR for additional public comments is not required.

F. Content and Location of Record

The record upon which all findings and determinations related to the adoption of the Project are based include the following:

- The Final EIR, consisting of the Draft EIR, the RTC document, and all documents referenced in or relied upon by the Final EIR;
- All information (including written evidence and testimony) provided by city staff members to the Planning Commission related to the Final EIR, the Project, the project approvals and entitlements, and the alternatives set forth in the Final EIR;

- All information (including written evidence and testimony) presented to the Planning Commission, or incorporated into reports presented by the Planning Department, by the environmental consultant and subconsultants who prepared the Final EIR;
- All information (including written evidence and testimony) presented to the city from other public agencies relating to the Project or the final EIR;
- All applications, letters, testimony, and presentations provided to the city by the Department and its consultants in connection with the Project;
- All information (including written evidence and testimony) presented at any public hearing or workshop related to the Final EIR;
- The MMRP; and
- All other documents composing the record pursuant to Public Resources Code section 21167.6(e).

The public hearing transcripts and audio files, a copy of all letters regarding the Final EIR received during the public review period, the administrative record, and background documentation for the Final EIR are located at the San Francisco Planning Department, 49 South Van Ness Avenue, Suite 1400, San Francisco. The San Francisco Planning Commission Secretary is the custodian of these documents and materials.

G. Findings about Environmental Impacts and Mitigation Measures

The following Sections II, III, and IV set forth the Planning Commission's findings about the Final EIR's determinations regarding significant environmental impacts and the mitigation measures proposed to address them. These findings provide the written analysis and conclusions of the Planning Commission regarding the environmental impacts of the Project and the mitigation measures included as part of the Final EIR and adopted by the Planning Commission as part of the Project. To avoid duplication and redundancy, and because the Planning Commission agrees with, and hereby adopts, the conclusions in the Final EIR, these findings will not repeat the analysis and conclusions in the Final EIR, but instead incorporate them by reference and rely upon them as substantial evidence supporting these findings.

In making these findings, the Planning Commission has considered the opinions of the Department and other city staff members and experts, other agencies, and members of the public. The Planning Commission finds that (i) the determination of significance thresholds is a judgment decision within the discretion of the city; (ii) the significance thresholds used in the Final EIR are supported by substantial evidence in the record, including the expert opinion of the Final EIR preparers and city staff members; and (iii) the significance thresholds used in the Final EIR provide reasonable and appropriate means of assessing the significance of the adverse environmental effects of the Project. Thus, although, as a legal matter, the Planning Commission is not bound by the significance determinations in the Final EIR (see Public Resources Code section 21082.2, subdivision [e]), the Planning Commission finds them persuasive and hereby adopts them as its own.

These findings do not attempt to describe the full analysis of each environmental impact contained in the Final EIR. Instead, a full explanation of these environmental findings and conclusions can be found in the Final EIR, and these findings hereby incorporate by reference the discussion and analysis in the Final EIR supporting the determination regarding the Project's impacts and mitigation measures designed to address those impacts. In making these findings, the Planning Commission ratifies, adopts, and incorporates in these findings the determinations and conclusions of the Final EIR relating to environmental impacts and mitigation measures,

except to the extent any such determinations and conclusions are specifically and expressly modified by these findings, and relies upon them as substantial evidence supporting these findings.

As set forth below, the Planning Commission adopts and incorporates the mitigation measures for the Project set forth in the Final EIR, which are set forth in the attached MMRP, to reduce the significant and unavoidable impacts of the Project. The Planning Commission intends to adopt the mitigation measures proposed in the Final EIR that are within its jurisdiction and urges other city agencies and departments that have jurisdiction over other mitigation measures proposed in the Final EIR, and set forth in the MMRP, to adopt those mitigation measures. Accordingly, in the event a mitigation measure recommended in the Final EIR has inadvertently been omitted in these findings or the MMRP, such mitigation measure is hereby adopted and incorporated in the findings below by reference. In addition, in the event the language describing a mitigation measure set forth in these findings or the MMRP fails to accurately reflect the mitigation measures in the Final EIR due to a clerical error, the language of the policies and implementation measures as set forth in the Final EIR shall control. The impact numbers and mitigation measure numbers used in these findings reflect the information contained in the Final EIR.

These findings are based upon substantial evidence in the entire record before the Planning Commission. The references set forth in these findings to certain pages or sections of the EIR or responses to comments in the Final EIR are for ease of reference and are not intended to provide an exhaustive list of the evidence relied upon for these findings.

SECTION II. IMPACTS OF THE PROJECT FOUND TO BE LESS THAN SIGNIFICANT AND THUS NOT REQUIRING MITIGATION

Under CEQA, no mitigation measures are required for impacts that are less than significant (Public Resources Code section 21002; CEQA Guidelines sections 15126.4, subdivision [a][3], 15091). Based on the evidence in the entire record of this proceeding, the Planning Commission finds that the Project will not result in any significant impacts in the following areas and that these impact areas therefore do not require mitigation.

Cultural Resources

- CR-2: Construction of the Project would not materially alter, in an adverse manner, the physical characteristics of any off-site historical resource that justifies its inclusion in the California Register of Historical Resources.

- C-CR-1: The Project, in combination with cumulative projects, would not materially alter, in an adverse manner, the physical characteristics of historical resources that justify their eligibility for inclusion in the California Register of Historical Resources, resulting in a cumulative impact.

Transportation and Circulation

- TR-1: Construction of the Project would not require a substantially extended duration or intense activity and the secondary effects would not create potentially hazardous conditions for people walking, bicycling, or driving; or interfere with accessibility for people walking or bicycling; or substantially delay public transit.

- TR-2: Operation of the Project would not create potentially hazardous conditions for people walking, bicycling, or driving or public transit operations.
- TR-3: Operation of the Project would not interfere with accessibility of people walking or bicycling to and from the project site, and adjoining areas, or result in inadequate emergency access.
- TR-4: Operation of the Project would not substantially delay public transit.
- TR-5: Operation of the Project would not cause substantial additional VMT or substantially induce automobile travel.
- TR-6: Operation of the Project would not result in a loading deficit.
- C-TR-1: The Project, in combination with cumulative projects, would not result in significant construction-related transportation impacts.
- C-TR-2: The Project, in combination with cumulative projects, would not create potentially hazardous conditions.
- C-TR-3: The Project, in combination with cumulative projects, would not interfere with accessibility.
- C-TR-4: The Project, in combination with cumulative projects, would not substantially delay public transit.
- C-TR-5: The Project, in combination with cumulative projects, would not cause substantial additional VMT or substantially induce automobile travel.
- C-TR-6: The Project, in combination with cumulative projects, would not result in significant loading impacts.

Noise and Vibration

- C-NO-2: Construction vibration as a result of the Project, combined with construction vibration from cumulative projects in the vicinity, would not generate excessive groundborne vibration or groundborne noise levels.
- C-NO-3: Operation of the Project, combined with operation noise from cumulative projects in the vicinity, would not cause a substantial permanent increase in ambient noise levels in the Project vicinity.

Air Quality

- AQ-2: During operation, the Project would generate criteria air pollutant emissions at levels that would not result in a cumulatively considerable net increase in criteria air pollutants for which the region is in nonattainment.
- AQ-4: The Project would not conflict with implementation of the 2017 Bay Area Clean Air Plan.

- AQ-5: The Project would not create objectionable odors that would affect a substantial number of people.

Shadow

- SH-1: The Project would not create new shadow that substantially and adversely affects the use and enjoyment of publicly accessible open spaces.

- C-SH-1: The Project in combination with cumulative projects in the vicinity would not create new shadow in a manner that substantially and adversely affects the use and enjoyment of publicly accessible open spaces. The Project would not make a cumulatively considerable contribution to a significant cumulative shadow impact.

SECTION III. FINDINGS OF POTENTIALLY SIGNIFICANT IMPACTS OF THE PROJECT THAT CAN BE AVOIDED OR REDUCED TO A LESS-THAN-SIGNIFICANT LEVEL THROUGH MITIGATION

CEQA requires agencies to adopt mitigation measures that would avoid or substantially lessen a project's identified significant impacts or potential significant impacts if such measures are feasible. The findings in this Section III concern mitigation measures set forth in the EIR to mitigate the potentially significant impacts of the Project. These mitigation measures are included in the MMRP, which is included as Attachment B to the Planning Commission motion adopting these findings.

The project sponsor team has agreed to implement the mitigation measures identified below to address the potential impacts identified in the EIR. As authorized by CEQA section 21081 and CEQA Guidelines sections 15091, 15092, and 15093, based on substantial evidence in the whole record of this proceeding, the Planning Commission finds that, unless otherwise stated, the Project will be required to incorporate mitigation measures identified in the EIR into the Project to mitigate or avoid significant or potentially significant environmental impacts. These mitigation measures will reduce or avoid the potentially significant impacts described in the EIR, and the Planning Commission finds that these mitigation measures are feasible to implement and are within the responsibility and jurisdiction of the city to implement or enforce. In addition, the required mitigation measures are fully enforceable and will be included as conditions of approval for project approvals under the Project, as applicable, and also will be enforced through conditions of approval in building permits issued for the Project by the San Francisco Department of Building Inspection, as applicable. With the required mitigation measures, these Project impacts would be avoided or reduced to a less-than-significant level.

Noise and Vibration

- NO-1: Construction of the Project would generate a substantial temporary increase in ambient noise levels in the vicinity of the project in excess of standards established in the San Francisco Noise Ordinance or applicable standards of other agencies.

  The Planning Commission finds that, for the reasons set forth in the Final EIR, implementing Mitigation Measure M-NO-1 (Construction Noise Control) would reduce this impact to a less-than-significant level.

- NO-2: Construction of the Project would generate excessive groundborne vibration or groundborne noise levels.

  The Planning Commission finds that, for the reasons set forth in the Final EIR, implementing Mitigation Measure M-NO-2 (Vibration-Sensitive Equipment at 2601 Mariposa Street (KQED Building)) would reduce this impact to a less-than-significant level.

- NO-3: Operation of the Project would generate a substantial permanent increase in ambient noise levels in the vicinity of the project in excess of standards established in the local general plan, or applicable standards of other agencies.

  The Planning Commission finds that, for the reasons set forth in the Final EIR, implementing Mitigation Measure M-NO-3 (Fixed Mechanical Equipment Noise Control for Building Operations) would reduce this impact to a less-than-significant level.

- C-NO-1: Construction noise as a result of the Project, combined with construction noise from cumulative projects in the vicinity, would cause a substantial temporary increase in ambient noise levels.

  The Planning Commission finds that, for the reasons set forth in the Final EIR, implementing Mitigation Measure M-NO-1 (Construction Noise Control) would reduce this impact to a less-than-significant level.

Air Quality

- AQ-1: During construction, the Project would not generate significant fugitive dust emissions, but would generate criteria air pollutant emissions at levels which would result in a cumulatively considerable net increase in criteria air pollutants for which the region is in nonattainment.

  The Planning Commission finds that, for the reasons set forth in the Final EIR, implementing Mitigation Measure M-AQ-1 (Off-Road Construction Equipment Emissions Minimization) would reduce this impact to a less-than-significant level.

Wind

- WI-1: The Project would create wind hazards in publicly accessible areas of substantial pedestrian use in the vicinity of the project site.

  The Planning Commission finds that, for the reasons set forth in the Final EIR, implementing Mitigation Measure M-WI-1 (Design Measures to Reduce Project-Specific Wind Impacts) would reduce this impact to a less-than-significant level.

- C-WI-1: The Project, in combination with cumulative projects, would not alter wind in a manner that would make a cumulatively considerable contribution to a significant cumulative wind impact.

The Planning Commission finds that, for the reasons set forth in the Final EIR, implementing Mitigation Measure M-WI-1 (Design Measures to Reduce Project-Specific Wind Impacts) would reduce this impact to a less-than-significant level.

Tribal Cultural Resources

- TCR-1: Construction of the Project could cause a substantial adverse change in the significance of a tribal cultural resource as defined in Public Resources Code section 21074.

  The Planning Commission finds that, for the reasons set forth in the Final EIR, implementing Mitigation Measure M-TCR-1 (Tribal Cultural Resources Preservation and/or Interpretive Program) would reduce this impact to a less-than-significant level.

- C-TCR-1: The Project, in combination with cumulative projects in the vicinity, would not result in significant cumulative tribal cultural resources impacts.

  The Planning Commission finds that, for the reasons set forth in the Final EIR, implementing Mitigation Measure M-TCR-1 (Tribal Cultural Resources Preservation and/or Interpretive Program) would reduce this impact to a less-than-significant level.

Geology and Soils

- GE-6: The Project could directly or indirectly destroy a unique paleontological resource or site.

  The Planning Commission finds that, for the reasons set forth in the Final EIR, implementing Mitigation Measure M-GE-6a (Inadvertent Discovery of Paleontological Resources) would reduce this impact to a less-than-significant level.

SECTION IV. SIGNIFICANT IMPACTS OF THE PROJECT THAT CANNOT BE AVOIDED OR REDUCED TO A LESS-THAN-SIGNIFICANT LEVEL

Based on substantial evidence in the whole record of these proceedings, the Planning Commission finds that there are significant Project-specific and cumulative impacts that would not be eliminated or reduced to an insignificant level by the mitigation measures listed in the MMRP. The Final EIR identifies significant impacts in two significant impact topic areas—Cultural Resources and Air Quality–that would remain significant and unavoidable, even with implementation of mitigation measures; those impacts topics and the mitigation measures that reduce the impacts, although not to a less-than-significant level, are listed below.

The Planning Commission further finds based on the analysis contained within the Final EIR, other considerations in the record, and the significance criteria identified in the Final EIR, that feasible mitigation measures are not available to reduce the significant Project impacts to less-than-significant levels, and thus those impacts remain significant and unavoidable. The Planning Commission also finds that, although measures were considered in the Final EIR that could reduce some significant impacts, certain measures, as described below, are infeasible for reasons set forth below; therefore, those impacts remain significant and unavoidable or potentially significant and unavoidable.

The following significant impacts on the environment, as reflected in the Final EIR, are unavoidable. But, as more fully explained in Section VII, below, under Public Resources Code section 21081(a)(3) and (b) and CEQA Guidelines sections 15091(a)(3), 15092(b)(2)(B), and 15093, the Planning Commission finds that these impacts are acceptable in light of the legal, environmental, economic, social, technological and other benefits of the Project. This finding is supported by substantial evidence in the record of this proceeding.

A. Impacts That Remain Significant and Unavoidable After Implementation of Mitigation Measures

Cultural Resources

- CR-1: The Project would cause a substantial adverse change in the significance of a historical resource as defined in section 15064.5 of the CEQA Guidelines.

  The Project would demolish the entire bus yard and building and redevelop the whole site with an approximately 1,250,000-gross-square-foot building that rises between 70 to 150 feet in height, including a partial basement level. The demolition under the Project would eliminate all the character-defining features that contribute to and convey the historic and architectural significance of the project site as a post-Earthquake reinforced concrete car barn designed by master Michael M. O'Shaughnessy.

  For these reasons, the Project would materially alter the physical characteristics of the Potrero Trolley Coach Division Facility that convey its historic significance and that justify its inclusion in the California Register. As such, the Project would cause a substantial adverse impact on the Potrero Trolley Coach Division Facility, a historical resource, and this would be a significant impact.

  Mitigation measures M-CR-1a (Documentation of Historical Resource), M-CR-1b (Salvage Plan), M-CR-1c (Interpretation of the Historical Resource), and M-CR-1d (Oral Histories) would document and present the complex history of the site and subject building. These mitigation measures would reduce the cultural resource impact but not to a less-than-significant level. The impact is significant and unavoidable with mitigation. Because identified mitigation measures M-CR-1a, M-CR-1b, M-CR-1c and M-CR-1d would not reduce the impact to a less-than-significant level, a full and a partial preservation alternatives to the Project have been identified.

Air Quality

- AQ-3: Construction and operation of the Project would generate toxic air contaminants, including diesel particulate matter, at levels which would expose sensitive receptors to substantial pollutant concentrations.

  Construction of the Project would generate the following local air pollutants of concern: running exhaust DPM and PM2.5 from off-road equipment and on-road trucks, fugitive PM2.5 dust from on-road truck tire wear, brake wear, and resuspension of entrained roadway dust. Operation of the Project would also generate the following local air pollutants of concern: running exhaust DPM, PM2.5, and/or TOG from on-road vehicles and emergency diesel generators, and fugitive PM2.5 dust from on-road vehicle tire wear, brake wear, and resuspension of entrained roadway dust. The emissions of DPM, PM2.5, and TOG during Project construction and operation could pose a health risk to nearby

sensitive receptors.

As explained in the Final EIR, with implementation of Mitigation Measures M-AQ-1 (Off-Road Construction Equipment Emissions Minimization) and M-AQ-3 (Emergency Diesel Generator Health Risk) the excess cancer health risk exposure would be reduced to just below the threshold of significance of 7.0 in a million (i.e., 6.87 in a million overall with 6.22 in a million attributable to off-road construction equipment after mitigation). The 38.5 percent reduction to the overall cancer risk at the maximally exposed individual resident attributable to Mitigation Measure M-AQ-1 would not be assured because of potential increases to the off-road construction equipment roster and intensity of average daily use. As a result, the efficacy of the combination of Mitigation Measures M-AQ-1 and M-AQ-3 would also not be assured. Although a reasonable worst-case construction scenario for the construction air quality emissions modeling was employed and long-term operational benefits associated with the Project's TDM program were not calculated, construction and operation of the Project could result in a substantial increase in the exposure of sensitive receptors to DPM, TOG, and PM2.5 and the impact on local air quality is determined to be significant. No additional mitigation measures have been identified and therefore this impact is significant and unavoidable with mitigation.

C-AQ-1: The Project, in combination with cumulative projects in the vicinity, would contribute considerably to cumulative health risk impacts on sensitive receptors. As discussed in the Final EIR, cumulative projects within 1,000 feet of the offsite maximally exposed individual resident are not expected to substantially increase the existing background health risks at the maximally exposed individual resident. However, as discussed under Impact AQ-3, the Project would result in a substantial increase in the existing background health risks at the maximally exposed individual resident. Even with Mitigation Measures M-AQ-1 and M-AQ-3 required as conditions of approval for the Project, construction and/or operation of the Project would result in a substantial increase in the exposure of sensitive receptors to DPM, TOG, and PM2.5 and the Project's contribution to cumulatively significant health risk impacts would be significant and unavoidable with mitigation.

SECTION V. Evaluation of Project Alternatives

This section describes the EIR alternatives and the reasons for rejecting the alternatives as infeasible. CEQA mandates that an EIR evaluate a reasonable range of alternatives to the Project or the project location that would feasibly attain most of the project's basic objectives, but that would avoid or substantially lessen any identified significant adverse environmental effects of the project. An EIR is not required to consider every conceivable alternative to a Project. Rather, it must consider a reasonable range of potentially feasible alternatives that will foster informed decision-making and public participation. CEQA requires that every EIR also evaluate a "no project" alternative. Alternatives provide a basis of comparison to the Project in terms of their significant impacts and their ability to meet project objectives. This comparative analysis is used to consider reasonable, potentially feasible options for minimizing environmental consequences of the Project.

A. Alternatives Analyzed in the Final EIR

The Department considered a range of alternatives in draft EIR Chapter 5, Alternatives. The Final EIR analyzed the Project compared to four CEQA alternatives:

- Alternative A (No Project Alternative)
- Alternative B (Full Preservation Alternative)
- Alternative C (Partial Preservation Alternative)
- Alternative D (Transit Facility Plus Commercial Only Alternative)

B. Evaluation of Project Alternatives

CEQA provides that alternatives analyzed in an EIR may be rejected if "specific economic, legal, social, technological, or other considerations, including provision of employment opportunities for highly trained workers, make infeasible ... the project alternatives identified in the EIR" (CEQA Guidelines section 15091[a][3]). The Planning Commission has reviewed each of the alternatives to the Project as described in the Final EIR that would reduce or avoid the impacts of the Project and finds that there is substantial evidence of specific economic, legal, social, technological, and other considerations that make these alternatives infeasible, for the reasons set forth below.

In making these determinations, the Planning Commission is aware that CEQA defines "feasibility" to mean "capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, legal, and technological factors." The Planning Commission is also aware that under CEQA case law, the concept of "feasibility" encompasses (i) the question of whether a particular alternative promotes the underlying goals and objectives of a project, and (ii) the question of whether an alternative is "desirable" from a policy standpoint to the extent that desirability is based on a reasonable balancing of the relevant economic, environmental, social, legal, and technological factors.

The following Project alternatives and Project were fully considered and compared in the Final EIR.

- **Alternative A (No Project Alternative):** Under Alternative A, existing land use controls on the Project site would continue to govern site development and the existing site would continue to function as a transit facility, which would not constitute a change from existing conditions. Under Alternative A, the existing maintenance and operations building would be retained in its current configuration, including its flat roof (parking deck) and second-story additions constructed in 1924 along Mariposa and Hampshire streets for offices and maintenance shops, respectively. The overall height and massing (approximately 45-foot height at Mariposa and Hampshire streets) would be preserved. The paved bus storage yard on the western portion of the site with access from Mariposa Street would also be retained in its current condition.

  If Alternative A were to proceed, no changes would be implemented, and none of the impacts associated with the Project, as described in the Final EIR, would occur. With no change to existing site conditions under the no Project alternative, land use activity on the Project site would not contribute to significant cumulative impacts beyond existing levels.

  Alternative A is hereby rejected as infeasible. Although it would eliminate the significant and unavoidable impacts to cultural resources and air quality, it would fail to meet the basic objectives of

the Project. In particular, Alternative A would fail to: (i) rebuild, expand, and modernize the SFMTA's Potrero Bus Yard by 2027 to efficiently maintain and store a growing Muni bus fleet according to the SFMTA Fleet Plan and Facilities Framework schedule; (ii) construct the first SFMTA transit facility with infrastructure for battery electric buses to facilitate Muni's transition to an all-electric fleet, in accordance with San Francisco and California policy; (iii) construct a new public asset that is resilient to earthquakes and projected climate change effects, and provides a safe, secure environment for the SFMTA's employees and assets; (iv) improve working conditions of SFMTA's workforce of transit operators, mechanics, and front-line administrative staff through a new facility at Potrero Yard; (v) achieve systemwide master plan priorities by consolidating scattered transit support functions at Potrero Yard; or (vi) create a development that is financially feasible in that the public asset can be funded by public means and public transportation funds are used only for the bus yard component.

- **Alternative B (Full Preservation Alternative):** The two preservation alternatives are the culmination of a screening process that considered various site plans, building retention programs, building heights, views of the character-defining features, and feedback from the City Historic Preservation Commission. Under the Full Preservation Alternative, the existing, approximately 45-foot-tall, office wing along Mariposa Street would be retained and the remainder of the maintenance and operations building would be demolished, including the shops wing along Hampshire Street north of the office wing. The replacement transit facility would cover the remainder of the site, including the bus yard on the west portion of the site.

  Under Alternative B, the building's three transit levels would rise to a height of 75 feet, with multi-family residential floors above rising to 150 feet (inclusive of the 75-foot-tall transit facility podium). The office wing would be retained and preserved in its entirety with no new construction built on top of it. The shops wing along Hampshire Street would be demolished; however, new construction would feature setbacks that reference the wing's original form and massing. Under this alternative, residential uses within the new transit facility would be developed along Mariposa and Bryant streets, and on floors above the new transit facility podium. However, the footprint for residential development would be limited under Alternative B due to the retention of the office wing, the transit facility podium setbacks from the retained office wing, and the residential floor setbacks from the transit facility podium. Ground-floor commercial uses would be developed along Bryant Street. Most of the character-defining features of the historical resource would be retained and reused.

  Overall, Alternative B would have approximately 176,000 fewer gross square feet of space compared to the Refined Project and about 53,000 more gross square feet of space than the Paratransit Variant. Compared to the Project (both the Refined Project and the Paratransit Variant), the replacement transit facility would be reduced in size by approximately 122,000 gross square feet—from approximately 700,000 to 578,000 gross square feet.

  Alternative B is hereby rejected as infeasible because it would fail to meet the basic objectives of the Project. In particular, Alternative B would not fully satisfy the Project's basic objectives to: (i) rebuild, expand, and modernize the SFMTA's Potrero Bus Yard by 2027 to efficiently maintain and store a growing Muni bus fleet according to the SFMTA Fleet Plan and Facilities Framework schedule; (ii) construct the first SFMTA transit facility with infrastructure for battery electric buses to facilitate Muni's

transition to an all-electric fleet, in accordance with San Francisco and California policy; and (iii) achieve systemwide master plan priorities by consolidating scattered transit support functions at Potrero Yard. Reductions to the transit facility under Alternative B could result in less space for operator training, operator and administration areas, transit street operations, and electric bus battery infrastructure, as well as displacement of maintenance bays and bus parking, limiting SFMTA's ability to meet the fleet plan mix, and loss of non-revenue vehicle parking spaces, limiting SFMTA's ability to consolidate transit street operations and other functions at Potrero Yard.

- **Alternative C (Partial Preservation Alternative):** Under the Partial Preservation Alternative, the office wing along Mariposa and Hampshire streets on the southeast portion of the site would be retained and reused. The remainder of the building would be demolished, including the shops wing along Hampshire Street north of the office wing. New construction (i.e., the three-level transit facility, with residential and ground-floor commercial uses plus residential uses atop the transit facility podium) would cover the remainder of the site as it does in Alternative B.

  Similar to the Project, the building's three transit levels would rise to a height of 75 feet, with multi-family residential floors above rising to 150 feet (inclusive of the 75-foot-tall transit facility podium). The office wing would be retained and preserved in its entirety, with no new construction built on top of it. The remainder of the building would be demolished but the new building would feature some setbacks and notches to differentiate the new construction from the retained office wing. Residential uses within the new transit facility under this alternative would be developed along Mariposa and Bryant streets and on floors above the transit facility podium. However, the footprint for residential development would be limited under Alternative C due to the retention of the office wing and the residential floor setbacks from the transit facility podium and retained office wing. Ground-floor commercial uses would be developed along Bryant Street as under the Project. Most of the character-defining features of the historical resource would be retained and reused, although to a lesser degree than in Alternative B. A portion of the existing structure would be retained; however, spatial relationships with the site and environment would be altered to a greater extent in Alternative C as compared to Alternative B.

  Overall, Alternative C would have approximately 166,000 fewer gross square feet of space compared to the Refined Project and 63,000 more gross square feet of space than the Paratransit Variant. Compared to the Project (Refined Project and Paratransit Variant), the replacement transit facility would be reduced in size by 103,000 gross square feet—from approximately 700,000 to 597,000 gross square feet. Although the interior of the retained office wing of the maintenance and operations building would be renovated to serve the SFMTA's programmatic needs, reductions to the SFMTA program could result in similar land use program reductions as with the Full Preservation Alternative.

  Alternative C is hereby rejected as infeasible because it would fail to meet the basic objectives of the Project. In particular, like Alternative B, Alternative C would not fully satisfy the Project's basic objectives to: (i) rebuild, expand, and modernize the SFMTA's Potrero Bus Yard by 2027 to efficiently maintain and store a growing Muni bus fleet according to the SFMTA Fleet Plan and Facilities Framework schedule; (ii) construct the first SFMTA transit facility with infrastructure for battery electric buses to facilitate Muni's transition to an all-electric fleet, in accordance with San Francisco and California policy; and (iii) achieve systemwide master plan priorities by consolidating scattered transit

support functions at Potrero Yard. Reductions to the transit facility under Alternative C could result in less space for operator training, operator and administration areas, transit street operations, and electric bus battery infrastructure, as well as displacement of maintenance bays and bus parking, limiting SFMTA's ability to meet the fleet plan mix, and loss of non-revenue vehicle parking spaces, limiting SFMTA's ability to consolidate transit street operations and other functions at Potrero Yard.

- **Alternative D (Transit Facility Plus Commercial Only Alternative):** Under the Transit Facility Plus Commercial Only Alternative, the 4.4-acre site would be redeveloped to provide a modern transit facility with commercial uses in a 75-foot-tall structure with three transit levels. However, Alternative D, unlike the Project, would not include residential uses within the transit facility (along Mariposa and Bryant streets) or proposed residential development atop the transit facility podium. All joint development space within the transit facility would be repurposed for SFMTA maintenance and circulation space, electric bus battery infrastructure, and staff amenities with the exception of ground-floor commercial space. The approximately 3,000 gross square feet of ground-floor commercial uses under the Project (Refined Project and Paratransit Variant) would be approximately 30,000 gross square feet less than under Alternative D, which would include 33,000 gross square feet of commercial uses along Bryant Street.

  Streetscape improvements would be limited to a loading facility on Bryant Street for commercial use, and the off-street loading at the basement level would be dedicated to the SFMTA. There would be no passenger loading space on Hampshire or Bryant streets north of Mariposa Street; thus, fewer parking spaces adjacent to the project site would be lost compared to Project (Refined Project and Paratransit Variant) . Alternative D would require 107,000 cubic yards more excavation than the Project (Refined Project and Paratransit Variant) for the foundation and structural work and the below-grade basement. However, due to the smaller construction program for the transit facility and commercial space only, Alternative D could be constructed in 2.5 to 3 years, less than the approximately four years expected for the Project (Refined Project and Paratransit Variant)..

  Alternative D is hereby rejected as infeasible. Overall, Alternative D would meet fewer of the additional project objectives than Alternatives B or C because there would be no residential component to the joint development. Without the residential component, the Alternative D project would deliver zero housing units and would fail to maximize reuse of a site located in a central, mixed-use neighborhood by creating a mixed-use development and providing dense housing and striving to maximize the number of affordable units on the site.

SECTION VI. STATEMENT OF OVERRIDING CONSIDERATIONS

The Planning Commission finds that, notwithstanding the imposition of all feasible mitigation measures, a total of three significant impacts related to cultural resources and air quality would remain significant and unavoidable with mitigation, as described in more detail above.

Pursuant to CEQA section 21081 and CEQA Guidelines section 15093, the Planning Commission hereby finds, after consideration of the Final EIR and the evidence in the record, that each of the specific overriding economic, legal, social, technological, and other benefits of the Project – including. as noted above, either the Refined Project or the Paratransit Variant – independently and collectively outweighs these significant and unavoidable impacts and is an overriding consideration warranting approval of the Project, as further

discussed below. Any one of the reasons for approval cited below is sufficient to justify approval of the Project. Thus, even if a court were to conclude that not every reason is supported by substantial evidence, the Planning Commission will stand by its determination that each individual reason is sufficient. The substantial evidence supporting the various benefits can be found below, and in the record of proceedings.

On the basis of the above findings and the substantial evidence in the whole record of this proceeding, the Planning Commission specifically finds that there are significant benefits of the Project to support approval of the Project in spite of the unavoidable significant impacts, and therefore makes this statement of overriding considerations. The Planning Commission further finds that, as part of the process of obtaining Project approvals, significant effects on the environment from implementation of the Project have been eliminated or substantially lessened, where feasible. All mitigation measures and improvement measures identified in the Final EIR and MMRP are adopted as part of the Approval Actions described in Section I, above.

Furthermore, the Planning Commission has determined that any remaining significant effects on the environment found to be unavoidable are acceptable due to the following specific overriding economic, technological, legal, social, and other considerations. The Project would meet all of the objectives, as described in the Draft EIR.

The Project would have the following benefits:

- The Project would advance SFMTA's Building Progress Program, which has a goal of repairing, renovating, and modernizing SFMTA's aging facilities and facilitating improvement of the overall transportation service delivery system in the City.

- The Project would replace an aging facility a new multilevel bus facility that will not only improve maintenance and storage capabilities, but also contribute to a greener, more sustainable, and reliable transportation system for the City.

- The Project would ensure resiliency to climate change and natural disasters and improve transit service by reducing vehicle breakdowns, increasing on-time performance, and reducing passenger overcrowding. Relatedly, the Project will provide a safer, more secure environment for SFMTA's employees and physical assets.

- The Project would directly address and support the City's housing goals—memorialized in its General Plan Housing Element and the Mayor's Public Lands for Housing Goals—by constructing a range of new housing units (up to 513)on the site.

- The Project would enhance safety and reduce conflicts between transit, commercial vehicles, bicyclists, drivers, and pedestrians in the project site vicinity.

- The Project would support transit-oriented development and promote the use of public transportation through an innovative and comprehensive transportation demand management program.

- The Project would demonstrate the City's leadership in sustainable development by constructing an environmentally low-impact facility intended to increase the site's resource efficiency.

Having considered the above, and in light of evidence contained in the FEIR and in the record, the Planning Commission finds that the benefits of the Project outweigh the unavoidable adverse environmental effects identified in the FEIR and/or Initial Study, and that those adverse environmental effects are therefore acceptable.

ATTACHMENT B – AGREEMENT TO IMPLEMENT MITIGATION MONITORING AND REPORTING PROGRAM: MITIGATION, IMPROVEMENT AND PUBLIC WORKS STANDARD CONSTRUCTION MEASURES (MMRP) and MMRP

Attachment B

San Francisco Planning

MITIGATION MONITORING AND REPORTING PROGRAM: MITIGATION, IMPROVEMENT & PUBLIC WORKS STANDARD CONSTRUCTION MEASURES

Record No.:	Case No. 2019-021884ENV	Block/Lot:	3971/001
Project Title:	SFMTA Potrero Yard Modernization Project	*Lot Size:*	4.4 acres
BPA Nos:	Submittal pending	*Project Sponsor:*	Chris Lazaro, SFMTA, (415) 549-6572
Zoning:	Public (P) Use District	*Lead Agency:*	San Francisco Planning Department
	65-X Height and Bulk District	*Staff Contact:*	Jennifer McKellar, Planning – (628) 652-7563

Tables 1 and 3 below indicate when compliance with each mitigation and improvement measure must occur. Some mitigation and improvement measures span multiple phases. Substantive descriptions of each mitigation measure's requirements are provided on the following pages in the Mitigation Monitoring and Reporting Program. The San Francisco Municipal Transportation Agency (SFMTA) is the project sponsor and property owner of the project site at 2500 Mariposa Street (Potrero Yard). Together the SFMTA and a private project co-sponsor (developer) are referenced below as the project sponsor team. In addition, pursuant to the May 11, 2023, memorandum regarding Public Works' Authority for project delivery of the Potrero Yard Project and the May 31, 2020, attachment referenced therein, San Francisco Public Works assumes responsibility for environmental compliance, including applicable Standard Construction Measures in Tables 2 and 6 below.

	Period of Compliance			
Table 1: Adopted Mitigation Measure	**Prior to the start of Construction***	**During Construction****	**Post-Construction or Operational**	**Compliance with MM completed?**
Mitigation Measure M-CR-1a: Documentation of Historical Resource	X			
Mitigation Measure M-CR-1b: Salvage Plan	X			
Mitigation Measure M-CR-1c: Interpretation of the Historical Resource	X			
Mitigation Measure M-CR-1d: Oral Histories	X			
Mitigation Measure M-TCR-1: Tribal Cultural Resources Preservation and/or Interpretive Program	X	X	X	
Mitigation Measure M-NO-1: Construction Noise Control	X	X		
Mitigation Measure M-NO-2: Vibration-Sensitive Equipment at 2601 Mariposa Street (KQED Building)	X	X		
Mitigation Measure NO-3: Fixed Mechanical Equipment Noise Control for Building Operations	X		X	

Mitigation Measure M-AQ-1: Off-Road Construction Equipment Emissions Minimization	X	X		
Mitigation Measure M-AQ-3: Emergency Diesel Generator Health Risk Reduction Plan	X		X	
Mitigation Measure M-WI-1: Design Measures to Reduce Project-Specific Wind Impacts	X			
Mitigation Measure M-GE-6a: Inadvertent Discovery of Paleontological Resources	X	X		
Mitigation Measure M-GE-6b: Preconstruction Paleontological Evaluation for Class 3 (Moderate) Paleontological Sensitivity Sediments during Construction	X	X		

*Prior to any ground disturbing activities at the project site.
**Construction is broadly defined to include any physical activities associated with construction of a development project including, but not limited to: site preparation, clearing, demolition, excavation, shoring, foundation installation, and building construction.

	Period of Compliance			
Table 2: Adopted Public Works Standard Construction Measure	**Prior to the start of Construction***	**During Construction****	**Post-Construction or Operational**	**Compliance with SCM completed?**
SCM #1: SEISMIC AND GEOTECHNICAL STUDIES	X	X		
SCM #2: AIR QUALITY	X	X		
SCM #3: WATER QUALITY	X	X		
SCM #4: TRAFFIC	X	X		
SCM #5: NOISE	X	X		
SCM #6: HAZARDOUS MATERIALS	X	X		
SCM #7: BIOLOGICAL RESOURCES	X	X		
SCM #8: VISUAL AND AESTHETIC CONSIDERATIONS, PROJECT SITE	X	X		
SCM #9: CULTURAL RESOURCES	X	X		

*Prior to any ground disturbing activities at the project site.
**Construction is broadly defined to include any physical activities associated with construction of a development project including, but not limited to: site preparation, clearing, demolition, excavation, shoring, foundation installation, and building construction.

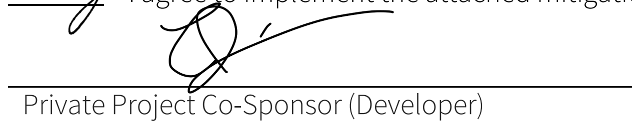
(Continues on next page)

	Period of Compliance			
Table 3: Adopted Improvement Measure	**Prior to the start of Construction***	**During Construction****	**Post-Construction or Operational**	**Compliance with Improvement Measure completed?**
Improvement Measure I-TR-A: Construction Management Plan – Additional Measures	X	X		
Improvement Measure I-TR-B: Driveway and Loading Operations Plan (DLOP)			X	

*Prior to any ground disturbing activities at the project site.
**Construction is broadly defined to include any physical activities associated with construction of a development project including, but not limited to: site preparation, clearing, demolition, excavation, shoring, foundation installation, and building construction.

Signatures:

I agree to implement the attached mitigation measure(s) and standard construction measures as described herein as conditions of project approval.



Private Project Co-Sponsor (Developer)

December 22, 2023
Date

Note to project sponsor team: Please contact CPC.EnvironmentalMonitoring@sfgov.org to begin the environmental monitoring process prior to the submittal of your building permits to the San Francisco Department Building Inspection.

(Continues on next page)

MITIGATION MONITORING AND REPORTING PROGRAM

Table 4: MITIGATION MEASURES FOR THE POTRERO YARD MODERNIZATION PROJECT

Adopted Mitigation Measures	MONITORING AND REPORTING PROGRAM[1]			
	Implementation Responsibility	**Mitigation Schedule**	**Monitoring / Reporting Responsibility**	**Monitoring Actions / Completion Criteria**
MITIGATION MEASURES AGREED TO BY PROJECT SPONSOR TEAM				
HISTORIC ARCHITECTURAL/CULTURAL RESOURCES				
Mitigation Measure M-CR-1a: Documentation of Historical Resource (HRER Part II, Mitigation Measure 1)				
Prior to issuance of a demolition permit, the project sponsor team shall undertake Historic American Building/Historic American Landscape Survey-like (HABS/HALS-like) documentation of the building features. The documentation shall be undertaken by a professional who meets the Secretary of the Interior's Professional Qualifications Standards for Architectural History, History, or Architecture (as appropriate) to prepare written and photographic documentation of the Potrero Trolley Coach Division Facility. The specific scope of the documentation shall be reviewed and approved by the Planning Department but shall include the following elements: Measured Drawings – A set of measured drawings shall be prepared that depict the existing size, scale, and dimension of the historic resource. Planning Department staff will accept the original architectural drawings or an as-built set of architectural drawings (e.g., plans, sections, elevations). Planning Department staff will assist the consultant in determining the appropriate level of measured drawings. Historic American Buildings/Historic American Landscape Survey-Level Photographs – Either Historic American Buildings/Historic American Landscape Survey (HABS/HALS) standard large-format or digital photography shall be used. The scope of the digital photographs shall be reviewed by Planning Department staff for concurrence, and all digital photography shall be conducted according to the latest National Park Service (NPS) standards. The	Project Sponsor Team and qualified consultant, at the direction of the ERO	Prior to issuance of excavation permit or commencement of construction	Planning Department preservation staff shall review and approve the documentation package	Considered complete upon completion of the Planning Department approved documentation provided to the repositories in their preferred format and the print-on-demand booklet is made available to the public, upon request

Adopted Mitigation Measures	Implementation Responsibility	Mitigation Schedule	Monitoring / Reporting Responsibility	Monitoring Actions / Completion Criteria
photography shall be undertaken by a qualified professional with demonstrated experience in HABS/HALS photography. Photograph views for the data set shall include contextual views; views of each side of the building and interior views, including any original interior features, where possible; oblique views of the building; and detail views of character-defining features. All views shall be referenced on a photographic key. This photographic key shall be on a map of the property and shall show the photograph number with an arrow to indicate the direction of the view. Historic photographs shall also be collected, reproduced, and included in the data set. HABS/HALS Historical Report – A written historical narrative and report shall be provided in accordance with the HABS/HALS Historical Report Guidelines. The written history shall follow an outline format that begins with a statement of significance supported by the development of the architectural and historical context in which the structure was built and subsequently evolved. The report shall also include architectural description and bibliographic information. Video Recordation (HRER Part II, Mitigation Measure 3) – Video recordation shall be undertaken before demolition or site permits are issued. The project sponsor team shall undertake video documentation of the affected historical resource and its setting. The documentation shall be conducted by a professional videographer, one with experience recording architectural resources. The documentation shall be narrated by a qualified professional who meets the standards for history, architectural history, or architecture (as appropriate) set forth by the Secretary of the Interior's Professional Qualification Standards (36 Code of Federal Regulations Part 61). The documentation shall include as much information as possible—using visuals in combination with narration—about the materials, construction methods, current condition, historic use, and historic context of the historical resource. This mitigation measure would supplement the				

Adopted Mitigation Measures	Implementation Responsibility	Mitigation Schedule	Monitoring / Reporting Responsibility	Monitoring Actions / Completion Criteria
	MONITORING AND REPORTING PROGRAM[1]			
traditional HABS/HALS documentation, and would enhance the collection of reference materials that would be available to the public and inform future research. Softcover Book – A Print-on-Demand softcover book shall be produced that includes the content from the historical report, historical photographs, HABS/HALS photography, measured drawings, and field notes. The Print-on-Demand book shall be made available to the public for distribution. The project sponsor team shall transmit such documentation to the History Room of the San Francisco Public Library, San Francisco Architectural Heritage, the Planning Department, and the Northwest Information Center. The HABS/HALS documentation scope will determine the requested documentation type for each facility, and the project sponsor team will conduct outreach to identify other interested groups. All documentation will be reviewed and approved by the Planning Department's staff before any demolition or site permit is granted for the affected historical resource.				
Mitigation Measure M-CR-1b: Salvage Plan (HRER Part II, Mitigation Measure 2)				
Prior to any demolition that would remove character-defining features, the project sponsor team shall consult with the planning department as to whether any such features may be salvaged, in whole or in part, during demolition/alteration. The project sponsor team shall make a good faith effort to salvage materials of historical interest to be utilized as part of the interpretative program.	Project Sponsor Team/qualified preservation consultant at the direction of the ERO	Prior to issuance of construction permits	Planning Department	Considered compete after salvage occur and interpretive program is complete
Mitigation Measure M-CR-1c: Interpretation of the Historical Resource (HRER Part II, Mitigation Measure 4)				
The project sponsor team shall facilitate the development of an interpretive program focused on the history of the project site. The interpretive program should be developed and implemented by a qualified professional with demonstrated experience in displaying information and graphics to the public in a visually interesting	Project Sponsor Team, construction contractors, and qualified consultant, at the	Prior to issuance of excavation permit or commencement of construction	Planning Department preservation staff shall review and approve the interpretive program plan	Considered complete upon the Planning Department's approval and the Project Sponsor Team's implementation of the interpretive program plan

Adopted Mitigation Measures	Implementation Responsibility	Mitigation Schedule	Monitoring / Reporting Responsibility	Monitoring Actions / Completion Criteria
manner, such as a museum or exhibit curator. This program shall be initially outlined in a proposal for an interpretive plan subject to review and approval by Planning Department staff. The proposal shall include the proposed format and the publicly-accessible location of the interpretive content, as well as high-quality graphics and written narratives. The proposal prepared by the qualified consultant describing the general parameters of the interpretive program shall be approved by Planning Department staff prior to issuance of the architectural addendum to the site permit. The detailed content, media, and other characteristics of such an interpretive program shall be approved by Planning Department staff prior to issuance of a Temporary Certificate of Occupancy. The interpretative program shall include but not be limited to the installation of permanent on-site interpretive displays or screens in publicly accessible locations. Historical photographs, including some of the large-format photographs required by Mitigation Measure M-CR-1a, may be used to illustrate the site's history. The oral history program required by Mitigation Measure M-CR-1d will also inform the interpretative program. The primary goal is to educate visitors and future residents about the property's historical themes, associations, and lost contributing features within broader historical, social, and physical landscape contexts. These themes would include but not be limited to the subject property's historic significance for its association with the earliest years of San Francisco's Municipal Railway, the United States' first publicly owned street railway and for its distinctive characteristics as a car barn, for its post-Earthquake period of construction, and as the work of master Michael M. O'Shaughnessy.	direction of the ERO			
Mitigation Measure M-CR-1d: Oral Histories (HRER Part II, Mitigation Measure 5)				

Adopted Mitigation Measures	Implementation Responsibility	Mitigation Schedule	Monitoring / Reporting Responsibility	Monitoring Actions / Completion Criteria
			MONITORING AND REPORTING PROGRAM[1]	
The project sponsor team shall undertake an oral history project on the resource that may include interviews of people such as former SFMTA employees, or other community members who may offer informative historic perspectives on the history and significance of the resource. The project shall be conducted by a professional historian in conformance with the Oral History Association's Principles and Best Practices (https://www.oralhistory.org/principles-and-best-practices-revised-2018/). In addition to transcripts of the interviews, the oral history project shall include a narrative project summary report containing an introduction to the project, a methodology description, and brief summaries of each conducted interview. Copies of the completed oral history project shall be submitted to the San Francisco Public Library, Planning Department, and other interested historical institutions. The oral history project shall also be incorporated into the interpretative program.	Project Sponsor Team and qualified consultant, at the direction of the ERO	Prior to issuance of excavation permit or commencement of construction	Planning Department preservation staff shall review and approve the documentation package	Considered complete upon the Planning Department's approval and the Project Sponsor Team's implementation of the interpretive program plan
Mitigation Measure M-TCR-1: Tribal Cultural Resources Preservation and/or Interpretive Program				
During ground-disturbing activities that encounter archeological resources, if the Environmental Review Officer (ERO) determines that a significant archeological resource is present, and if in consultation with the affiliated Native American tribal representatives, the ERO determines that the resource constitutes a tribal cultural resource (TCR) and that the resource could be adversely affected by the proposed project, the proposed project shall be redesigned so as to avoid any adverse effect on the significant tribal cultural resource, if feasible. If the ERO, in consultation with the project sponsor, determines that preservation-in-place of the TCR would be both feasible and effective, then the archeological consultant shall prepare an archeological resource preservation plan (ARPP). Implementation of	Project Sponsor Team, construction contractors, and qualified consultant, at the direction of the ERO	Consultation and planning starting upon discovery of a potential TCR during archeological testing or during construction excavations; interpretive program to be implemented prior to issuance of building occupancy permit	Environmental Review Officer (ERO) or designee	In the event of the discovery of a TCR, considered complete after implementation of the Planning Department approved interpretation program

Adopted Mitigation Measures	Implementation Responsibility	Mitigation Schedule	Monitoring / Reporting Responsibility	Monitoring Actions / Completion Criteria
		MONITORING AND REPORTING PROGRAM[1]		
the approved ARPP by the archeological consultant shall be required when feasible. If the ERO, in consultation with the affiliated Native American tribal representatives and the project sponsor, determines that preservation-in-place of the TCR is not a sufficient or feasible option, then the project sponsor shall implement an interpretive program of the TCR in consultation with affiliated Native American tribal representatives. An interpretive plan produced in consultation with affiliated Native American tribal representatives, at a minimum, and approved by the ERO, would be required to guide the interpretive program. The plan shall identify proposed locations for installations or displays, the proposed content and materials of those displays or installation, the producers or artists of the displays or installation, and a long-term maintenance program. The interpretive program may include artist installations, preferably by local Native American artists, oral histories with local Native Americans, artifacts displays and interpretation, and educational panels or other informational displays.				
NOISE				
Mitigation Measure M-NO-1: Construction Noise Control				
The SFMTA and private project co-sponsor and/or its contractors on SFMTA's behalf (referred to below as project sponsor team) shall prepare construction noise control documentation as detailed below. Prior to issuance of any demolition or building permit, the project sponsor team shall submit a project-specific construction noise control plan to the Environmental Review Officer (ERO) or the ERO's designee for approval. The construction noise control plan shall be prepared by a qualified acoustical engineer, with input from the construction contractor, and include all feasible measures to reduce construction noise. The construction noise control plan shall identify noise control measures to meet a performance target of	Project Sponsor Team, construction contractors, acoustical engineer	Prior to the issuance of construction permits; prior to the commencement of each construction stage; implementation of monitoring ongoing during construction	Environmental review officer or designee in Planning Department, Project Sponsor Team	Noise control plan approved by ERO/Planning Department prior to construction and considered complete upon submission of a noise monitoring report after each construction phase and completion of construction activities

Adopted Mitigation Measures	MONITORING AND REPORTING PROGRAM[1] Implementation Responsibility	Mitigation Schedule	Monitoring / Reporting Responsibility	Monitoring Actions / Completion Criteria
construction activities not resulting in a noise level greater than 90 dBA at noise-sensitive receptors and 10 dBA above the ambient noise level at noise-sensitive receptors. The project sponsor team shall ensure that requirements of the construction noise control plan are included in contract specifications. If nighttime construction is required, the plan shall include specific measures to reduce nighttime construction noise. The plan shall also include measures for notifying the public of construction activities, complaint procedures, and a plan for monitoring construction noise levels in the event complaints are received. The construction noise control plan shall include the following measures to the degree feasible, or other effective measures, to reduce construction noise levels: • Use construction equipment that is in good working order, and inspect mufflers for proper functionality; • Select "quiet" construction methods and equipment (e.g., improved mufflers, use of intake silencers, engine enclosures); • Use construction equipment with lower noise emission ratings whenever possible, particularly for air compressors; • Prohibit the idling of inactive construction equipment for more than five minutes; • Locate stationary noise sources (such as compressors) as far from nearby noise-sensitive receptors as possible (including future onsite noise-sensitive receptors at the Phase 2 Bryant Street Housing under the phased construction scenarios for the Refined Project), muffle such noise sources, and construct barriers around such sources and/or the construction site. • Avoid placing stationary noise-generating equipment (e.g., generators, compressors) within noise-sensitive buffer areas (as determined by the acoustical engineer) immediately adjacent to neighbors (including future onsite noise-				

Adopted Mitigation Measures	MONITORING AND REPORTING PROGRAM[1] Implementation Responsibility	Mitigation Schedule	Monitoring / Reporting Responsibility	Monitoring Actions / Completion Criteria
sensitive receptors at the Phase 2 Bryant Street Housing under the phased construction scenarios for the Refined Project). • Enclose or shield stationary noise sources from neighboring noise-sensitive properties (including the future onsite noise-sensitive receptors at the Phase 2 Bryant Street Housing under the phased construction scenarios for the Refined Project) with noise barriers to the extent feasible. To further reduce noise, locate stationary equipment in pit areas or excavated areas, if feasible; and • Install temporary barriers, barrier-backed sound curtains and/or acoustical panels around working powered impact equipment and, if necessary, around the perimeter of active construction areas or phases. When temporary barrier units are joined together, the mating surfaces shall be flush with each other. Gaps between barrier units, and between the bottom edge of the barrier panels and the ground, shall be closed with material that completely closes the gaps, and dense enough to attenuate noise. • Under the phased construction scenarios for the Refined Project, develop strategies to reduce exposure to construction noise in coordination with future onsite noise-sensitive receptors at the Phase 2 Bryant Street Housing. Some options to reduce noise include limiting noise to Phase 2 Bryant Street receptors by delaying or limiting occupancy in units closest to the construction zone or notifying receptors of loud construction periods. These options should be explored as part of the noise control plan prepared by a qualified noise consultant and the construction contractor. The construction noise control plan shall include the following measures for notifying the public of construction activities, complaint procedures, and monitoring construction noise levels:				

Adopted Mitigation Measures	Implementation Responsibility	Mitigation Schedule	Monitoring / Reporting Responsibility	Monitoring Actions / Completion Criteria
• Designate an on-site construction noise manager for the project; • Notify neighboring noise-sensitive receptors within 300 feet of the project construction area at least 30 days in advance of high-intensity noise-generating activities (e.g., pier drilling, pile driving, and other activities that may generate noise levels greater than 90 dBA at noise-sensitive receptors) about the estimated duration of the activity (including future onsite noise-sensitive receptors at the Phase 2 Bryant Street Housing under the phased construction scenarios for the Refined Project); • Post a sign onsite describing noise complaint procedures and a complaint hotline number that shall always be answered during construction; • Implement a procedure for notifying the planning department of any noise complaints within one week of receiving a complaint; • Establish a list of measures for responding to and tracking complaints pertaining to construction noise. Such measures may include the evaluation and implementation of additional noise controls at sensitive receptors (residences, hospitals, convalescent homes, schools, churches, hotels and motels, and sensitive wildlife habitat); and • Conduct noise monitoring (measurements) at the beginning of major construction phases (e.g., demolition, grading, excavation) and during high-intensity construction activities to determine the effectiveness of noise attenuation measures and, if necessary, implement additional noise control measures. The construction noise control plan shall include the following additional measures in the event of pile-driving activities:				

Adopted Mitigation Measures	Implementation Responsibility	Mitigation Schedule	Monitoring / Reporting Responsibility	Monitoring Actions / Completion Criteria
• When pile driving is to occur within 600 feet of a noise-sensitive receptor, implement “quiet” pile-driving technology (such as pre-drilling of piles, sonic pile drivers, auger cast-in-place, or drilled-displacement, or the use of more than one pile driver to shorten the total pile-driving duration [only if such measure is preferable to reduce impacts to sensitive receptors]) where feasible, in consideration of geotechnical and structural requirements and conditions; • Where the use of driven impact piles cannot be avoided, properly fit impact pile driving equipment with an intake and exhaust muffler and a sound-attenuating shroud, as specified by the manufacturer; and • Conduct noise monitoring (measurements) before, during, and after the pile-driving activity.				
Mitigation Measure M-NO-2: Vibration-Sensitive Equipment at 2601 Mariposa Street (KQED Building)				
Prior to construction, the SFMTA and private project co-sponsor and/or its contractors on SFMTA’s behalf (referred to below as project sponsor team) shall designate and make available a community liaison to respond to vibration complaints from building occupants at the KQED building, located at 2601 Mariposa Street. Contact information for the community liaison shall be posted in a conspicuous location so that it is clearly visible to building occupants most likely to be disturbed. Through the community liaison, the project sponsor team shall provide notification to property owners and occupants of 2601 Mariposa Street at least 10 days prior to construction activities involving equipment that can generate vibration capable of interfering with vibration-sensitive equipment, informing them of the estimated start date and duration of vibration-generating construction activities. Equipment types capable of generating such vibration include an impact pile	Project Sponsor Team, and qualified consultant, at the direction of the ERO	Prior to the issuance building and construction permits	Project sponsor, project acoustical engineer and Planning Department	Considered complete after construction activities are completed and after buildings and/or structures are remediated to their pre-construction condition at the conclusion of vibration-generating activity on the site, should any damage occur

Adopted Mitigation Measures	Implementation Responsibility	Mitigation Schedule	Monitoring / Reporting Responsibility	Monitoring Actions / Completion Criteria
driver, or similar equipment, operating within 250 feet of the building or a vibratory roller, or similar equipment, operating within 125 feet of the building. If feasible, the project sponsor team shall identify potential alternative equipment and techniques that could reduce construction vibration levels. Alternative equipment and techniques may include, but are not limited to: • pre-drilled piles, • caisson drilling, • oscillating or rotating pile installation, • jetting piles into place using a water injection at the tip of the pile could be substituted for driven piles, if feasible, based on soil conditions, • static rollers could be substituted for vibratory rollers in some cases. If concerns prior to construction or complaints during construction related to equipment interference are identified, the community liaison shall work with the project sponsor team and the affected building occupants to resolve the concerns such that the vibration control measures would meet a performance target of the 65 VdB vibration level threshold for vibration sensitive equipment, as set forth by Federal Transit Authority (FTA). To resolve concerns raised by building occupants, the community liaison shall convey the details of the complaint(s) to the project sponsor team, such as who shall implement specific measures to ensure that the project construction meets the performance target of 65 VdB vibration level for vibration sensitive equipment. These measures may include evaluation by a qualified noise and vibration consultant, scheduling certain construction activities outside the hours of operation or recording periods of specific vibration-sensitive equipment if feasible, and/or conducting ground-borne vibration monitoring to document that the project can meet the performance target of 65 VdB at specific distances and/or locations. Ground-borne				

Adopted Mitigation Measures	Implementation Responsibility	Mitigation Schedule	Monitoring / Reporting Responsibility	Monitoring Actions / Completion Criteria
vibration monitoring, if appropriate to resolve concerns, shall be conducted by a qualified noise and vibration consultant.				
Mitigation Measure NO-3: Fixed Mechanical Equipment Noise Control for Building Operations				
The SFMTA and a private project co-sponsor and/or its contractors on SFMTA's behalf (referred to below as project sponsor team) shall prepare operational noise control documentation as detailed below. Prior to approval of a building permit, the project sponsor team shall submit documentation to the Environmental Review Officer (ERO) or the officer's designee, demonstrating with reasonable certainty that the building's fixed mechanical equipment (such as heating, ventilation and air conditioning [HVAC] equipment) meets the noise limits specified in sections 2909 (b) and 2909 (d) of the noise ordinance (i.e., an 8-dB increase above the ambient noise level at the property plane for commercial or mixed-use properties; and interior noise limits of 55 dBA and 45 dBA for daytime and nighttime hours inside any sleeping or living room in a nearby dwelling unit on a residential property assuming windows open, respectively). Acoustical treatments required to meet the noise ordinance may include, but are not limited to: • Enclosing noise-generating mechanical equipment; • Installing relatively quiet models of air handlers, exhaust fans, and other mechanical equipment; • Using mufflers or silencers on equipment exhaust fans; • Orienting or shielding equipment to protect noise-sensitive receptors (residences, hospitals, convalescent homes, schools, churches, hotels and motels, and sensitive wildlife habitat) to the greatest extent feasible; • Increasing the distance between noise-generating equipment and noise-sensitive receptors; and/or	Project Sponsor Team and qualified consultant, at the direction of the ERO	Prior to the issuance building permit	Environmental Review Officer (ERO) or designee	Considered complete after receipt and acceptance of the appropriate documentation to the ERO

<table>
<tr><th>Adopted Mitigation Measures</th><th>Implementation Responsibility</th><th>Mitigation Schedule</th><th>Monitoring / Reporting Responsibility</th><th>Monitoring Actions / Completion Criteria</th></tr>
<tr><td>• Placing barriers around the equipment to facilitate the attenuation of noise.

Compliance with this fixed-mechanical equipment noise control for building operations standard requirement does not obviate the need for the equipment to demonstrate compliance with the noise ordinance throughout the lifetime of the project.</td><td></td><td></td><td></td><td></td></tr>
<tr><td>AIR QUALITY</td><td></td><td></td><td></td><td></td></tr>
<tr><td>Mitigation Measure M-AQ-1: Off-Road Construction Equipment Emissions Minimization</td><td></td><td></td><td></td><td></td></tr>
<tr><td>The SFMTA and private project co-sponsor and/or its contractors on SFMTA's behalf (referred to below as project sponsor team) shall comply with the following:
A. Engine Requirements.
1. All off-road equipment greater than or equal to 25 horsepower shall have engines that meet U.S. EPA or California Air Resources Board Tier 4 Final off-road emission standards.
2. Where access to alternative sources of power is available, portable diesel engines shall be prohibited. If access to alternative sources of power is infeasible, portable diesel engines shall meet the requirements of Subsection (A)(1).
3. Diesel engines, whether for off-road or on-road equipment, shall not be left idling for more than two minutes, at any location, except as provided in exceptions to the applicable state regulations regarding idling for off-road and on-road equipment (e.g., traffic conditions, safe operating conditions). The project sponsor team shall post legible and visible signs in English, Spanish, and Chinese, in designated queuing</td><td>Project Sponsor Team, construction contractors</td><td>Prior to issuance of a construction permit; implementation ongoing during construction</td><td>Environmental Review Officer (ERO) or designee/ project sponsor</td><td>Considered complete upon Planning Department review and approval of Construction Emissions Minimization Plan, ongoing review and approval of biannual reports, and review and approval of final construction report</td></tr>
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MONITORING AND REPORTING PROGRAM[1]				
Adopted Mitigation Measures	**Implementation Responsibility**	**Mitigation Schedule**	**Monitoring / Reporting Responsibility**	**Monitoring Actions / Completion Criteria**
areas and at the construction site to remind operators of the two-minute idling limit. 4. The project sponsor team shall instruct construction workers and equipment operators on the maintenance and tuning of construction equipment and require that such workers and operators properly maintain and tune equipment in accordance with manufacturer specifications. B. Waivers. 1. The San Francisco Planning Department Environmental Review Officer (ERO) may waive the equipment requirements of Subsection (A)(1) if: a particular piece of off-road Tier 4 Final equipment is not regionally available, not technically feasible, or would not produce desired emissions reduction due to expected operating modes. In granting the waiver, the project sponsor team must demonstrate with substantial evidence that the project construction does not exceed the BAAQMD threshold for NOx (54 lbs/day) by resulting in a net increase of average daily NOx emissions greater than 4 pounds per day. The project sponsor team must also demonstrate with substantial evidence that the overall combined construction and operational excess cancer risk does not exceed 7 per 1 million persons exposed at nearby sensitive receptors. C. Construction Emissions Minimization Plan. 1. Before starting onsite construction activities, the project sponsor team shall submit a Construction Emissions Minimization Plan (Plan) to the ERO for review and approval. The Plan shall state, in reasonable detail, how the project sponsor team will meet the requirements of Section A.				

Adopted Mitigation Measures	Implementation Responsibility	Mitigation Schedule	Monitoring / Reporting Responsibility	Monitoring Actions / Completion Criteria
2. The Plan shall include estimates of the construction timeline by phase, with a description of each piece of off-road equipment required for every construction phase. The description may include, but is not limited to: equipment type, equipment manufacturer, equipment identification number, engine model year, engine certification (Tier rating), horsepower, engine serial number, and expected fuel use and hours of operation. 3. The project sponsor team shall ensure that all applicable requirements of the Plan have been incorporated into the contract specifications. The Plan shall include a certification statement that the project sponsor team agrees to comply fully with the Plan. 4. The project sponsor team shall make the Plan available to the public for review onsite during working hours. The project sponsor team shall post at the construction site a legible and visible sign summarizing the Plan. The sign shall also state that the public may ask to inspect the Plan for the project at any time during working hours and shall explain how to request to inspect the Plan. The project sponsor team shall post at least one copy of the sign in a visible location on each side of the construction site facing a public right-of-way. D. Monitoring 1. After start of construction activities, the project sponsor team shall submit biannual reports to the ERO documenting compliance with the Plan. After completion of construction activities and prior to receiving a final certificate of occupancy, the project sponsor team shall submit to the ERO a final report summarizing construction activities, including the start and end dates and duration of each construction phase, and the specific information required in the Plan.				

(Table header group: MONITORING AND REPORTING PROGRAM[1])

MONITORING AND REPORTING PROGRAM[1]

Adopted Mitigation Measures	Implementation Responsibility	Mitigation Schedule	Monitoring / Reporting Responsibility	Monitoring Actions / Completion Criteria
Mitigation Measure M-AQ-3: Emergency Diesel Generator Health Risk Reduction Plan				
The SFMTA and private project co-sponsor and/or its contractors on SFMTA's behalf (referred to below as the project sponsor team) shall comply with the following: 1. Require all emergency diesel generators to meet Tier 4 Final emission standards and reduce annual testing limit to 20 hours per year for each generator; or 2. Require all emergency generators to be battery-powered; or 3. The project sponsor team shall retain a qualified air quality consultant to develop an Emergency Diesel Generator Health Risk Reduction Plan. The project sponsor team shall submit the plan to the San Francisco Planning Department Environmental Review Officer (ERO) for review and approval prior to issuance of a permit for emergency diesel generators from the San Francisco Department of Building Inspection or the Bay Area Air Quality Management District. The plan must include, for each emergency diesel generator, a description of the anticipated venting location, engine specifications, and annual maintenance testing procedures. The plan must demonstrate with substantial evidence that annual maintenance testing will not result in the project's overall construction and operational cancer risk exceeding 7 per one million persons exposed at nearby offsite sensitive receptors. Additionally, the operator of the facility at which the generators are located (including the private project co-sponsor as applicable) shall be required to maintain records of the testing schedule for each emergency diesel generator for the life of that generator and to	Project Sponsor Team and construction contractor	Prior to issuance of a permit for emergency diesel generator	Project Sponsor Team, facility maintenance contractor, and the Planning Department	Considered complete upon Planning Department review and approval of Emergency Diesel Generator Health Risk Reduction Plan

Adopted Mitigation Measures	Implementation Responsibility	Mitigation Schedule	Monitoring / Reporting Responsibility	Monitoring Actions / Completion Criteria
provide this information for review to the planning department within three months of requesting such information.				
WIND				
Mitigation Measure M-WI-1(a): Design Measures to Reduce Project-Specific Wind Impacts				
The project sponsor team shall retain a qualified wind consultant to prepare, in consultation with the San Francisco Planning Department (planning department), a wind impact mitigation report that identifies design measures to reduce the project's wind impacts in the project scenario. Prior to certification of the Final Environmental Impact Report, the project sponsor team shall submit the wind impact mitigation report to the planning department for its final review and approval. The wind impact mitigation report shall incorporate updated information on the building design based on a list of potential wind reduction measures identified below, along with the estimated effectiveness of each measure to reduce the identified off-site wind hazards. • Porous façades on portions of the north, east and west sides for natural ventilation as part of the heating, ventilation, and air conditioning strategy for the new transit facility at the second and third levels • Recessed building corner up to 12 feet in height at the southwest corner of proposed building near Bryant/Mariposa intersection • Vertical elevated screens on portions of the second and third levels of the west façade (Bryant Street) • Vertical wind screens at grade level on the adjacent Bryant Street sidewalk near the Bryant/Mariposa intersection Such wind reduction design measures may include additional on-site landscaping, or equivalent wind-reducing features; and off-site wind reduction measures such as landscaping, streetscape	Project Sponsor Team/qualified consultant	Prior to completion of the environmental review	Project Sponsor Team, and the Planning Department	Completion of and acceptance of the wind impact mitigation report by the Planning Department

	MONITORING AND REPORTING PROGRAM[1]			
Adopted Mitigation Measures	**Implementation Responsibility**	**Mitigation Schedule**	**Monitoring / Reporting Responsibility**	**Monitoring Actions / Completion Criteria**
improvements or other wind-reducing features, such as wind screens. The project sponsor team shall implement as many of the design measures identified in the wind impact mitigation report as needed to reduce the proposed project's or project variants' potential to create a new wind hazard or exacerbate an existing wind hazard in publicly accessible areas of substantial pedestrian use to less-than-significant levels. The final wind impact mitigation report should not find that the project produces a net increase of the already identified wind hazard exceedances. The planning department shall approve the final list of wind reduction measures that the project sponsor team shall implement.				
Mitigation Measure M-WI-1(b): Additional Wind Testing				
If changes to the building design or massing are proposed after certification of the Final Environmental Impact Report, additional wind analysis may be required to confirm the modified design does not result in any 9-hour wind hazard exceedances and to minimize 1-hour wind hazard exceedances. If the planning department determines that the modified design could result in wind hazard criterion exceedances (for example, due to the removal of one or more wind reducing features), the project sponsor team shall retain a qualified wind consultant to prepare a wind analysis under the direction of the planning department. The wind analysis may require a wind tunnel test and shall identify wind reduction measures needed to avoid 9-hour wind hazard exceedances and to minimize 1-hour wind hazard exceedances.	Project Sponsor Team /qualified consultant	Prior to completion of the environmental review	Project Sponsor Team, and the Planning Department	Completion of and acceptance of the wind impact mitigation report by the Planning Department
GEOLOGY AND SOILS				
Mitigation Measure M-GE-6a: Inadvertent Discovery of Paleontological Resources				

Adopted Mitigation Measures	Implementation Responsibility	Mitigation Schedule	Monitoring / Reporting Responsibility	Monitoring Actions / Completion Criteria
		MONITORING AND REPORTING PROGRAM[1]		
Worker Awareness Training - Prior to commencing construction, and ongoing throughout ground disturbing activities (e.g., excavation, utility installation, the project sponsor and/or their designee shall ensure that all project construction workers are trained on the contents of the Paleontological Resources Alert Sheet, as provided by the Planning Department. The Paleontological Resources Alert Sheet shall be prominently displayed at the construction site during ground disturbing activities for reference regarding potential paleontological resources. In addition, the project sponsor shall inform the contractor and construction personnel of the immediate stop work procedures and other procedures to be followed if bones or other potential fossils are unearthed at the project site. Should new workers that will be involved in ground disturbing construction activities begin employment after the initial training has occurred, the construction supervisor shall ensure that they receive the worker awareness training as described above. The project sponsor shall complete the standard form/affidavit confirming the timing of the worker awareness training to the Environmental Review Officer (ERO). The affidavit shall confirm the project's location, the date of training, the location of the informational handout display, and the number of participants. The affidavit shall be transmitted to the ERO within five (5) business days of conducting the training. Paleontological Resource Discoveries - In the event of the discovery of an unanticipated paleontological resource during project construction, ground disturbing activities shall temporarily be halted within 25 feet of the find until the discovery is examined by a qualified paleontologist as recommended by the Society of	Project Sponsor Team, construction contractors, at the direction of the ERO	Prior to construction commencement	Project Sponsor Team and the Planning Department	Submission of evidence of worker awareness training and distribution of alert sheet to the satisfaction of the Planning Department, including proper adherence to procedures if a resource is encountered

Adopted Mitigation Measures	Implementation Responsibility	Mitigation Schedule	Monitoring / Reporting Responsibility	Monitoring Actions / Completion Criteria
	MONITORING AND REPORTING PROGRAM[1]			
Vertebrate Paleontology standards (SVP 2010) and Best Practices in Mitigation Paleontology (Murphey et al. 2019). Work within the sensitive area shall resume only when deemed appropriate by the qualified paleontologist in consultation with the ERO. The qualified paleontologist shall determine: 1) if the discovery is scientifically significant; 2) the necessity for involving other responsible or resource agencies and stakeholders, if required or determined applicable; and 3) methods for resource recovery. If a paleontological resource assessment results in a determination that the resource is not scientifically important, this conclusion shall be documented in a Paleontological Evaluation Letter to demonstrate compliance with applicable statutory requirements (e.g., Federal Antiquities Act of 1906, CEQA Guidelines Section 15064.5, California Public Resources Code Chapter 17, Section 5097.5, Paleontological Resources Preservation Act 2009). The Paleontological Evaluation Letter shall be submitted to the ERO for review within 30 days of the discovery. If the qualified paleontologist determines that a paleontological resource is of scientific importance, and there are no feasible measures to avoid disturbing this paleontological resource, the qualified paleontologist shall prepare a Paleontological Mitigation Program. The mitigation program shall include measures to fully document and recover the resource of scientific importance. The qualified paleontologist shall submit the mitigation program to the ERO for review and approval within 10 business days of the discovery. Upon approval by the ERO, ground disturbing activities in the project area shall resume and be monitored as determined by the qualified paleontologist for the duration of such activities. The mitigation program shall include: 1) procedures for construction monitoring at the project site; 2) fossil preparation and				

Adopted Mitigation Measures	Implementation Responsibility	Mitigation Schedule	Monitoring / Reporting Responsibility	Monitoring Actions / Completion Criteria
identification procedures; 3) curation of paleontological resources of scientific importance into an appropriate repository; and 4) preparation of a Paleontological Resources Report (report or paleontology report) at the conclusion of ground disturbing activities. The report shall include dates of field work, results of monitoring, fossil identifications to the lowest possible taxonomic level, analysis of the fossil collection, a discussion of the scientific significance of the fossil collection, conclusions, locality forms, an itemized list of specimens, and a repository receipt from the curation facility. The project sponsor shall be responsible for the preparation and implementation of the mitigation program, in addition to any costs necessary to prepare and identify collected fossils, and for any curation fees charged by the paleontological repository. The paleontology report shall be submitted to the ERO for review within 30 business days from conclusion of ground disturbing activities, or as negotiated following consultation with the ERO.				
Mitigation Measure M-GE-6b: Preconstruction Paleontological Evaluation and Monitoring Plan during Construction				
The project sponsor shall engage a qualified paleontologist to develop a site-specific monitoring plan prior to commencing soil-disturbing activities at the project site. The Preconstruction Paleontological Monitoring Plan would determine project construction activities requiring paleontological monitoring based on those may affect sediments with moderate sensitivity for paleontological resources. Prior to issuance of any demolition permit, the project sponsor shall submit the Preconstruction Paleontological Monitoring Plan to the ERO for approval. At a minimum, the plan shall include: 1. Project Description 2. Regulatory Environment – outline applicable federal, state and local regulations	Project Sponsor Team, construction contractors, and qualified consultant, at the direction of the ERO	Prior to construction commencement	Project Sponsor Team and the Planning Department	Completion of and acceptance of the Preconstruction Paleontological Evaluation by the Planning Department

Adopted Mitigation Measures	Implementation Responsibility	Mitigation Schedule	Monitoring / Reporting Responsibility	Monitoring Actions / Completion Criteria
		MONITORING AND REPORTING PROGRAM[1]		
3. Summary of Sensitivity Classification(s) 4. Research Methods, including but not limited to: 4.a. Field studies conducted by the approved paleontologist to check for fossils at the surface and assess the exposed sediments. 4.b. Literature Review to include an examination of geologic maps and a review of relevant geological and paleontological literature to determine the nature of geologic units in the project area. 4.c. Locality Search to include outreach to the University of California Museum of Paleontology in Berkeley. 5. Results: to include a summary of literature review and finding of potential site sensitivity for paleontological resources; and depth of potential resources if known. 6. Recommendations for any additional measures that could be necessary to avoid or reduce any adverse impacts to recorded and/or inadvertently discovered paleontological resources of scientific importance. Such measures could include: 6.a. Avoidance: If a known fossil locality appears to contain critical scientific information that should be left undisturbed for subsequent scientific evaluation. 6.b. Fossil Recovery: If isolated small, medium- or large-sized fossils are discovered during field surveys or construction monitoring, and they are determined to be scientifically significant, they should be recovered. Fossil recovery may involve collecting a fully exposed fossil from the ground surface, or may involve a systematic excavation, depending upon the size and complexity of the fossil discovery. 6.c. Monitoring: Monitoring involves systematic inspections of graded cut slopes, trench sidewalls, spoils piles, and other types of construction				

Adopted Mitigation Measures	Implementation Responsibility	Mitigation Schedule	Monitoring / Reporting Responsibility	Monitoring Actions / Completion Criteria
			MONITORING AND REPORTING PROGRAM[1]	
excavations for the presence of fossils, and the fossil recovery and documentation of these fossils before they are destroyed by further ground disturbing actions. Standard monitoring is typically used in the most paleontologically sensitive geographic areas/geologic units (moderate, high and very high potential); while spot-check monitoring is typically used in geographic areas/geologic units of moderate or unknown paleontological sensitivity (moderate or unknown potential). 6.d. Data recovery and reporting: Fossil and associated data discovered during soils disturbing activities should be treated according to professional paleontological standards and documented in a data recovery report. The plan should define the scope of the data recovery report. The consultant shall document the monitoring conducted according to the monitoring plan and any data recovery completed for significant paleontological resource finds discovered, if any. Plans and reports prepared by the consultant shall be considered draft reports subject to revision until final approval by the ERO. The final monitoring report and any data recovery report shall be submitted to the ERO prior to the certificate of occupancy.				

Continues on the next page.

Table 5: IMPROVEMENT MEASURES FOR THE POTRERO YARD MODERNIZATION PROJECT

Adopted Improvement Measures	MONITORING AND REPORTING PROGRAM[1] Implementation Responsibility	Mitigation Schedule	Monitoring / Reporting Responsibility	Monitoring Actions / Completion Criteria
IMPROVEMENT MEASURES AGREED TO BY PROJECT SPONSOR TEAM				
TRANSPORTATION				
Improvement Measure I-TR-A: Construction Management Plan – Additional Measures				
As part of the project's construction management plan, the SFMTA and a private project co-sponsor and/or its contractors on SFMTA's behalf (referred to as project sponsor team) will require additional measures to further minimize disruptions to people walking and bicycling, transit, and emergency vehicles during project construction: The additional measures include: Carpool, Bicycle, Walk, and Transit Access for Construction Workers—Carpool, Bicycle, Walk, and Transit Access for Construction Workers—To minimize parking demand and vehicle trips associated with construction workers, the construction contractor will include as part of the Construction Management Plan methods to encourage carpooling, bicycle, walk, and transit access to the project site by construction workers. These methods could include providing secure bicycle parking spaces, participating in free-to-employee and employer ride matching program from www.511.org, participating in emergency ride home program through the City of San Francisco (www.sferh.org), and providing transit information to construction workers. Project Construction Updates for Adjacent Businesses and Residents— To minimize construction impacts on access to nearby residences and businesses, the project sponsor team will provide nearby residences and adjacent businesses with regularly updated information regarding project construction, including construction activities, peak construction vehicle activities, travel lane closures,	Project Sponsor Team, including SFMTA regulatory teams, and construction contractor	Prior to the issuance of construction permits; implementation ongoing during construction with construction updates provided weekly; Active Monitoring of Detours as needed	Project Sponsor Team, SFMTA (in its regulatory capacity)	Considered complete upon the submittal and approval of the Construction Management Plan to the SFMTA (in its regulatory capacity)

Adopted Improvement Measures	Implementation Responsibility	Mitigation Schedule	Monitoring / Reporting Responsibility	Monitoring Actions / Completion Criteria
and parking lane and sidewalk closures (e.g., via the project's website). At regular intervals to be defined in the construction management plan, a regular email notice will be distributed by the project sponsor team that would provide current construction information of interest to neighbors, as well as contact information for specific construction inquiries or concerns.				
Improvement Measure I-TR-B: Driveway and Loading Operations Plan (DLOP)				
The project sponsor team (including joint development project sponsor as applicable) will be required to prepare and implement a Driveway and Loading Operations Plan (DLOP). The DLOP will be prepared by the private project co-sponsor, in coordination with the SFMTA, and submitted as part of the application for the first temporary occupancy permit. The DLOP will include provisions to manage loading activities and driveway operations associated with the below-grade onsite loading spaces; provisions for assessing on-street commercial and passenger loading supply and protocol for expanding on-street supply, if needed; provisions for trash/recycling/compost truck access and collection operations; provisions for residential move-in and move-out operations; provisions for scheduling Muni deliveries using the onsite loading facilities; and provisions for accommodating recurring deliveries such as UPS, Federal Express, and USPS within the onsite loading facilities. The intent of the DLOP is to reduce potential conflicts between passenger and freight loading and transit operations, and between passenger and freight loading activities and people walking and bicycling, and other vehicles in the project vicinity, as well as to maximize reliance on onsite facilities to accommodate freight loading demand.	Project Sponsor Team	Project Sponsor Team to submit Loading Management Plan to ERO prior to the issuance of any certificate of occupancy for the proposed project.	ERO, Project Sponsor Team or successor owner/ manager of residential building	Considered complete upon ERO approval of Loading Management Plan; Ongoing monitoring to continue indefinitely

Table 6: PUBLIC WORKS STANDARD CONSTRUCTION MEASURES FOR THE POTRERO YARD MODERNIZATION PROJECT

Public Works' Regulatory Affairs division will ensure the Standard Construction Measures are included in construction specifications and contracts. The planning department environmental monitoring team will confirm the public works standard construction measures have been incorporated into the final project agreement with the project sponsor team.

	MONITORING AND REPORTING PROGRAM[1]			
Adopted Public Works Standard Construction Measure	**Implementation Responsibility**	**Mitigation Schedule**	**Monitoring / Reporting Responsibility**	**Monitoring Actions / Completion Criteria**
PUBLIC WORKS STANDARD CONSTRUCTION MEASURES AGREED TO BY PROJECT SPONSOR TEAM				
Public Works Standard Construction Measure #1, Seismic and Geotechnical Studies (Geology and Soils)				
The project manager shall ensure that projects that may potentially be affected by existing soil, slope and/or geologic conditions at the project site will be screened for liquefaction, subsidence, landslide, fault displacement, and other geological hazards at the project site, and will be engineered and designed as necessary to minimize risks to safety and reliability due to such hazards. As necessary, geotechnical investigations will be performed.	Project Sponsor Team, construction contractors	Prior to construction	Project Sponsor Team, Planning Department, Public Works Regulatory Affairs	Considered complete upon submission of geotechnical investigations, if applicable
Public Works Standard Construction Measure #2, Air Quality				
All projects will comply with the Construction Dust Control Ordinance. Major construction projects that are estimated to require 20 or more days of cumulative work within the Air Pollutant Exposure Zone must comply with the additional clean construction requirements of the Clean Construction Ordinance.	Project Sponsor Team, construction contractors	Ongoing during construction	Project Sponsor Team, Planning Department, Public Works Regulatory Affairs	Considered complete upon submission of a Site-Specific Dust Control Plan for the review and approval of the Department of Public Health
Public Works Standard Construction Measure #3, Water Quality				
All projects will implement erosion and sedimentation controls to be tailored to the project site, such as fiber rolls and/or gravel bags around storm drain inlets, installation of silt fences, and other such measures sufficient-to prevent discharges of sediment and other pollutants to storm drains and all surface waterways, such as San Francisco Bay, the Pacific Ocean, water supply reservoirs, wetlands, swales, and streams. As required based on project location and size,	Project Sponsor Team, construction contractors	Ongoing during construction	Project Sponsor Team, Planning Department, Public Works Regulatory Affairs	Considered complete upon Project Sponsor Team's enforcement of water quality considerations

Adopted Public Works Standard Construction Measure	Implementation Responsibility	Mitigation Schedule	Monitoring / Reporting Responsibility	Monitoring Actions / Completion Criteria
a Stormwater Control Plan (in most areas of San Francisco) or a Stormwater Pollution Prevention Plan (SWPPP) (in certain areas of San Francisco) will be prepared. If uncontaminated groundwater is encountered during excavation activities, it will be discharged in compliance with applicable water quality standards and discharge permit requirements.				
Public Works Standard Construction Measure #4, Traffic				
All projects will implement traffic control measures sufficient to maintain traffic and pedestrian circulation on streets affected by construction of the project. The measures will also, at a minimum, be consistent with the requirements of San Francisco Municipal Transportation Agency (SFMTA)'s Blue Book. Traffic control measures may include, but not be limited to, flaggers and/or construction warning sign age of work ahead; scheduling truck trips during non-peak hours to the extent feasible; maintaining access to driveways, private roads, and off-street commercial loading facilities by using steel trench plates or other such method; and coordination with local emergency responders to maintain emergency access. Any temporary rerouting of transit vehicles or relocation of transit facilities would be coordinated with SFMTA Muni Operations.	Project Sponsor Team, construction contractors	Ongoing during construction	Project Sponsor Team; SFMTA Muni Operations, Public Works Regulatory Affairs	Considered complete upon the submittal and approval of the Construction Management Plan to the SFMTA
Public Works Standard Construction Measure #5, Noise				
All projects will comply with local noise ordinances resulting construction noise. Public Works shall undertake measures to minimize noise disruption to nearby neighbors and sensitive receptors during construction. These efforts could include using best available noise control technologies on equipment (i.e., mufflers, ducts, and acoustically attenuating shields), locating stationary noise sources (i.e., pumps and generators) away from sensitive receptors, erecting temporary noise barriers, and other such means.	Project Sponsor Team, construction contractors	Ongoing during construction	Project Sponsor Team, Planning Department, Public Works Regulatory Affairs	Considered complete upon Project Sponsor enforcement of local noise ordinances

Adopted Public Works Standard Construction Measure	Implementation Responsibility	Mitigation Schedule	Monitoring / Reporting Responsibility	Monitoring Actions / Completion Criteria
Public Works Standard Construction Measure #6, Hazardous Materials				
Projects that involve excavation of 50 cubic yards of soil in the Maher Zone will comply with the Maher Ordinance. Projects on sites that are not currently located in the Maher Zone but have the potential to contain hazardous materials in soil and/or groundwater will be referred to the Department of Public Health as newly identified Maher sites.	Project Sponsor Team, construction contractors	Ongoing during construction	Project Sponsor Team, Planning Department, Public Works Regulatory Affairs	Considered complete upon Project Sponsor enforcement of Maher ordinance
Public Works Standard Construction Measure #7, Biological Resources				
Projects will comply with all local, state, and federal requirements for surveys, analysis, and protection of biological resources (e.g., Migratory Bird Treaty Act, Federal and State Endangered Species Acts, etc.). The project site and the immediately surrounding area will be screened to determine whether biological resources may be affected by construction. If biological resources are present, a qualified biologist will carry out a survey of the project site to note the presence of general biological resources and to identify whether habitat for special-status species and/or migratory birds is present. If necessary, measures will be implemented to protect biological resources, such as installing wildlife exclusion fencing, establishing work buffer zones, installing bird deterrents, having a qualified biologist conduct monitoring, and other such applicable measures. Tree removal will also comply with any applicable tree protection ordinance.	Project Sponsor Team, construction contractors	Ongoing during construction	Project Sponsor Team, Planning Department, Public Works Regulatory Affairs	Considered complete upon Project Sponsor enforcement of biological considerations
Public Works Standard Construction Measure #8, Visual and Aesthetic Considerations, Project Site				
All project sites will be maintained in a clean and orderly state. Construction staging areas will be sited away from public view, and on currently paved or previously disturbed areas, where possible.	Project Sponsor Team, construction contractors	Ongoing during construction	Project Sponsor Team, Planning Department, Public Works Regulatory Affairs	Considered complete upon Project Sponsor Team's enforcement of visual considerations

Adopted Public Works Standard Construction Measure	Implementation Responsibility	Mitigation Schedule	Monitoring / Reporting Responsibility	Monitoring Actions / Completion Criteria
Nighttime lighting will be directed away from residential areas and have shields to prevent light spillover effects. Upon project completion, project sites on City-owned lands will be returned to their general pre-project condition, including re-grading of the site and re-vegetation or re-paving of disturbed areas to the extent this is consistent with Public Works Bureau of Urban Forestry Policy and San Francisco Code. Project sites on non-City land will be restored to their general pre-project condition so that the owner may return them to their prior use, unless otherwise arranged with the property owner.				
Public Works Standard Construction Measure #9, Cultural Resources				
All projects that will alter a building or structure, produce vibrations, or include soil disturbance will be screened to assess whether cultural resources are or may be present and could be affected, as detailed below. Soil is defined as native earthen deposits or introduced earthen fill. Soil does not include materials that were previously introduced as part of roadway pavement section including asphalt concrete wearing roadway base and subbase. *Archeological Resources.* The EP Archeologist has determined that Standard Archeological Measure III (Testing/Data Recovery) shall be implemented by Public Works to protect and/or treat significant archeological resources identified as being present within the site and potentially affected by the project (see Attachment H: Public Works Archeological Measure III (Testing / Data Recovery)). 1. Public Works shall implement the EP Archeologist's recommendations prior to and/or during project construction consistent with Standard Archeological Measure III and shall consult with the EP Archeologist in	Project Sponsor Team, construction contractors	Prior to issuance of a construction permit	Project Sponsor Team, the EP Archeologist staff, Public Works and the ERO	Considered complete upon compliance with Standard Archeological Measure III (Testing/Data Recovery) requirements

Adopted Public Works Standard Construction Measure	Implementation Responsibility	Mitigation Schedule	Monitoring / Reporting Responsibility	Monitoring Actions / Completion Criteria
			MONITORING AND REPORTING PROGRAM[1]	
selecting a qualified archeological consultant from the EP Archeological Resources Consultant Pool, as needed, to implement these measures. 2. Soil-disturbing activities in archeologically sensitive areas, as identified through the above process, will not begin until preconstruction archeological measures required by the EP Archeologist (e.g., preparation of an Archeological Testing Plan, Archeological Treatment Plan, and/or an Archeological Data Recovery Plan) have been implemented.				
Public Works Standard Construction Measure #9, Cultural Resources				
All projects that will alter a building or structure, produce vibrations, or include soil will be screened to assess whether cultural resources are or may be present disturbance and could be affected, as detailed below. *Historic (Built Environment) Resources*. Where construction will take place in proximity to a building or structure identified as a significant historical resource but would not otherwise directly affect it, Public Works will implement protective measures, such as but not limited to, the erection of temporary construction barriers to ensure that inadvertent impacts to such buildings or structures are avoided. These measures shall require the development of a Construction Best Practices for Historical Resources Plan and a plan outlining the Construction Monitoring for Historical Resources Program to be reviewed and approved by CCSF Planning Department Preservation staff. If a project includes or is directly adjacent to historic buildings or structures susceptible to vibration (such as but not limited to unreinforced masonry, earthen construction, lathe and plaster, or fragile architectural ornamentation) as determined in consultation with CCSF Planning Department Preservation staff, Public Works will determine if vibrations associated with proposed construction	Project Sponsor Team, construction contractors	Prior to issuance of a construction permit	Project Sponsor Team, the EP Preservation staff, Public Works and the ERO	Considered complete upon compliance with requirements

MONITORING AND REPORTING PROGRAM[1]				
Adopted Public Works Standard Construction Measure	**Implementation Responsibility**	**Mitigation Schedule**	**Monitoring / Reporting Responsibility**	**Monitoring Actions / Completion Criteria**
activities has the potential to cause damage to such buildings or structures. Generally, vibration below 0.12 inches per second peak particle velocity does not have the potential to damage sensitive buildings or structures. A vibration study may be necessary to determine if such vibration levels will occur. If Public Works determines in consultation with CCSF Planning Department Preservation staff that vibration damage may occur, Public Works will engage a qualified historic architect or historic preservation professional to document and photograph the preconstruction condition of the building and prepare a plan for monitoring the building during construction. The monitoring plan will be submitted to and approved by CCSF Planning Department Preservation Planner prior to the beginning of construction and will be implemented during construction. The monitoring plan will identify how often monitoring will occur, who will undertake the monitoring, reporting requirements on vibration levels, reporting requirements on damage to adjacent historical resources during construction, reporting procedures to follow if such damage occurs, and the scope of the preconstruction survey and post-construction conditions assessment. If any damage to a historic building or structure occurs, Public Works will modify activities to minimize further vibration. If any damage occurs, the building will be repaired following the Secretary of the Interior's Standards for the Treatment of Historic Properties under the guidance of a qualified historic architect or historic preservation professional in consultation with CCSF Department Preservation Planner.				

[1] *Definitions of MMRP Column Headings:*

Adopted Mitigation, Improvement or Public Works Standard Construction Measures: Full text of the mitigation measures, improvement measures or Public Works Standard Construction Measures copied verbatim from the final CEQA document.

Implementation Responsibility: Entity who is responsible for implementing the mitigation measures, improvement measures or Public Works Standard Construction Measures. In most cases this is the project sponsor and/or project's sponsor's contractor/consultant and at times under the direction of the planning department.

Mitigation Schedule: Identifies milestones for when the actions in the mitigation measure, improvement measure or Public Works Standard Construction Measure need to be implemented.

Monitoring/Reporting Responsibility: Identifies who is responsible for monitoring compliance with the mitigation measure, improvement measure or Public Works Standard Construction Measure and any reporting responsibilities. In most cases it is the Planning Department who is responsible for monitoring compliance. If a department or agency other than the planning department is identified as responsible for monitoring, there should be an expressed agreement between the planning department and that other department/agency. In most cases the project sponsor, their contractor, or consultant are responsible for any reporting requirements.
Monitoring Actions/Completion Criteria: Identifies the milestone at which the mitigation measure, improvement measure or Public Works Standard Construction Measure is considered complete. This may also identify requirements for verifying compliance.

San Francisco Planning

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PLANNING COMMISSION MOTION NO. 21482

HEARING DATE: JANUARY 11, 2024

Record No.:	**2019-021884ENV**
Project Title:	**2500 Mariposa Street (SFMTA Potrero Yard Modernization Project)**
Zoning:	Public (P) Use District 65-X Height and Bulk Districts
Block/Lot:	3971/001
Project Sponsor:	San Francisco Municipal Transportation Agency Chris Lazaro – (415) 549-6572 Chris.Lazaro@sfmta.com
Property Owner:	San Francisco Municipal Transportation Agency (City and County of San Francisco) 1 S. Van Ness Ave, 7th Floor San Francisco, CA 94103
Staff Contact:	Jennifer McKellar – (628) 652-7563 Jennifer.McKellar@sfgov.org

ADOPTING FINDINGS UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT RELATED TO THE CERTIFICATION OF A FINAL ENVIRONMENTAL IMPACT REPORT FOR A PROPOSED PROJECT AND A PROPOSED PROJECT VARIANT AT 2500 MARIPOSA STREET. THE PROJECT WOULD INCLUDE SFMTA BUS PARKING AND CIRCULATION (UP TO 213 BUSES); SFMTA MAINTENANCE, OPERATION, AND ADMINISTRATIVE USES; AND JOINT DEVELOPMENT (RESIDENTIAL AND COMMERCIAL) USES AS PART OF A JOINT DEVELOPMENT PROGRAM BETWEEN SFMTA AND A PRIVATE PROJECT CO-SPONSOR. THE APPROXIMATELY 1,250,000 GROSS-SQUARE-FOOT STRUCTURE WOULD RISE TO HEIGHTS RANGING FROM 70 TO 150 FEET ACROSS THE SITE. IT WOULD CONTAIN A FOUR-LEVEL (INCLUDING MEZZANINE LEVEL), APPROXIMATELY 70-FOOT-TALL REPLACEMENT TRANSIT FACILITY (700,000 GROSS SQUARE FEET) PLUS A JOINT DEVELOPMENT WITH A MIX OF COMMERCIAL (3,000 GROSS SQUARE FEET) AND RESIDENTIAL USES (UP TO 530,000 GROSS SQUARE FEET AND 513 UNITS). THE MAJORITY OF RESIDENTIAL DEVELOPMENT WOULD BE ATOP THE REPLACEMENT TRANSIT FACILITY ON FLOORS 7 THROUGH 13. A PROJECT VARIANT (PARATRANSIT VARIANT) IS ALSO PROPOSED, WHICH WOULD CONSTRUCT BRYANT STREET FAMILY HOUSING (103 UNITS) BUT REPLACE THE REMAINDER OF THE PODIUM HOUSING WITH SFMTA'S PARATRANSIT OPERATIONS.

PREAMBLE

On January 11, 2024, the San Francisco Planning Commission (hereinafter "Commission") conducted a duly noticed public hearing at a regularly scheduled meeting regarding the final Environmental Impact Report ("EIR") in compliance with the California Environmental Quality Act for Record No. 2019-021884ENV.

The Project EIR files have been made available for review by the Commission and the public. The Commission Secretary is the Custodian of Records; the file for Record No. 2019-021884ENV is located at 49 South Van Ness Avenue, Suite 1400, San Francisco, California. The project EIR has also been made available for public review online at https://bit.ly/SFPlanning_PotreroYard.

The Commission has heard and considered the testimony presented to it at the public hearing and has further considered written materials and oral testimony presented on behalf of the applicant, Department staff, and other interested parties.

MOVED, that the Commission hereby CERTIFIES the Final Environmental Impact Report identified as Case No. 2019-021884ENV, for the Potrero Yard Modernization Project at 2500 Mariposa Street (hereinafter "Project"), including the project variant (hereinafter "Project Variant") based on the following findings:

1. The City and County of San Francisco, acting through the Planning Department (hereinafter "Department") fulfilled all procedural requirements of the California Environmental Quality Act (Cal. Pub. Res. Code Section 21000 et seq., hereinafter "CEQA"), the State CEQA Guidelines (Cal. Admin. Code Title 14, Section 15000 et seq., hereinafter "CEQA Guidelines") and Chapter 31 of the San Francisco Administrative Code (hereinafter "Chapter 31").

    A. The Department determined that an environmental impact report (hereinafter "EIR") was required and provided public notice of that determination by publication in a newspaper of general circulation on August 19, 2020. On the same date, the Department submitted the notice of preparation of an EIR and notice of public scoping meeting to the state Office of Planning and Research electronically, and emailed or mailed the notice to the Department's list of persons requesting such notice, and to owners and occupants of properties within 300 feet of the project site on August 19, 2020.

    B. On September 2, 2020, the Department held a virtual public scoping meeting by Zoom conference and telephone to receive public comments on the scope of the environmental analysis in the EIR for the project.

    C. On June 30, 2021, the Department published the draft EIR (hereinafter "DEIR") and provided public notice in a newspaper of general circulation of the availability of the DEIR for public review and comment and of the date and time of the Planning Commission public hearing on the DEIR; the Department emailed or mailed the notice to the Department's list of persons requesting such notice, and to property owners and occupants within a 300-foot radius of the site on June 30, 2021.

    D. Electronic copies of the notice of availability of the DEIR and the DEIR were posted to the Planning Department's environmental review documents web page and available for download. The notice of availability of the DEIR was also posted on the website of the San Francisco County Clerk's Office.

    E. The notice of availability of the DEIR and of the date and time of the public hearing at the Planning Commission were posted at and near the project site on June 30, 2021.

    F. On June 30, 2021, the DEIR was emailed or otherwise delivered to government agencies and was submitted to the State Clearinghouse electronically for delivery to responsible or trustee state agencies.

G. A notice of completion of an EIR was filed with the State Secretary of Resources via the State Clearinghouse on June 30, 2021.

2. The Commission held a duly advertised public hearing on said DEIR on August 26, 2021, at which opportunity for public comment was given and public comment was received on the DEIR. The period for acceptance of written comments ended on August 31, 2021.

3. The Department prepared responses to comments on environmental issues received at the public hearing and in writing during the 62-day public review period for the DEIR, prepared revisions to the text of the DEIR in response to comments received or based on additional information that became available during the public review period, and corrected errors in the DEIR. This material was presented in a Responses to Comments document, published on December 13, 2023, posted to the Planning Department's environmental review documents web page, distributed to the Commission, other decisionmakers, and all parties who commented on the DEIR, and made available to others upon request at the Department.

4. A final environmental impact report (hereinafter "FEIR") has been prepared by the Department, consisting of the DEIR, any consultations and comments received during the review process, any additional information that became available, and the Responses to Comments document, all as required by law.

5. The Planning Department Commission Secretary is the Custodian of Records; all pertinent documents are located in the File for Case No. 2019-021884ENV, at 49 South Van Ness Avenue, Suite 1400, San Francisco, California.

6. The Commission, in certifying the completion of said FEIR, hereby does find that none of the factors that would necessitate recirculation of the FEIR under CEQA Guidelines Section 15088.5 are present. The FEIR contains no information revealing (1) any new significant environmental impact that would result from the Project (or Project Variant) or from a new mitigation measure proposed to be implemented, (2) any substantial increase in the severity of a previously identified environmental impact, (3) any feasible Project (or Project Variant) alternative or mitigation measure considerably different from others previously analyzed that would clearly lessen the environmental impacts of the Project (or Project Variant), but that was rejected by the Project's proponents, or (4) that the Draft EIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded.

7. The Commission finds that the Project and Project Variant proposed for approval are within the scope of the Project and Project Variant analyzed in the FEIR, and the FEIR fully analyzed the Project and Project Variant proposed for approval. No new impacts have been identified that were not analyzed in the FEIR.

8. On January 11, 2024, the Commission reviewed and considered the information contained in the FEIR and hereby does find that the contents of said report and the procedures through which the FEIR was prepared, publicized, and reviewed comply with the provisions of CEQA, the CEQA Guidelines, and Chapter 31 of the San Francisco Administrative Code.

9. The Commission hereby does find that the FEIR concerning File No. 2019-021884ENV reflects the independent judgment and analysis of the City and County of San Francisco, is adequate, accurate and objective, and that the Responses to Comments document contains no significant revisions to the DEIR, and hereby does

CERTIFY THE COMPLETION of said FEIR in compliance with CEQA, the CEQA Guidelines, and Chapter 31 of the San Francisco Administrative Code.

10. The Commission, in certifying the completion of said FEIR, hereby does find that the Project and Project Variant described in the EIR:

    A. Would have a significant unavoidable project-specific impact on cultural resources: historical architectural resources;

    B. Would have a significant unavoidable project-specific impact on air quality for construction- and operation-related health risk; and

    C. Would make a considerable contribution to significant unavoidable cumulative impacts on air quality: construction- and operation-related health risk.

11. The Commission reviewed and considered the information contained in the FEIR prior to approving the Project and Project Variant.

I hereby certify that the Planning Commission ADOPTED the foregoing Motion on January 11, 2024.

Jonas P. Ionin
Commission Secretary

AYES:	Braun, Ruiz, Diamond, Imperial, Koppel, Moore, Tanner
NAYS:	None
ABSENT:	None
ADOPTED:	January 11, 2024

12/15/2023

Subject: Letter of Support: Potrero Yard Modernization Project

Honorable Members of the San Francisco Recreation and Parks Commission,

I am writing to express support for the Potrero Yard Modernization Project. The reimagined and rebuilt Potrero Yard would address much-needed transportation infrastructure improvements that support long-term resilient, safe, and efficient Muni operations of an all-electric bus fleet. Additionally, the new Potrero Yard would be enhanced with homes for low- to moderate-income households – the nation's first known joint development of a bus maintenance facility with housing. This project is critical for the City's future, helping San Francisco meet both its pressing housing needs, and growing our sustainable green transportation system which assists the City in meeting its climate goals.

The project developer team, Potrero Neighborhood Collective (PNC), includes both a national transportation developer, Plenary Americas, and local veteran community organizations: Mission Economic Development Agency, Young Community Developers, and Tabernacle Community Development Corporation. PNC's commitment to innovation and community inclusion is evidenced by its proposed design and program including the following priorities:

- **Safe, Reliable, and Improved Muni Service** with a bus yard that can house up to 213 electric trolleybuses (a 54% increase to the current fleet) and modern equipment to maintain the fleet, which will keep buses moving and meet transit riders' needs for years to come.
- **Employee Wellness** with a seismically safe modernized bus yard that also provides natural light, outdoor spaces, and recreation spaces for Muni employees.
- **Maximizing Housing Units and Affordability** by creating safe and stable homes for households that might otherwise be priced out of the City including working families, City employees, and those on a fixed income.
- **Improving Safety for Bicyclists and Pedestrians** by enhancing the City's existing 17th Street bikeway along the project site with proposed Class IV bike lanes from Bryant Street to Hampshire Street, including concrete barriers and wider lanes where possible, and upgrading sidewalks and crossings. These improvements are in line with both the City's Vision Zero strategy, and our Climate Action Plan.
- **New Commercial Spaces that Activate** the streets and include a public restroom, a community-requested public benefit.
- **Approach to Local Economic Inclusion that Prioritizes Southeast Corridor Communities** through Local Business Enterprises (LBE) participation and Local Hire. This is achieved through committed proactive outreach to LBEs and residents of Southeast San Francisco, oversight of future selected general contractors, and transparent reporting.
- **Culturally relevant public art** that celebrates the people, values, history, and diverse culture of the Potrero Hill and Mission neighborhoods while also highlighting SFMTA's goal to provide reliable, safe, and affordable transportation for all.

I am urging you to support the Potrero Yard Modernization Project. We need a new bus yard that serves to improve transit reliability, while also providing public benefits, including new affordable housing on City-owned land, addressing the dire need for housing in the City.

Thank you for your ongoing advocacy for public transit. I look forward to your continued leadership on this crucial issue.

Sincerely,

Adrianna J. Zhang

2 Marina Blvd. Building C, Suite 260
San Francisco, CA 94123
AmericanIndianCulturalDistrict.org

December 14, 2023

Potrero Yard Modernization Project Team
San Francisco Municipal Transportation Agency
1 South Van Ness Avenue, 3rd floor
San Francisco, CA 94103

Subject: American Indian Cultural District Letter of Support for Potrero Yard Modernization Project

To whom it may concern:

The American Indian Cultural District (AICD) is writing this letter to advocate in support of the Potrero Yard Modernization Project. The reimagined Potrero Yard would address much-needed transportation infrastructure improvements for safe, and efficient Muni operations of an all-electric bus fleet. Additionally, the proposed bus yard will include homes for low-to-moderate-income households within the future map boundaries of the American Indian Cultural District.

AICD serves the greater American Indian community by utilizing placemaking and place-keeping initiatives to preserve and celebrate our unique cultures, acting as a collective to strengthen our voices and increase our visibility, and advocating and creating community-strengthening policies aimed at equitable resource access, funding, and opportunities for American Indian people in San Francisco. We believe that culturally relevant and culturally competent initiatives are created and enacted by American Indians for American Indians.

Housing is a high-level focus area for AICD. American Indians are 17 times more likely to be homeless, have the lowest homeownership rates, and have the highest rental rates in San Francisco. In addition to the values outlined in the program design below, we support this project because we hope that it will help address the housing crisis faced by the local American Indian community we serve.

The project developer team, Potrero Neighborhood Collective (PNC), includes both a national transportation developer, Plenary Americas, and local veteran community organizations. PNC's commitment to innovation and community inclusion is evidenced by its proposed design and program which included the following priorities:

- **Safe, Reliable, and Improved Muni Service** with a bus yard that can house up to 213 electric trolleybuses (a 54% increase to the current fleet) and modern equipment to maintain the fleet, keep buses moving, and meet transit riders' needs.

- **Employee Wellness** with a seismically safe modernized bus yard that also provides natural light, outdoor spaces, and recreation spaces for Muni employees.

- **Maximizing Housing Units and Affordability** by creating safe and stable homes for households that might otherwise be priced out of the City including working families, City employees, and those on a fixed income.

- **Improving Safety for Bicyclists and Pedestrians** by enhancing the City's existing 17th Street bikeway along the project site with proposed Class IV bike lanes from Bryant Street to Hampshire Street, including concrete barriers and wider lanes where possible, as well as upgrading sidewalks and crossings. These improvements are known to support bicyclist, pedestrian, and vehicular safety in line with the City's Vision Zero efforts.

- **New Commercial Spaces that Activate** the streets and include a public restroom, a community-requested public benefit.

- **Approach to Local Economic Inclusion that Prioritizes Southeast Corridor Communities** through Local Business Enterprises (LBE) Participation and Local Hire. This is achieved through committed proactive outreach to LBEs and residents of Southeast San Francisco, oversight of future selected general contractors, and transparent reporting.

- **Culturally relevant public art** that celebrates the people, values, history, and diverse culture of the Potrero Hill and Mission neighborhoods while also highlighting SFMTA's goal to provide reliable, safe, and affordable transportation for all.

In conclusion, we hope you consider our request to support the Potrero Yard Modernization Project. We need a new bus yard that serves to improve transit reliability while also providing public benefits, including new housing on City-owned land to address the City's dire need for affordable housing.

Sincerely,

Sharaya Souza, Executive Director
American Indian Cultural District

Mary Travis-Allen, Board President
American Indian Cultural District

12/15/2023

Subject: Letter of Support: Potrero Yard Modernization Project

Honorable Members of the San Francisco Recreation and Parks Commission,

I am writing to express support for the Potrero Yard Modernization Project as a Member of the Project's CommunityWorking Group. The reimagined and rebuilt Potrero Yard would address much-needed transportation infrastructure improvements that support long-term resilient, safe, and efficient Muni operations of an all-electric bus fleet. Additionally, the new Potrero Yard would be enhanced with homes for low- to moderate-income households – the nation's first known joint development of a bus maintenance facility with housing. This project is critical for the City's future, helping San Francisco meet both its pressing housing needs, and growing our sustainable green transportation system which assists the City in meeting its climate goals.

The project developer team, Potrero Neighborhood Collective (PNC), includes both a national transportation developer, Plenary Americas, and local veteran community organizations: Mission Economic Development Agency, Young Community Developers, and Tabernacle Community Development Corporation. PNC's commitment to innovation and community inclusion is evidenced by its proposed design and program including the following priorities:

- **Safe, Reliable, and Improved Muni Service** with a bus yard that can house up to 213 electric trolleybuses (a 54% increase to the current fleet) and modern equipment to maintain the fleet, which will keep buses moving and meet transit riders' needs for years to come.
- **Employee Wellness** with a seismically safe modernized bus yard that also provides natural light, outdoor spaces, and recreation spaces for Muni employees.
- **Maximizing Housing Units and Affordability** by creating safe and stable homes for households that might otherwise be priced out of the City including working families, City employees, and those on a fixed income.
- **Improving Safety for Bicyclists and Pedestrians** by enhancing the City's existing 17th Street bikeway along the project site with proposed Class IV bike lanes from Bryant Street to Hampshire Street, including concrete barriers and wider lanes where possible, and upgrading sidewalks and crossings. These improvements are in line with both the City's Vision Zero strategy, and our Climate Action Plan.
- **New Commercial Spaces that Activate** the streets and include a new public restroom for all to use.
- **Approach to Local Economic Inclusion that Prioritizes Southeast Corridor Communities** through Local Business Enterprises (LBE) participation and Local Hire. This is achieved through committed proactive outreach to LBEs and residents of Southeast San Francisco, oversight of future selected general contractors, and transparent reporting.
- **Culturally relevant public art** that celebrates the people, values, history, and diverse culture of the Potrero Hill and Mission neighborhoods while also highlighting SFMTA's goal to provide reliable, safe, and affordable transportation for all.

I am urging you to support the Potrero Yard Modernization Project. We need a new bus yard that serves to improve transit reliability, while also providing public benefits, including new affordable housing on City-owned land, addressing the dire need for housing in the City.

Thank you for your ongoing advocacy for public transit. I look forward to your continued leadership on this crucial issue.

Sincerely,

Alexander B.N. Hirji, Member, SFMTA Potrero Yard Modernization Project Working Group

From: Christian Vega
To: Pantoja, Gabriela (CPC); CPC-Commissions Secretary
Subject: Potrero Yard Letter of Support
Date: Wednesday, January 10, 2024 8:47:45 AM

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

To Whom it May Concern,

My name is Christian Vega and I'd like to submit a letter of support for the Potrero Yard project.

I'm currently a member of the project working group as a resident of the local neighborhood but my support for the project goes beyond that.

As a resident of the city for the last 6 years, I recognize that San Francisco is at a critical point in its development. There is shortage of housing amidst a population boom while the city struggles with an identity crisis. I believe that this project represents a small but important step in helping the city move forward.

By providing affordable housing and modernizing critical public transportation infrastructure, the Potrero Yard project achieves double the impact of many other projects. This effort has the opportunity to increase housing access and reduce congestion in the city while also beautifying the neighborhood.

Projects like these that combine housing and retail with infrastructure are common in places like Japan and, in my experience living there, encouraged me to use public transportation more. By making the station a destination in itself, it is no longer just a waypoint, but instead has the potential to be an integrated part of the neighborhood. I look forward to seeing more projects like this in the city and for that reason hope the planning commission considers approving the endeavor.

Regards,
Christian Vega

San Francisco Transit Riders
P.O. Box 193341, San Francisco, CA 94119
www.sftransitriders.org | info@sftransitriders.org | @SFTRU

December 21, 2023

Subject: Letter of Support: Potrero Yard Modernization Project

I am writing on behalf of San Francisco Transit Riders to express support for the Potrero Yard Modernization Project. As a public transit advocacy organization, we believe the upgrades to Potrero Yard will improve transit service for transit riders, as well as the experience for workers. This project will have a positive impact on reducing the city's greenhouse gas emissions and improving equity by improving Muni facilities and providing new affordable housing. In order to meet our city's ambitious climate goals, it is crucial that we do all we can to ensure our public transit fleet is operating cleanly and efficiently.

The reimagined Potrero Yard would address much-needed transportation infrastructure improvements that support long term resilient, safe, and efficient Muni operations of an all-electric bus fleet. Additionally, the century-old bus yard would be enhanced with homes for low- to moderate-income households – the nation's first known joint development of a bus maintenance facility with housing.

The project developer team, Potrero Neighborhood Collective (PNC), includes both a national transportation developer, Plenary Americas, and local veteran community organizations: Mission Economic Development Agency, Young Community Developers, and Tabernacle Community Development Corporation. PNC's commitment to innovation and community inclusion is evidenced by their proposed design and program including the following priorities:

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- Approach to Local Economic Inclusion that Prioritizes Southeast Corridor Communities through Local Business Enterprises (LBE) participation and Local Hire. This is achieved through committed proactive outreach to LBEs and residents of Southeast San Francisco, oversight of future selected general contractors, and transparent reporting.
- Culturally relevant public art that celebrates the people, values, history and diverse culture of the Potrero Hill and Mission neighborhoods while also highlighting SFMTA's goal to provide reliable, safe, and affordable transportation for all.

San Francisco Transit Riders
P.O. Box 193341, San Francisco, CA 94119
www.sftransitriders.org | info@sftransitriders.org | @SFTRU

I am urging you to support the Potrero Yard Modernization Project as we need a new bus yard that serves to improve transit reliability while also providing public benefits, including new housing on City-owned land to address the City's dire need for affordable housing.

Thank you for your ongoing advocacy for public transit. I look forward to your continued leadership on this issue.

Sincerely,

Dylan Fabris
Community & Policy Manager
San Francisco Transit Riders

January 5, 2024

Subject: Letter of Support: Potrero Yard Modernization Project

I am writing on behalf of Calle 24 Latino Cultural District to express support for the Potrero Yard Modernization Project. The reimagined Potrero Yard would address much-needed transportation infrastructure improvements that support long term resilient, safe, and efficient Muni operations of an all-electric bus fleet. Additionally, the century-old bus yard would be enhanced with homes for low- to moderate-income households – the nation's first known joint development of a bus maintenance facility with housing.

The project developer team, Potrero Neighborhood Collective (PNC), includes both a national transportation developer, Plenary Americas, and local veteran community organizations: Mission Economic Development Agency, Young Community Developers, and Tabernacle Community Development Corporation. PNC's commitment to innovation and community inclusion is evidenced by their proposed design and program including the following priorities:

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- **New Commercial Spaces that Activate** the streets and include a public restroom, a community requested public benefit.
- **Approach to Local Economic Inclusion that Prioritizes Southeast Corridor Communities** through Local Business Enterprises (LBE) participation and Local Hire. This is achieved through committed proactive outreach to LBEs and residents of Southeast San Francisco, oversight of future selected general contractors, and transparent reporting.

- **Culturally relevant public art** that celebrates the people, values, history and diverse culture of the Potrero Hill and Mission neighborhoods while also highlighting SFMTA's goal to provide reliable, safe, and affordable transportation for all.

I am urging you to support the Potrero Yard Modernization Project as we need a new bus yard that serves to improve transit reliability while also providing public benefits, including new housing on City-owned land to address the City's dire need for affordable housing.

Thank you for your ongoing advocacy for public transit. I look forward to your continued leadership on this issue.

Sincerely,

Erick Arguello
Calle 24 Latino Cultural District

San Francisco Parks and Recreation Commission
501 Stanyan Street
San Francisco, CA 94117
Email: recpark.commision@sfgov.org

December 20, 2023

Dear San Francisco Park and Recreation Commission,

The Friends of Franklin Square board is writing to express our support for the proposed SFMTA Potrero Yard Modernization Project proposed by Potrero Neighborhood Collective (PNC). It is our opinion that the proposed project will benefit Franklin Square Park and the majority of its park users despite casting some shadows on the park. Our primary reasons are as follows:

1) The proposed residential development will become home to many residents who we believe will become new park users. Living in such close proximity to the park, we believe they will be invested in Franklin Square's well-being and will work towards improving it. More park users will further activate the park and improve park safety.

2) Although the Project as proposed does create a shadow on the children's playground, adult workout area and soccer field it does appear to be limited in duration. Our opinion is based upon our understanding that the project will increase the net new annual shadow on the park by to 3.13% from the current 1.77%. Our opinion recognizes that the new project will constrain the views from Franklin Square for park users from the current open air bus yard. Nevertheless, the severity of these issues does not, in our opinion, sufficiently negate the benefits the project will bring to Franklin Square.

3) Furthermore, PNC supported Friends of Franklin Square's several requests for community benefits including:

a) Construct and maintain a public restroom on-site, located at the corner of 17th & Bryant Street.
b) Construct a commercial space at the corner of Hampshire & 17th Street to increase street activation. The commercial space will also have a restroom available to customers.
c) Construct a raised pedestrian crosswalk at the corner of 17th & Hampshire Street.
d) Improve street safety on all streets bordering the Project through street lighting and activation (commercial space at 17th & Hampshire), residential, employee and bus entryways & vendor spaces on 17th Street.
e) Enhance bike lane safety on 17th Street with concrete medians and a wider lane.
f) Beautify streets and views from Franklin Square: The Project will include public art along 17th Street that celebrates the people, values and history of the

neighborhood. Street and podium level trees/greenery are planned throughout the Project.

Friends of Franklin Square is an all-volunteer operated organization that seeks to enhance and improve everyone's experience at our local park. FoFS was created in 2006 to rejuvenate Franklin Square Park. We are proud to announce a fully staffed Pit Stop station opened at Franklin Square in November 2023 through our advocacy work. Since 2007, our group has advocated and secured city funding to upgrade the park including a complete remodel of the playground in 2007, the installation of the Brotherhood of Man mosaic at the park in 2013 and, in 2020, the construction of a new adult outdoor workout area, park lighting and upgrades to the park's walking path. Friends of Franklin Square was recognized by the Neighborhood Empowerment Network in 2017 as an outstanding park volunteer group. We have 267 members on our email list.

SFMTA and the PNC team included a representative from Friends of Franklin as part of the Working Group, actively soliciting our feedback about the Project. Friends of Franklin Square worked hard to inform our neighbors about the Project via emails, social media posts, physical sign posting at the park and inviting PNC to present to our group.

Results from our outreach are generally positive and were shared with us verbally at the SFMTA/PNC group presentation. Our recent email soliciting additional feedback received one negative response which we are including in Appendix A.

If you have any questions, please feel free to contact us via email at friendsoffranklinsquare@gmail.com.

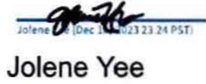
Sincerely,

Friends of Franklin Square Board

Alejandro Abogado

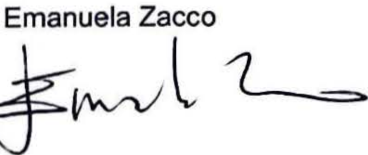
Anna Celli

Anjuli Piya



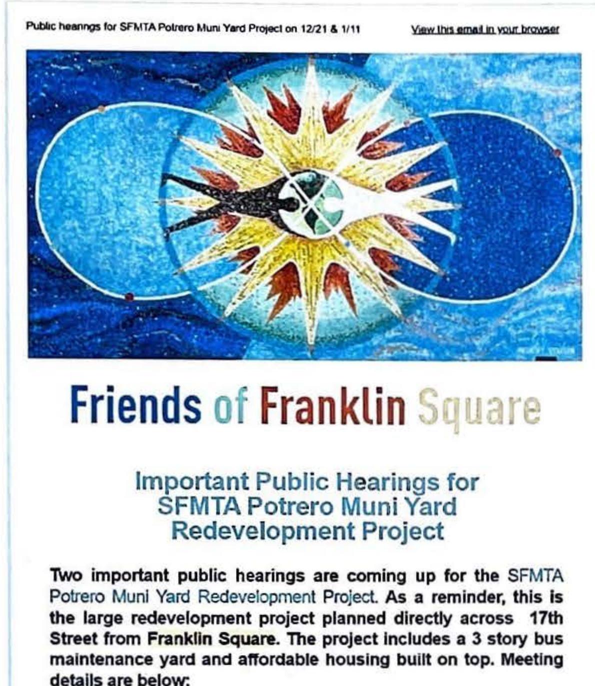
Jolene Yee

Emanuela Zacco



Appendix A: Outreach & Public Comments:

Email to FoFS members

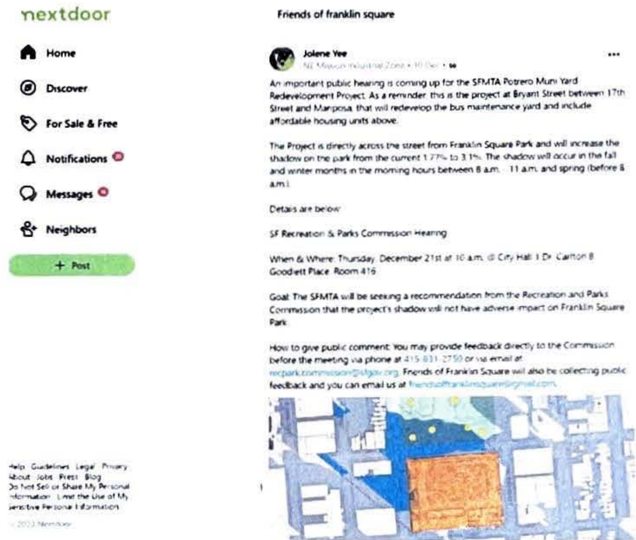

Public hearings for SFMTA Potrero Muni Yard Project on 12/21 & 1/11 | View this email in your browser

Friends of Franklin Square

Important Public Hearings for SFMTA Potrero Muni Yard Redevelopment Project

Two important public hearings are coming up for the SFMTA Potrero Muni Yard Redevelopment Project. **As a reminder, this is the large redevelopment project planned directly across 17th Street from Franklin Square. The project includes a 3 story bus maintenance yard and affordable housing built on top. Meeting details are below:**

Post on Nextdoor


nextdoor

Home
Discover
For Sale & Free
Notifications
Messages
Neighbors
+ Post

Friends of franklin square

Jolene Yee

An important public hearing is coming up for the SFMTA Potrero Muni Yard Redevelopment Project. As a reminder, this is the project at Bryant Street between 17th Street and Mariposa that will redevelop the bus maintenance yard and include affordable housing units above.

The Project is directly across the street from Franklin Square Park and will increase the shadow on the park from the current 1.77% to 3.1%. The shadow will occur in the fall and winter months in the morning hours between 8 a.m. - 11 a.m. and spring (before 8 a.m.).

Details are below:

SF Recreation & Parks Commission Hearing

When & Where: Thursday, December 21st at 10 a.m. @ City Hall 1 Dr. Carlton B. Goodlett Place, Room 416

Goal: The SFMTA will be seeking a recommendation from the Recreation and Parks Commission that the project's shadow will not have adverse impact on Franklin Square Park.

How to give public comment: You may provide feedback directly to the Commission before the meeting via phone at 415-831-2750 or via email at recpark.commission@sfgov.org. Friends of Franklin Square will also be collecting public feedback and you can email us at friendsoffranklinsquare@gmail.com.

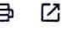
Sign postings at Franklin Square Park

Public Hearings for SFMTA Potrero Yard Redevelopment Project

SF Rec & Park Hearing	SF Planning Hearing
12/21/2023 @ 10 a.m.	1/11/2024 @ noon
City Hall Room 416	City Hall Room 400
recpark.commission@sfgov.org	commissions.secretary@sfgov.org

Public comment received:

Feedback/Opinions on SFMTA Potrero Muni Yard Redevelopment Project Inbox ×



to me

Wed, Dec 13, 2:45 PM (5 days ago)

I wonder how much money are you going to take to sell out your organization's namesake park, like you did your neighbors on Bryant St. a while back? The park will be losing sunlight from that decision that you supported. If you support this one, pretty soon they'll need to keep the field lights on 24/7.

I hope you rise to the occasion and defy this further attempt by developers to take away our quality of life so that they can rake in the $$$.

From:	Garrett Sadler
To:	Pantoja, Gabriela (CPC); CPC-Commissions Secretary; potreroyard@sfmta.com
Subject:	Letter of support for Potrero Yard modernization
Date:	Friday, January 5, 2024 6:11:44 PM

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Hello,

I am writing [on behalf of to express support for the Potrero Yard Modernization Project. The reimagined Potrero Yard would address much-needed transportation infrastructure improvements that support long term resilient, safe, and efficient Muni operations of an all-electric bus fleet. Additionally, the century-old bus yard would be enhanced with homes for low- to moderate-income households – the nation's first known joint development of a bus maintenance facility with housing.

The project developer team, Potrero Neighborhood Collective (PNC), includes both a national transportation developer, Plenary Americas, and local veteran community organizations: Mission Economic Development Agency, Young Community Developers, and Tabernacle Community Development Corporation. PNC's commitment to innovation and community inclusion is evidenced by their proposed design and program including the following priorities:

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Culturally relevant public art that celebrates the people, values, history and diverse culture of the Potrero Hill and Mission neighborhoods while also highlighting SFMTA's goal to provide reliable, safe, and affordable transportation for all.
I am urging you to support the Potrero Yard Modernization Project as we need a new bus yard that serves to improve transit reliability while also providing public benefits, including new housing on City-owned land to address the City's dire need for affordable housing.

Thank you for your ongoing advocacy for public transit. I look forward to your continued leadership on this issue.

Sincerely,

Garrett Sadler

12.15.23

Subject: Letter of Support: Potrero Yard Modernization Project

I am writing to express support for the Potrero Yard Modernization Project. I live near new the project and believe in its mission to create more desperately needed housing for San Francisco as well as modernize the 100-year Muni station to ensure this mass transit hub stays vital. Most of all I'm excited to have new neighbors and the energy they will bring to the neighborhood.

The reimagined Potrero Yard would address much-needed transportation infrastructure improvements that support long term resilient, safe, and efficient Muni operations of an all-electric bus fleet. Additionally, the century-old bus yard would be enhanced with homes for low- to moderate-income households – the nation's first known joint development of a bus maintenance facility with housing.

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I am urging you to support the Potrero Yard Modernization Project as we need a new bus yard that serves to improve transit reliability while also providing public benefits, including new housing on City-owned land to address the City's dire need for affordable housing.

Thank you for your ongoing advocacy for public transit. I look forward to your continued leadership on this issue.

Sincerely,

Heather Dunbar

Homeless Prenatal Program

Stable families, healthy communities

December 14, 2023

San Francisco Planning Commission
City Hall - Room 400
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

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Psyche Philips

Arpana Vidyarthi

Shellena Eskridge,
Executive Director

Martha Ryan,
Founder

Subject: Letter of Support: Potrero Yard Modernization Project

Dear Commissioners,

I am writing on behalf of Homeless Prenatal Program to express support for the Potrero Yard Modernization Project. The reimagined Potrero Yard would address much-needed transportation infrastructure improvements that support long term resilient, safe, and efficient Muni operations of an all-electric bus fleet. Additionally, the century-old bus yard would be enhanced with homes for low-to moderate-income households – the nation's first known joint development of a bus maintenance facility with housing. As an organization that has helped families find stable, affordable housing in San Francisco for over thirty years, we know the critical need for the housing this project will help address.

The project developer team, Potrero Neighborhood Collective (PNC), includes both a national transportation developer, Plenary Americas, and local veteran community organizations: Mission Economic Development Agency, Young Community Developers, and Tabernacle Community Development Corporation. PNC's commitment to innovation and community inclusion is evidenced by their proposed design and program including the following priorities:

- **Safe, Reliable, and Improved Muni Service** with a bus yard that can house up to 213 electric trolleybuses (a 54% increase to the current fleet) and modern equipment to maintain the fleet and keep buses moving and meet transit riders' needs.
- **Employee Wellness** with a seismically-safe modernized bus yard that also provides natural light, outdoor spaces, and recreation spaces for Muni employees.

- **Maximizing Housing Units and Affordability** by creating safe and stable homes for households that might otherwise be priced out of the City including working families, City employees, and those on a fixed income.

- **Improving Safety for Bicyclists and Pedestrians** by enhancing the City's existing 17th Street bikeway along the project site with proposed Class IV bike lanes from Bryant Street to Hampshire Street, including concrete barriers and wider lanes where possible, as well as upgrading sidewalks and crossings. These improvements are known to support bicyclist, pedestrian, and vehicular safety in line with the City's Vision Zero efforts.

- **New Commercial Spaces that Activate** the streets and include a public restroom, a community requested public benefit.

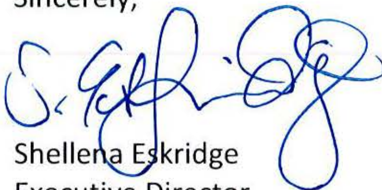
- **Approach to Local Economic Inclusion that Prioritizes Southeast Corridor Communities** through Local Business Enterprises (LBE) participation and Local Hire. This is achieved through committed proactive outreach to LBEs and residents of Southeast San Francisco, oversight of future selected general contractors, and transparent reporting.

- **Culturally relevant public art** that celebrates the people, values, history and diverse culture of the Potrero Hill and Mission neighborhoods while also highlighting SFMTA's goal to provide reliable, safe, and affordable transportation for all.

I urge you to support the Potrero Yard Modernization Project as we need a new bus yard that serves to improve transit reliability while also providing public benefits, including new housing on City-owned land to address the City's dire need for affordable housing.

Thank you for your ongoing advocacy for public transit. I look forward to your continued leadership on this issue.

Sincerely,



Shellena Eskridge
Executive Director

From:	Linda Appu
To:	Pantoja, Gabriela (CPC); CPC-Commissions Secretary; PotreroYard@sfmta.com
Subject:	Letter of Support: Potrero Yard Modernization Project
Date:	Monday, January 8, 2024 8:26:43 AM

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

I am writing to express my support for the Potrero Yard Modernization Project. The reimagined Potrero Yard would address much-needed transportation infrastructure improvements that support long term resilient, safe, and efficient Muni operations of an all-electric bus fleet. Additionally, the century-old bus yard would be enhanced with homes for low- to moderate-income households – the nation's first known joint development of a bus maintenance facility with housing.

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Thank you for your ongoing advocacy for public transit. I look forward to your continued leadership on this issue.

Sincerely,
Linda Appu

From: Magda de Melo Freitas
To: Pantoja, Gabriela (CPC)
Subject: Fwd: Potrero Yard Modernization - substantial increase of exposure to air toxic pollutants issue and mesh facade at Hampshire street
Date: Wednesday, January 10, 2024 6:59:59 PM

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Hi Gabriela,

I am forwarding the email I just sent to Debra Dwyer since I had your email address wrong. See below,

Thanks,
---------- Forwarded message ---------
From: **Magda de Melo Freitas** <magdammelo@gmail.com>
Date: Wed, Jan 10, 2024 at 6:48 PM
Subject: Potrero Yard Modernization - substantial increase of exposure to air toxic pollutants issue and mesh facade at Hampshire street
To: <debra.dwyer@sfgov.org>, <gabriela.pantoja@sfgov.br>, <commissions.secretary@sfgov.org>

Hi Debra,

My name is Magda, I am part of the Potrero Yard Modernization Working Group and live across the Potrero Muni Yard. Yesterday, and many times before, I expressed during our monthly meetings my concern related to the EIR Analysis of Air Pollutant Emissions and tried to discuss ways to mitigate this important issue.

One of my questions to the Potrero Yard Project EIR DRAFT dated August 30, 2021, is:
"7. The proposed project will contribute negatively to the air quality and will provide considerable health risk impacts on the new residents of the project and those living in the vicinity. Can this EIR include a mitigation measure to turn this “significant and unavoidable impact” into a "less than significant impact? "

The "RESPONSE AQ-1: Exposure of Sensitive Receptors to Toxic Air Contaminant" does not address our concern regarding the substantial increase of exposure to air toxic pollutants that this project will generate during the operational phase, post-construction.

The RESPONSE AQ-1 clearly states *" As a result, the analysis conservatively concludes that construction and operation of the Draft EIR Project could result in a substantial increase in the exposure of sensitive receptors to TACs and the impact on local air quality would be significant."*

My main concern is that the schematic design of the Potrero Yard proposes an "open mesh" to "enclose" the 2nd and 3rd floor of the Potrero Yard Building facing Hampshire Street.

This "open mesh" is not an enclosure but an open surface that cannot contain the pollutants generated by the buses, the service cars, and other activities like the car wash, vehicle tires, etc.
Not only the activities on the 2nd and 3rd floors will generate pollution and dust, but also noise, and light pollution at night in particular.

Currently, the activities on the existing Muni Potrero Yard facing Hampshire Street are contained behind a wall. We understand that the fact that this project proposes an increase in the size of the facade, and making this facade mainly open will negatively impact the air quality in that area. Note that the proposed mesh area is very large and extends the whole Hampshire Street facade longitudinally with two double-height floors.

Could one of the mitigation measures be to make the 2nd and 3rd floors contained or partially contained with a surface other than an open mesh to control the emission of pollutants, noise, and light pollution? Could the EIR include a mitigation measure addressing this issue?

Thank you,

Magda Freitas

From: Pedro Freitas
To: Pantoja, Gabriela (CPC)
Subject: Potrero Yard Project public comment for EIR hearing
Date: Thursday, January 11, 2024 9:26:06 AM

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Hello Gabriela.
My name is Pedro Freitas and I am the current president of the HOA at 475 Hampshire street. Our building faces the Potrero Yard Project.
I would like to bring to your attention, and express it as a public comment in the EIR hearing, that we are concerned with multiple impacts of the project on the quality of life of our residents.
The EIR identified air pollution impact during construction and during regular operation of the Yard. The EIR has not addressed the impact on our residents from dust and other pollutants that will pass through the open mesh facade of the Project on Hampshire street.
All units of our building depend on the front windows for ventilation that face the project. This concerned has been raised with the project designers and remains undressed.
Similarly, the project mesh facade will impact our residents with light and noise levels. All bedrooms of all of our units face the Project with floor to ceiling windows. The proposed project design will significantly increase noise and light levels compared to the existing Yard structure.
These concerns have all been expressed to the design team and have been largely ignored. The answers we have received so far do not address any of these concerns.

I cannot attend the hearing today due to travel. I would be appreciative if these comments can be expressed on our behalf.

Thanks you in advance,
Pedro Freitas
475 Hampshire Street HOA

From: Peter Belden <pbelden@gmail.com>
Sent: Friday, December 15, 2023 9:02 AM
To: Pantoja, Gabriela (CPC); PotreroYard@sfmta.com
Subject: support for Potrero Yard Modernization Project

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear Planning Commission,

I am writing to express my strong support for the Potrero Yard Modernization Project. As a member of the Potrero Yard Neighborhood Working Group and a Potrero resident who lives near the project site I have had the opportunity to learn in depth about the project and to hear a range of constituencies express their opinions and ask questions.

This project is particularly urgent for three reasons:

1. **Housing density** - San Francisco needs a dramatic increase in the amount of housing and in housing density. This density will promote economic growth, improve transit utilization and convenience and is a critical step in reducing greenhouse gas emissions.
2. **Improved transit** - The project provides much-needed transportation infrastructure improvements that support long term resilient, safe, and efficient Muni operations of an all-electric bus fleet. The new bus yard would house 54% more buses as well as the modern equipment to maintain the expanded fleet.
3. **Housing affordability** - The project is 100% affordable, below market, providing hundreds of units to lower income residents and families. The city is behind in achieving state mandated levels of affordable housing and this project is an essential opportunity for progress.

I expect that there may be one or two voices expressing concern about the amount of shadow the new building would create for the nearby park. In a small dense city like San Francisco there are always trade-offs. To me it is 100% clear that the imperative to address the dire emergency of the climate crisis by building more dense housing in urban centers and promoting electrified public transit makes the resulting shadow impact a trivial cost and well worth the trade-off. Furthermore, providing affordable housing for several hundred low income residents and families is also well worth creating a small amount of shadow on a park. Shadow is not entirely a bad thing. Cities need to provide more shadow to reduce the heat island effect and make up for shadow that would have been provided by trees where buildings stand.

Community outreach has been exhaustive. The project developer team, Potrero Neighborhood Collective (PNC), includes both a national transportation developer, Plenary Americas, and local veteran community organizations: Mission Economic Development Agency, Young Community Developers, and Tabernacle Community Development Corporation. They have partnered with SFMTA to do extensive outreach and provide transparent information to the community over the course of multiple years. They have more than achieved the necessary amount of outreach and have made information and contact people easily available. If anything the project has been too slow because of the extensive amount of public outreach and engagement.

Safety for People Walking and Biking

There is one area where some critical improvements are still needed in the project design, safety of people walking and biking along 17th Street in front of Potrero Yard. The new development appropriately provides zero resident parking spaces and few if any parking spaces for employees. This will dramatically increase the number of people walking and biking along 17th St, an already busy corridor for walking and biking. However the current design, because of unreasonable demands from the SF fire department, does not include the typical minimum safety features, such as a six-inch concrete curb to protect the bike lane. Specifically the fire code makes clear that a six-inch curb does not impede emergency vehicle access and thus is appropriate for this location. However, a few individuals in the SF Fire Department are ignoring the fire code and are insisting that safety for people walking and biking be compromised and that six-inch curb protection not be provided. Instead they demand a mountable curb which does not provide adequate safety. This is particularly unnecessary given that this new building will meet the most current fire code and have the latest in fire prevention features. The risk of a fire is greatly reduced in this type of brand new building. But most importantly six-inch curbs are consistent with the fire code and we cannot allow the fire department to undermine safety of people walking and biking a time when roughly thirty people are killed each year in traffic crashes in San Francisco.

To be blunt, fire safety is not what is driving the decisions by SFMTA and the developer team to undermine safety for people walking and biking along 17th Street. Rather it is mayoral politics that is driving the bad decisions. The fire department and its union have political power and have shown they are able to bully this mayor. Thus current SFMTA leaders have been unwilling to stand up for safety because they do not have the backing of the mayor in the face of fire department criticism.

As the Planning Commission you have the ability to stand up to this abuse of power. We must insist that SFMTA implement the following essential improvements to the pedestrian and bicycle infrastructure in the project:

1. six-inch concrete curb not mountable curb protection for bike lanes
2. protected corners including corner islands at both intersections on 17th Street. This would be safer for pedestrians than bulb outs and would considerably improve safety for people on bicycles. Adjustments to the sidewalk can be made to create space for both bus turning radius and protected corners
3. the elimination of mixing zones where the protection of the bike lane disappears and vehicles may enter the bike lane

The Potrero Yard Modernization Project is a rare opportunity and an essential step forward for the city on housing, transportation, equity and sustainability. I urge you to approve the project with haste so that it can be implemented quickly.

Peter Belden
519 Vermont St
San Francisco, CA 94107

12/18/2023

Subject: Letter of Support: Potrero Yard Modernization Project

I am writing on behalf of Cultura y Arte Nativa de las Americas (CANA) to express support for the Potrero Yard Modernization Project. The reimagined Potrero Yard would address much-needed transportation infrastructure improvements that support long term resilient, safe, and efficient Muni operations of an all-electric bus fleet. Additionally, the century-old bus yard would be enhanced with homes for low- to moderate-income households – the nation's first known joint development of a bus maintenance facility with housing.

The project developer team, Potrero Neighborhood Collective (PNC), includes both a national transportation developer, Plenary Americas, and local veteran community organizations: Mission Economic Development Agency, Young Community Developers, and Tabernacle Community Development Corporation. PNC's commitment to innovation and community inclusion is evidenced by their proposed design and program including the following priorities:

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- **New Commercial Spaces that Activate** the streets and include a public restroom, a community requested public benefit.
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- **Culturally relevant public art** that celebrates the people, values, history and diverse culture of the Potrero Hill and Mission neighborhoods while also highlighting SFMTA's goal to provide reliable, safe, and affordable transportation for all.

I am urging you to support the Potrero Yard Modernization Project as we need a new bus yard that serves to improve transit reliability while also providing public benefits, including new housing on City-owned land to address the City's dire need for affordable housing.

Thank you for your ongoing advocacy for public transit. I look forward to your continued leadership on this issue.

Sincerely,

Roberto Y. Hernandez

Roberto Y. Hernandez
CEO, Cultura y Arte Nativa de las Americas

January 9, 2024

Subject: Letter of Support: Potrero Yard Modernization Project

I am writing Raven McCroey to express support for the Potrero Yard Modernization Project. The reimagined Potrero Yard would address much-needed transportation infrastructure improvements that support long term resilient, safe, and efficient Muni operations of an all-electric bus fleet. Additionally, the century-old bus yard would be enhanced with homes for low- to moderate-income households – the nation's first known joint development of a bus maintenance facility with housing.

The project developer team, Potrero Neighborhood Collective (PNC), includes both a national transportation developer, Plenary Americas, and local veteran community organizations: Mission Economic Development Agency, Young Community Developers, and Tabernacle Community Development Corporation. PNC's commitment to innovation and community inclusion is evidenced by their proposed design and program including the following priorities:

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Thank you for your ongoing advocacy for public transit. I look forward to your continued leadership on this issue.

Sincerely,

Raven McCroey
Shanti Project

December 19, 2024

San Francisco Recreation & Parks Commission

Re: Potrero Yard Modernization Rebuild

Dear Recreation & Parks Commissioners:

I am writing as a member of the Potrero Yard Neighborhood Working Group. I was appointed to the working group earlier this year. I have spent most of my career as a developer of affordable housing, working in community-based nonprofit organizations in San Francisco. More than a decade ago, I was part of the group that advocated for San Francisco to require that publicly owned parcels that were considered "surplus" would be dedicated for affordable housing.

The current project, combining the modernization of the outdated Potrero bus yard with new construction of hundreds of units of affordable housing, is a natural succession to the original surplus property law, recognizing that public lands be considered, whenever possible, as opportunities for affordable housing. While the project faces extraordinary challenges in keeping the twin goals of transportation infrastructure and affordable housing moving on parallel tracks, the MTA has assembled an impressive development team to make it happen. In particular, the selection of the affordable housing development partnership of Mission Economic Development Agency, Young Community Developers, and Tabernacle Community Development Corporation – three committed, experienced, accountable, community-based organizations – ensures that the housing component will be – as promised to the community – 100% affordable.

The sustainability of our City (and our planet) depends on having state-of-the-art public transit and adequate affordable housing for low- and moderate-income people. The recently issued Regional Housing Needs Allocation sets a goal for San Francisco to produce 46,598 affordable homes by 2031. Without cutting-edge projects like the Potrero Yard rebuild, we will never come close to achieving that goal. I urge you to support this thoughtful and much-needed project, and to continue to look for innovative solutions to meet San Francisco's desperate affordable housing needs.

Sincerely,

Amy Beinart
amybeinart@gmail.com

January 3, 2024

Subject: Letter of Support: Potrero Yard Modernization Project

I am writing on behalf of Little Mission Studio, a business located on Hampshire Street across from the Potrero Yard, to express support for the Potrero Yard Modernization Project. The reimagined Potrero Yard would address much-needed transportation infrastructure improvements that support long term resilient, safe, and efficient Muni operations of an all-electric bus fleet. Additionally, the century-old bus yard would be enhanced with homes for low- to moderate-income households – the nation's first known joint development of a bus maintenance facility with housing.

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One area that could use your help is navigating all the organizations to design the streets around the yard to best support the entire community. Plenary Americas assures me that they do not have a say in planning the streets, but could not point me to who does. The latest designs that I have seen remove the only handicapped parking for Franklin Square Park, and remove significant existing parking around the project by adding several loading zones and bulb outs as well as changing Hampshire street from head in to parallel parking. All this while increasing the number of people living and working in the block. The loss of handicap access to Franklin Square park seems to be reducing accessibility in the neighborhood. The change of parking to Hampshire street will mean that the delivery/pickup trucks visiting the PDR businesses with loading garages on Hampshire street will block both the sidewalk and the traffic lanes by no longer having the ability to back into the garage with the buffer of the head-in parking.

Thank you for your ongoing advocacy for public transit, and the overall community where the transit garages are located. I look forward to your continued leadership on this issue.

Sincerely,

Christian F. Howes
Co-Founder
Little Mission Studio

January 3, 2024

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Thank you for your ongoing advocacy for public transit, and the overall community where the transit garages are located. I look forward to your continued leadership on this issue.

Sincerely,

Christian F. Howes
Co-Founder
Little Mission Studio

From:	CPC-Commissions Secretary
Cc:	Pantoja, Gabriela (CPC); Feliciano, Josephine (CPC)
Subject:	FW: Planning Commission: Support for Potrero Yard Modernization Project
Date:	Thursday, January 11, 2024 11:11:54 AM

Best,
Josephine O. Feliciano, Planning Technician II
Commission Affairs
San Francisco Planning
49 South Van Ness Avenue, Suite 1400, San Francisco, CA 94103
Direct: 628.652.7600 | www.sfplanning.org
San Francisco Property Information Map

From: Scott Feeney <scott@oceanbase.org>
Sent: Thursday, January 11, 2024 8:22 AM
To: CPC-Commissions Secretary <commissions.secretary@sfgov.org>
Cc: PotreroYard <PotreroYard@sfmta.com>
Subject: Planning Commission: Support for Potrero Yard Modernization Project

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Planning Commissioners,

I'm writing to express support for the Potrero Yard Modernization Project. This is a critical project for meeting Muni's operational needs to keep San Francisco moving, as well as adding much-needed affordable housing for low- and moderate-income households.

Other benefits include economic inclusion through local hire, culturally relevant art, new commercial space to activate the street, a new bathroom serving visitors to Franklin Square Park, and bicycle and pedestrian safety improvements on 17th Street.

As a Mission District neighbor and housing advocate, I've served on the Potrero Yard Neighborhood Working Group since 2018 and seen how this project has come together, shaped by real outreach and genuine community feedback. The SFMTA, and more recently the developer team Potrero Neighborhood Collective, have been transparent and responsive with the public, and I trust them to deliver a great project that benefits the neighborhood and city.

I urge you to approve the Potrero Yard Modernization Project today.

Thank you,

Scott Feeney
Potrero Yard Neighborhood Working Group Member and Mission District neighbor

From:	Armand Domalewski
To:	Pantoja, Gabriela (CPC); commissions.secretary@sfgov.org; PotreroYard
Subject:	In Support of the Potrero Yard Project
Date:	Friday, January 5, 2024 15:45:18

EXT

Dear SF Planning Commission,

I am writing to express my support for the Potrero Yard Modernization Project. I've been a resident of San Francisco since 2015, and have lived in the Bay Area my entire life. This initiative promises to modernize a century-old bus facility, making it capable of accommodating 213 electric trolleybuses. This upgrade will not only enhance the efficiency of our transit system but also contribute to our environmental goals.

The project, spearheaded by the Potrero Neighborhood Collective, also proposes a significant focus on community needs. Alongside the transportation improvements, it includes plans for much-needed affordable housing. This dual approach aligns with our city's aspirations to provide better living conditions and transportation solutions.

Furthermore, the project will offer improved working conditions for Muni employees, reflecting our commitment to their well-being. It also addresses the need for safer pedestrian and cycling routes, in line with our Vision Zero goals.

In summary, the Potrero Yard Modernization Project represents a balanced blend of transit enhancement and community development. Your support for this initiative will be instrumental in its success and in bringing lasting benefits to our city.

Thank you for your attention to this important matter. I look forward to your support and leadership in making this project a reality.

Best regards,

--
Armand D. Domalewski
(925) 212-3562

This message is from outside of the SFMTA email system. Please review the email carefully before responding, clicking links, or opening attachments.

From:	Maria Susana Gomez
To:	Pantoja, Gabriela (CPC); commissions.secretary@sfgov.org; PotreroYard
Subject:	Support our Muni Tranportation Yard
Date:	Friday, January 5, 2024 14:50:38

EXT

01/05/2024

Subject: Letter of Support: Potrero Yard Modernization Project

I am writing [on behalf of my son Miguel Carreno Muni Tranportation supporter since going to Elementary school to the present been activity going with his mom to the tours and The Heritage Of Muni in the Fall supporting the bus drivers] to express support for the Potrero Yard Modernization Project. The reimagined Potrero Yard would address much-needed transportation infrastructure improvements that support long term resilient, safe, and efficient Muni operations of an all-electric bus fleet. Additionally, the century-old bus yard would be enhanced with homes for low- to moderate-income households – the nation's first known joint development of a bus maintenance facility with housing.

The project developer team, Potrero Neighborhood Collective (PNC), includes both a national transportation developer, Plenary Americas, and local veteran community organizations: Mission Economic Development Agency, Young Community Developers, and Tabernacle Community Development Corporation. PNC's commitment to innovation and community inclusion is evidenced by their proposed design and program including the following priorities:

- **Safe, Reliable, and Improved Muni Service** with a bus yard that can house up to 213 electric trolleybuses (a 54% increase to the current fleet) and modern equipment to maintain the fleet and keep buses moving and meet transit riders' needs.
- **Employee Wellness** with a seismically-safe modernized bus yard that also provides natural light, outdoor spaces, and recreation spaces for Muni employees.
- **Maximizing Housing Units and Affordability** by creating safe and stable homes for households that might otherwise be priced out of the City including working families, City employees, and those on a fixed income.
- **Improving Safety for Bicyclists and Pedestrians** by enhancing the City's existing 17th Street bikeway along the project site with proposed Class IV bike lanes from Bryant Street to Hampshire Street, including concrete barriers and wider lanes where possible, as well as upgrading sidewalks and crossings. These improvements are known to support bicyclist, pedestrian, and vehicular safety in line with the City's Vision Zero efforts.
- **New Commercial Spaces that Activate** the streets and include a public restroom, a community requested public benefit.
- **Approach to Local Economic Inclusion that Prioritizes Southeast Corridor Communities** through Local Business Enterprises (LBE) participation and Local Hire. This is achieved through committed proactive outreach to LBEs and residents of Southeast San Francisco, oversight of future selected general contractors, and transparent reporting.
- **Culturally relevant public art** that celebrates the people, values, history and diverse culture of the Potrero Hill and Mission neighborhoods while also highlighting SFMTA's goal to provide reliable, safe, and affordable transportation for all.

I am urging you to support the Potrero Yard Modernization Project as we need a new bus yard that serves to improve transit reliability while also providing public benefits, including

new housing on City-owned land to address the City's dire need for affordable housing.

Thank you for your ongoing advocacy for public transit. I look forward to your continued leadership on this issue.

Sincerely,

Miguel Carreno age 12

This message is from outside of the SFMTA email system. Please review the email carefully before responding, clicking links, or opening attachments.

January 6th, 2023

Subject: Letter of Support: Potrero Yard Modernization Project

I am writing On behalf of the San Francisco Latino Parity Equity Coalition to express support for the Potrero Yard Modernization Project. The reimagined Potrero Yard would address much-needed transportation infrastructure improvements that support long-term resilient, safe, and efficient Muni operations of an all-electric bus fleet. Additionally, the century-old bus yard would be enhanced with homes for low- to moderate-income households – the nation's first known joint development of a bus maintenance facility with housing.

The project developer team, Potrero Neighborhood Collective (PNC), includes both a national transportation developer, Plenary Americas, and local veteran community organizations: Mission Economic Development Agency, Young Community Developers, and Tabernacle Community Development Corporation. PNC's commitment to innovation and community inclusion is evidenced by its proposed design and program including the following priorities:

- **Safe, Reliable, and Improved Muni Service** with a bus yard that can house up to 213 electric trolleybuses (a 54% increase to the current fleet) and modern equipment to maintain the fleet, keep buses moving, and meet transit riders' needs.
- **Employee Wellness** with a seismically safe modernized bus yard that also provides natural light, outdoor spaces, and recreation spaces for Muni employees.
- **Maximizing Housing Units and Affordability** by creating safe and stable homes for households that might otherwise be priced out of the City including working families, City employees, and those on a fixed income.
- **Improving Safety for Bicyclists and Pedestrians** by enhancing the City's existing 17th Street bikeway along the project site with proposed Class IV bike lanes from Bryant Street to Hampshire Street, including concrete barriers and wider lanes where possible, as well as upgrading sidewalks and crossings. These improvements are known to support bicyclist, pedestrian, and vehicular safety in line with the City's Vision Zero efforts.
- **New Commercial Spaces that Activate** the streets and include a public restroom, a community-requested public benefit.
- **Approach to Local Economic Inclusion that Prioritizes Southeast Corridor Communities** through Local Business Enterprises (LBE) participation and Local Hire. This is achieved through committed proactive outreach to LBEs and residents of Southeast San Francisco, oversight of future selected general contractors, and transparent reporting.
- **Culturally relevant public art** that celebrates the people, values, history and diverse culture of the Potrero Hill and Mission neighborhoods while also highlighting SFMTA's goal to provide reliable, safe, and affordable transportation for all.

I am urging you to support the Potrero Yard Modernization Project as we need a new bus yard that serves to improve transit reliability while also providing public benefits, including new housing on City-owned land to address the City's dire need for affordable housing.

Thank you for your ongoing advocacy for public transit. I look forward to your continued leadership on this issue.

Sincerely,

Lucia Obregon
Director
San Francisco Parity and Equity Coalition

Serving Alameda, Contra Costa, Marin and San Francisco counties

October 19, 2023

To: SFMTA Director Jeff Tumlin
SFMTA Board
SFMTA Potrero Yard Project Team

Re: Potrero Yard Project

On behalf of the 6,000 members of the Sierra Club San Francisco Group, we provide the following comments on the Potrero Yard Project:

1. We urge SFMTA to implement these essential improvements to the pedestrian and bicycle infrastructure in the project:

- protected corners including corner islands at both intersections on 17th Street. This would be safer for pedestrians than bulb outs and would considerably improve safety for people on bicycles.
- the elimination of mixing zones
- concrete curb protected bike lanes, not mountable curbs

2. We applaud SFMTA for investing in the modernization of Potrero Yard. Increasing the frequency and reliability of transit is essential if we are to meet our climate goals for reducing carbon emissions.

3. One of the most important contributions San Francisco can make to reducing greenhouse gas emissions is to build more housing. A more dense city will reduce emissions from transportation. This infill development is also a critical strategy for preventing sprawl. We appreciate the significant number of affordable units this development will provide. We also thank the city for planning yet another development with zero resident car parking.

Thank you,
Peter Belden

Conservation Chair
San Francisco Group, Sierra Club

November 19, 2024

San Francisco Board of Supervisors
City Hall – Room 250
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

Subject: Letter of Support: Potrero Yard Modernization Project

Dear Board of Supervisors,

SPUR strongly supports the Potrero Yard Modernization Project. Rebuilding Potrero Yard will not only transform a century-old bus yard into a modern public transit facility, but it will also provide critical affordable housing in line with community needs. San Francisco has an obligation to build 46,598 affordable homes by 2031. Enhancing the bus yard with affordable homes is an efficient and innovative use of public assets to address critical community challenges.

The project priorities were developed through a consultative community process led by the Potrero Neighborhood Collective (PNC), and includes a national transportation developer, Plenary Americas, and local veteran community organizations: Mission Economic Development Agency, Young Community Developers and Tabernacle Community Development Corporation.

SPUR applauds the team's work translating complex community priorities into an elegant project:

- **Safe, Reliable and Improved Muni Service** with a bus yard that can house up to 246 electric trolleybuses (a 64% increase to Potrero's existing capacity) and routes that currently serve five of San Francisco's nine Muni Service Equity neighborhoods.
- **Employee Wellness** with a seismically safe, modernized bus yard that provides natural light, outdoor spaces, training and recreation spaces for Muni employees.
- **Maximizing Housing Units and Affordability** by creating safe and stable homes for households that might otherwise be priced out of the city.
- **Improving Safety for Bicyclists and Pedestrians** by enhancing the City's existing 17th Street Bikeway along the project site with proposed Class IV bike lanes from Bryant Street to Hampshire Street, including concrete barriers, wider lanes, and upgraded sidewalks and crossings. These improvements support the city's ongoing work to keep pedestrians and bicyclists safe.
- **Activated Commercial Spaces** and a public restroom, as requested by the community.
- **Culturally relevant public art** that celebrates the people, values, history and diverse culture of the Potrero Hill and Mission neighborhoods while also highlighting SFMTA's goal to provide reliable, safe, and affordable transportation for all.
- **Approach to Economic Inclusion that Prioritizes Small Business Participation**

With over 520,000 daily Muni riders and tens of thousands of households in urgent need of affordable housing, SPUR knows San Francisco will benefit from innovative projects such as the Potrero Yard Modernization Project. Thank you for your ongoing advocacy for public transit and affordable housing. We look forward to your continued leadership on these issues.

Sincerely,

Annie Fryman
Director of Special Projects
SPUR

November 18, 2024

Board President, Aaron Peskin
Board of Supervisors
City Hall
1 Dr Carlton B Goodlett Pl
San Francisco, CA 94102

RE: Letter of Support: Potrero Yard Modernization Project

Dear Board President Peskin,

I am writing to express Walk San Francisco's strong support for Potrero Yard Modernization Project. Walk San Francisco is the city's only pedestrian advocacy organization, advocating for life-saving changes across the city to protect the millions of people who walk in San Francisco every year and believes San Francisco can and should be the nation's most pedestrian-friendly city.

Potrero Yard Modernization is a smart transit-oriented development project that should factor into the city's goal of zero traffic-related deaths and injuries goals. Rebuilding Potrero Yard is a transformational project that modernizes a century-old bus yard and provides critical affordable housing. Enhancing the bus yard with homes for low- to moderate-income households optimizes agency-owned land and air rights to address the city's housing needs.

The project developer team includes both a national transportation developer and local veteran community organizations that have articulated their project priorities that will improve transit and keep people safer on our streets:

- Safe, Reliable and Improved Muni Service with a bus yard that can house up to 246 electric trolleybuses (a 64% increase to Potrero's existing capacity) and routes that currently serve five of San Francisco's nine Muni Service Equity neighborhoods.
- Improving Safety for Bicyclists and Pedestrians by enhancing the City's existing 17th Street Bikeway along the project site with proposed Class IV bike lanes from Bryant Street to Hampshire Street, including concrete barriers and wider lanes where possible, as well as upgrading sidewalks and crossings. These improvements are known to support bicyclist, pedestrian, and vehicular safety in line with the City's Vision Zero efforts.

Walk SF offers our strongest support for the Potrero Yard Modernization Project. With over 520,000 daily Muni riders, the city needs a new bus yard to improve transit reliability. Without a well-functioning MUNI, San Francisco will never reach Vision Zero.

Sincerely,

Jodie Medeiros
Executive Director

San Francisco Bicycle Coalition
1720 Market Street
San Francisco, CA 94102

T 415.431.BIKE
F 415.431.2468

sfbike.org

November 19, 2024

San Francisco Board of Supervisors
City Hall – Room 250
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

Subject: Letter of Support: Potrero Yard Modernization Project

Dear Board of Supervisors,

I am writing on behalf of the San Francisco Bicycle Coalition and our thousands of members to express our strong support for the Potrero Yard Modernization Project. Rebuilding Potrero Yard is a transformational project that not only modernizes a century-old bus yard but also provides critical affordable housing. Enhancing the bus yard with homes for low- to moderate-income households optimizes agency-owned land and air rights to address the city's housing needs.

The project developer team, Potrero Neighborhood Collective (PNC), includes both a national transportation developer, Plenary Americas, and local veteran community organizations: Mission Economic Development Agency, Young Community Developers and Tabernacle Community Development Corporation. PNC's commitment to innovation and community inclusion is evidenced by their proposed design and program including the following priorities:

- **Improving Safety for Bicyclists and Pedestrians** by enhancing the City's existing 17th Street Bikeway along the project site with proposed Class IV bike lanes from Bryant Street to Hampshire Street, including concrete barriers and wider lanes where possible, as well as upgrading sidewalks and crossings. These improvements are known to support bicyclist, pedestrian and vehicular safety in line with the City's Vision Zero efforts.
- **Safe, Reliable and Improved Muni Service** with a bus yard that can house up to 246 electric trolleybuses (a 64% increase to Potrero's existing capacity) and routes that currently serve five of San Francisco's nine Muni Service Equity neighborhoods.
- **Employee Wellness** with a seismically safe, modernized bus yard that provides natural light, outdoor spaces, training and recreation spaces for Muni employees.
- **Maximizing Housing Units and Affordability** by creating safe and stable homes for households that might otherwise be priced out of the city including working families, city employees and people on a fixed income.
- **New Commercial Spaces that Activate** the streets and include a public restroom, a community requested public benefit.
- **Approach to Economic Inclusion that Prioritizes Small Business Participation** with a Small and Disadvantaged Business Enterprises (SBE/DBE) participation.

- **Culturally relevant public art** that celebrates the people, values, history and diverse culture of the Potrero Hill and Mission neighborhoods while also highlighting SFMTA's goal to provide reliable, safe, and affordable transportation for all.

I urge you to support the Potrero Yard Modernization Project. With over 520,000 daily Muni riders, the city needs a new bus yard to improve transit reliability, while also continuing to connect the 17th Street corridor with All Ages and Abilities facilities. This project is two-fold in serving San Franciscans' mobility needs while also providing public benefits, including new housing on city-owned land to address the city's dire need for affordable housing.

Thank you for your ongoing advocacy for public transit. I look forward to your continued leadership on this issue.

Sincerely,

Christopher White
Executive Director

Docusign Envelope ID: A2ABD2BB-56D8-4075-90B2-3F66192CFDF9

San Francisco Ethics Commission
25 Van Ness Avenue, Suite 220, San Francisco, CA 94102
Phone: 415.252.3100 . Fax: 415.252.3112
ethics.commission@sfgov.org . www.sfethics.org

Received On:

File #: 241136

Bid/RFP #:

Incomplete - Pending Signature

Notification of Contract Approval

SFEC Form 126(f)4
(S.F. Campaign and Governmental Conduct Code § 1.126(f)4)
A Public Document

Each City elective officer who approves a contract that has a total anticipated or actual value of $100,000 or more must file this form with the Ethics Commission within five business days of approval by: (a) the City elective officer, (b) any board on which the City elective officer serves, or (c) the board of any state agency on which an appointee of the City elective officer serves. For more information, see: https://sfethics.org/compliance/city-officers/contract-approval-city-officers

1. FILING INFORMATION

TYPE OF FILING	DATE OF ORIGINAL FILING (*for amendment only*)
Original	

AMENDMENT DESCRIPTION – Explain reason for amendment

2. CITY ELECTIVE OFFICE OR BOARD

OFFICE OR BOARD	NAME OF CITY ELECTIVE OFFICER
Board of Supervisors	Members

3. FILER'S CONTACT

NAME OF FILER'S CONTACT	TELEPHONE NUMBER
Angela Calvillo	415-554-5184
FULL DEPARTMENT NAME	**EMAIL**
Office of the Clerk of the Board	Board.of.Supervisors@sfgov.org

4. CONTRACTING DEPARTMENT CONTACT

NAME OF DEPARTMENTAL CONTACT	DEPARTMENT CONTACT TELEPHONE NUMBER
Chris Lazaro	415-554-5184
FULL DEPARTMENT NAME	**DEPARTMENT CONTACT EMAIL**
MTA Municipal Transportation Agency	chris.lazaro@sfmta.com

Docusign Envelope ID: A2ABD2BB-56D8-4075-90B2-3F66192CFDF9

Incomplete - Pending Signature

5. CONTRACTOR	
NAME OF CONTRACTOR Potrero Neighborhood Collective LLC	TELEPHONE NUMBER 347-514-3117
STREET ADDRESS (including City, State and Zip Code) 555 W Fifth Street, Ste 3150 Los Angeles, CA 90013	EMAIL

6. CONTRACT		
DATE CONTRACT WAS APPROVED BY THE CITY ELECTIVE OFFICER(S)	ORIGINAL BID/RFP NUMBER	FILE NUMBER (*If applicable*) 241136
DESCRIPTION OF AMOUNT OF CONTRACT Three milestone payments totaling $275.5M and an initial annual payment in FY30 of $42.2M		
NATURE OF THE CONTRACT *(Please describe)* Resolution authorizing conditional approval of the Infrastructure Facility Design-Build-Finance-Operate-Maintain Agreement (Project Agreement) for the SFMTA Potrero Yard Modernization Project, subject to final pricing, and delegation of authority under Charter, Section 9.118(a) for the SFMTA Board of Directors to approve the final Project Agreement with Potrero Neighborhood Collective, LLC, or their affiliate, within the pricing limits of (1) an initial milestone payment of up to $75,000,000 at financial close, (2) a relocation payment of up to $500,000 within 60 days of completing temporary relocation of Potrero Yards operations, (3) a milestone payment of up to $200,000,000 no later than 2033, and (4) an initial maximum annual availability payment of $42,200,000 over a 30-year operations and maintenance term, beginning in 2030, subject to interest rate and credit spread fluctuations between commercial close and financial close, and annu		

7. COMMENTS

8. CONTRACT APPROVAL	
This contract was approved by:	
☐	THE CITY ELECTIVE OFFICER(S) IDENTIFIED ON THIS FORM
☒	A BOARD ON WHICH THE CITY ELECTIVE OFFICER(S) SERVES Board of Supervisors
☐	THE BOARD OF A STATE AGENCY ON WHICH AN APPOINTEE OF THE CITY ELECTIVE OFFICER(S) IDENTIFIED ON THIS FORM SITS

Docusign Envelope ID: A2ABD2BB-56D8-4075-90B2-3F66192CFDF9

Incomplete - Pending Signature

9. AFFILIATES AND SUBCONTRACTORS

List the names of (A) members of the contractor's board of directors; (B) the contractor's principal officers, including chief executive officer, chief financial officer, chief operating officer, or other persons with similar titles; (C) any individual or entity who has an ownership interest of 10 percent or more in the contractor; and (D) any subcontractor listed in the bid or contract.

#	LAST NAME/ENTITY/SUBCONTRACTOR	FIRST NAME	TYPE
1	Plenary Americas USA Ltd		Shareholder
2	Mission Econ Devt Agency		Shareholder
3	Young Community Developers		Shareholder
4	Tabernacle Comm Devt Corp		Shareholder
5	Arcadis IBI Group		Shareholder
6	Y.A. Studio Architect		Shareholder
7	Plant Construction Co LP		Shareholder
8	The Allen Group, LLC		Shareholder
9	D&A Communications		Shareholder
10	Marks	Stuart	Other Principal Officer
11	Budden	Brian	CEO
12	Kirkwood	Nigel	CFO
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Docusign Envelope ID: A2ABD2BB-56D8-4075-90B2-3F66192CFDF9

Incomplete - Pending Signature

9. AFFILIATES AND SUBCONTRACTORS

List the names of (A) members of the contractor's board of directors; (B) the contractor's principal officers, including chief executive officer, chief financial officer, chief operating officer, or other persons with similar titles; (C) any individual or entity who has an ownership interest of 10 percent or more in the contractor; and (D) any subcontractor listed in the bid or contract.

#	LAST NAME/ENTITY/SUBCONTRACTOR	FIRST NAME	TYPE
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Incomplete - Pending Signature

9. AFFILIATES AND SUBCONTRACTORS

List the names of (A) members of the contractor's board of directors; (B) the contractor's principal officers, including chief executive officer, chief financial officer, chief operating officer, or other persons with similar titles; (C) any individual or entity who has an ownership interest of 10 percent or more in the contractor; and (D) any subcontractor listed in the bid or contract.

#	LAST NAME/ENTITY/SUBCONTRACTOR	FIRST NAME	TYPE
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☐ Check this box if you need to include additional names. Please submit a separate form with complete information. Select "Supplemental" for filing type.

10. VERIFICATION

I have used all reasonable diligence in preparing this statement. I have reviewed this statement and to the best of my knowledge the information I have provided here is true and complete.

I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

SIGNATURE OF CITY ELECTIVE OFFICER OR BOARD SECRETARY OR CLERK	DATE SIGNED
BOS Clerk of the Board	

From: Trejo, Sara (MYR)
To: BOS Legislation, (BOS)
Cc: Paulino, Tom (MYR); Martinsen, Janet (MTA); Lazaro, Chris (MTA); von Krogh, Bonnie Jean (MTA); Gee, Natalie (BOS)
Subject: Mayor -- Resolution -- Potrero Yard Modernization Project Agreement
Date: Tuesday, November 19, 2024 2:53:26 PM
Attachments: BOS Resolution_BOS Project Agreement_Conditional Approval (11-15-24)).docx
2500 Mariposa St._Potrero Yard_Correspondence_20240111.pdf
Potrero PDA 2Nov2022_Executed.pdf
SFEC_Form_126f4BOS---Notification_of_Contract (15Nov2024).pdf
SFMTA BOS briefing 24.1119 Potrero Yard Modernization Project Infrastructure Facility.pdf
1 of 4_Potrero - IF DBFOM Agreement + Exhibit 1_V 11.15.24.pdf
2 of 4_Potrero - IF DBFOM Agreement Exhibit 2-4_V20_11.5.24.pdf
3 of 4_Potrero - IF DBFOM Agreement Exhibits 6-20__V 27_11.5.24.pdf
4 of 4_Potrero - IF DBFOM Agreement Exhibit 5 -_V 20_11.5.24.pdf

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Hello Clerks,

Attached is a Resolution conditionally approving an Infrastructure Facility Design-Build-Finance-Operate-Maintain Agreement for the SFMTA Potrero Yard Modernization Project, subject to final pricing; delegating authority under Charter Section 9.118(b) for the SFMTA Board of Directors to approve the final pricing within the following not-to-exceed pricing limits: (1) an initial milestone payment of up to $75,000,000 at financial close, (2) a relocation payment of up to $500,000 within 60 days of completing temporary relocation of Potrero Yard operations, (3) a milestone payment of up to $200,000,000 by no later than 2033, and (4) an initial maximum annual availability payment of up to $42,200,000 (in Fiscal Year 2030 dollars) over a maintenance term not to exceed 30 years after the scheduled substantial completion date, anticipated in 2029, subject to interest rate and credit spread fluctuations between commercial close and financial close and annual CPI adjustments, with the part of the payment covering capital costs increasing 1% per year and sculpted to align with the SFMTA's existing debt service obligations; authorizing the Director of Transportation to execute the Form Project Agreement, as modified with the final pricing and to substantially include the terms of a Draft Small Business Enterprise/Disadvantaged Business Enterprise Plan, with Potrero Neighborhood Collective, LLC or its affiliate; and making environmental findings under the California Environmental Quality Act.

Providing two links below for CEQA documentation and for a file that is too large.

- CEQA Documentation
- Exhibit 18: Technical Requirements

Also, please note that Supervisor Walton is a cosponsor of this item.

Best regards,

Sara Trejo
Legislative Aide
Office of the Mayor
City and County of San Francisco