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OF THE CITY AND COUNTY OF SAN FRANCISCO

(Exempt from Recording Fees
Pursuant to Government Code
Section 27383)

AND WHEN RECORDED MAIL TO:

Angela Calvillo
Clerk of the Board of Supervisors
City Hall, Room 244
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

DEVELOPMENT AGREEMENT

BY AND BETWEEN

THE CITY AND COUNTY OF SAN FRANCISCO

AND 5M PROJECT, LLC

TABLE OF CONTENTS

	<u>Page</u>
1. DEFINITIONS.....	5
2. EFFECTIVE DATE; TERM.....	14
2.1 Effective Date	14
2.2 Term.....	14
3. GENERAL RIGHTS AND OBLIGATIONS.....	15
3.1 Development of the Project	15
3.2 Transfer of Properties	15
4. PUBLIC BENEFITS; DEVELOPER OBLIGATIONS AND CONDITIONS TO DEVELOPER'S PERFORMANCE.....	16
4.1 Community Benefits Exceed Those Required by Existing Ordinances and Regulations	16
4.2 Conditions to Performance of Community Benefits.....	18
4.3 No Additional CEQA Review Required; Reliance on FEIR for Future Discretionary Approvals	19
4.4 Nondiscrimination.....	20
4.5 City Cost Recovery	21
4.6 Prevailing Wages	22
4.7 Indemnification of City.....	23
5. VESTING AND CITY OBLIGATIONS.....	24
5.1 Vested Rights	24
5.2 Existing Standards	25
5.3 Future Changes to Existing Standards	25
5.4 Fees and Exactions.....	28
5.5 Limitation on City's Future Discretion	30
5.6 Changes in Federal or State Laws.....	31
5.7 No Action to Impede Approvals.....	33
5.8 Criteria for Approving Subsequent Approvals	33
5.9 Estoppel Certificates	3534
5.10 Existing, Continuing Uses and Interim Uses	3635
5.11 Costa-Hawkins Rental Housing Act	3635
5.12 Taxes	37
6. NO DEVELOPMENT OBLIGATION.....	3837
7. MUTUAL OBLIGATIONS.....	3938
7.1 Notice of Completion, Revocation or Termination	3938
7.2 General Cooperation Agreement to Cooperate.....	39
7.3 Non-City Approvals Cooperation to Obtain Permits.....	4140
7.4 Cooperation in the Event of Third-Party Challenge	4241

7.5	Permits to Enter City Property	4342
7.6	Good Faith and Fair Dealing.....	43
7.7	Other Necessary Acts.....	4443
7.8	Dempster Building	44
8.	PERIODIC REVIEW OF DEVELOPER'S COMPLIANCE	45
8.1	Annual Review.....	45
8.2	Review Procedure	4645
9.	ENFORCEMENT OF AGREEMENT; DEFAULT; REMEDIES.....	47
9.1	Enforcement.....	47
9.2	Meet and Confer Process	47
9.3	Default.....	4847
9.4	Remedies.....	4948
9.5	Time Limits; Waiver; Remedies Cumulative	5150
9.6	Attorneys' Fees.....	51
10.	FINANCING; RIGHTS OF MORTGAGEES.....	5251
10.1	Owner's Right to Mortgage.....	5251
10.2	Mortgagee Not Obligated to Construct.....	52
10.3	Copy of Notice of Default and Notice of Failure to Cure to Mortgagee	5352
10.4	Mortgagee's Option to Cure Defaults	5453
10.5	Mortgagee's Obligations with Respect to the Property	54
10.6	No Impairment of Mortgage	5554
10.7	Cured Defaults	55
11.	AMENDMENT; TERMINATION; EXTENSION OF TERM.....	55
11.1	Amendment or Termination.....	55
11.2	Early Termination Rights.....	5655
11.3	Termination and Vesting.....	5756
11.4	Amendment Exemptions.....	5756
11.5	Extension Due to Legal Action or Referendum; Excusable Delay.....	5857
12.	TRANSFER OR ASSIGNMENT; RELEASE; CONSTRUCTIVE NOTICE.....	6059
12.1	Permitted Transfer of this Agreement.....	6059
12.2	Notice of Transfer	60
12.3	Release of Liability	6160
12.4	Responsibility for Performance	61
12.5	Constructive Notice	6261
12.6	Rights of Developer	62
12.7	Transfers to REITs and UPREITs.....	6362
13.	DEVELOPER REPRESENTATIONS AND WARRANTIES	6463
13.1	Interest of Developer; Due Organization and Standing.....	6463
13.2	No Inability to Perform; Valid Execution.....	6463
13.3	Conflict of Interest	64
13.4	Notification of Limitations on Contributions	6564

13.5 Other Documents65

13.6 No Bankruptcy65

14. MISCELLANEOUS PROVISIONS.....6665

14.1 Entire Agreement6665

14.2 Incorporation of Exhibits6665

14.3 Binding Covenants; Run With the Land.....66

14.4 Applicable Law and Venue.....6766

14.5 Construction of Agreement.....6766

14.6 Project Is a Private Undertaking; No Joint Venture or Partnership67

14.7 Recordation6867

14.8 Obligations Not Dischargeable in Bankruptcy6867

14.9 Survival68

14.10 Signature in Counterparts68

14.11 Notices68

14.12 Limitations on Actions.....69

14.13 Severability7069

14.14 MacBride Principles.....70

14.15 Tropical Hardwood and Virgin Redwood.....70

14.16 Sunshine.....70

14.17 Waiver of Personal Liability71

14.18 Non-Liability of Developer Officers and Others71

14.19 No Third Party Beneficiaries7271

EXHIBITS

- A Project Site Legal Descriptions & Site Plan
- B Project Description and Site Plan
- C Youth Development Program
- D Community Benefits Schedule
- E Affordable Housing Program
- F Workforce Agreement
- G Transportation Program
- H Art Program
- I List of Approvals
- J MMRP
- K Form of Assignment and Assumption Agreement
- L Notice of Completion and Termination

DEVELOPMENT AGREEMENT

BY AND BETWEEN

THE CITY AND COUNTY OF SAN FRANCISCO

AND 5M, LLC

THIS DEVELOPMENT AGREEMENT dated for reference purposes only as of this ____ day of _____, 2015, is by and between the CITY AND COUNTY OF SAN FRANCISCO, a political subdivision and municipal corporation of the State of California (the "**City**"), acting by and through its Planning Department, and 5M Project, LLC, a Delaware limited liability company ("**Developer**"), pursuant to the authority of Section 65864 *et seq.* of the California Government Code and Chapter 56 of the Administrative Code. The City and Developer are also sometimes referred to individually as a "**Party**" and together as the "**Parties**". Capitalized terms not defined when introduced shall have the meanings given in Article 1.

RECITALS

This Agreement is made with reference to the following facts:

A. Developer owns and operates the nearly 4-acre area generally between Mission, Fifth and Howard Streets composed of 8 building and 7 surface parking lots on 22 parcels, containing approximately 317,700 gross square feet of existing office and commercial uses and 219 parking spaces, including the historic Dempster Printing Building, Camelline Building and San Francisco Chronicle Building, all located on the real property more particularly described on Exhibit A (the "**Project Site**").

B. The Developer proposes a mixed use development that recognizes the transit-rich location for housing and employment on the Project Site, including office, residential, retail, cultural, educational, open space, parking and related uses. Specifically, the Project includes up

to 807,600, gross square feet of office uses (including ground floor uses), up to 821,300 gross square feet of residential uses (including both rental and ownership units), approximately 68,700 gross square feet of other active ground floor uses, and collectively up to 1,697,600 gross square feet of new construction and renovated existing building space, approximately ~~331463~~ associated parking spaces in three subterranean levels, approximately 429 Class 1 bicycle parking spaces, approximately 66 Class 2 bicycle parking spaces, and approximately 59,500 square feet of public and private open space, all as more particularly described on Exhibit B (the "**Project**").

C. The Project is anticipated to generate an annual average of approximately 1,200 construction jobs during construction and, upon completion, approximately 3,150 net new permanent jobs, and an approximately \$12,100,000 annual increase in general fund revenues to the City.

D. In order to strengthen the public planning process, encourage private participation in comprehensive planning, and reduce the economic risk of development, the Legislature of the State of California adopted Government Code Section 65864 *et seq.* (the "**Development Agreement Statute**"), which authorizes the City to enter into a development agreement with any person having a legal or equitable interest in real property regarding the development of such property. Pursuant to Government Code Section 65865, the City adopted Chapter 56 of the Administrative Code ("**Chapter 56**") establishing procedures and requirements for entering into a development agreement pursuant to the Development Agreement Statute. The Parties are entering into this Agreement in accordance with the Development Agreement Statute and Chapter 56.

E. In addition to the significant housing, jobs, urban revitalization, and economic benefits to the City from the Project, the City has determined that as a result of the development

of the Project in accordance with this Agreement additional clear benefits to the public will accrue that could not be obtained through application of existing City ordinances, regulations, and policies. Major additional public benefits to the City from the Project include an increase in affordable housing that exceeds that otherwise required and is anticipated to equal ~~forty~~^{thirty-three} percent (40~~33~~³³%) of the total market-rate housing for the Project; a robust workforce commitment, community benefits fees, and the rehabilitation of the Chronicle and Dempster Printing Buildings; and the retention of the Camelline Building; each as further described in this Agreement.

F. It is the intent of the Parties that all acts referred to in this Agreement shall be accomplished in a way as to fully comply with the California Environmental Quality Act (California Public Resources Code Section 21000 *et seq.*; "CEQA"), the CEQA Guidelines (Title 14, California Code of Regulations, Section 15000 *et seq.*); "CEQA Guidelines"), the Development Agreement Statute, Chapter 56, the Planning Code, the Enacting Ordinance and all other applicable Laws in effect as of the Effective Date. This Agreement does not limit the City's obligation to comply with applicable environmental Laws, including CEQA, before taking any discretionary action regarding the Project, or the Developer's obligation to comply with all applicable Laws in connection with the development of the Project.

G. The Final Environmental Impact Report ("FEIR") prepared for the Project and certified by the Planning Commission on September 17_____, 2015, together with the CEQA findings (the "CEQA Findings") and the Mitigation Measures adopted concurrently therewith and set forth in the MMRP, comply with CEQA, the CEQA Guidelines, and Chapter 31 of the Administrative Code. The FEIR thoroughly analyzes the Project and Project alternatives, and the Mitigation Measures were designed to mitigate significant impacts to the

extent they are susceptible to feasible mitigation. On _____, 2015, the Board of Supervisors, in Motion No. _____, affirmed the decisions of the Planning Commission to certify the FEIR and rejected the appeal of the FEIR certification. The information in the FEIR and the CEQA Findings were considered by the City in connection with approval of this Agreement.

H. On September 17_____, 2015, the Planning Commission held a public hearing on this Agreement and the Project, duly noticed and conducted under the Development Agreement Statute and Chapter 56. Following the public hearing, the Planning Commission adopted the CEQA findings and determined among other things that the FEIR thoroughly analyzes the Project, and the Mitigation Measures are designed to mitigate significant impacts to the extent they are susceptible to a feasible mitigation, and further determined that the Project and this Agreement will, as a whole, and taken in their entirety, continue to be consistent with the objectives, policies, general land uses and programs specified in the General Plan, as amended, and the Planning Principles set forth in Section 101.1 of the Planning Code (together the "**General Plan Consistency Findings**"). The information in the FEIR and the CEQA Findings has been considered by the City in connection with this Agreement.

I. On _____, 2015 the Board of Supervisors, having received the Planning Commission's recommendations, held a public hearing on this Agreement pursuant to the Development Agreement Statute and Chapter 56. Following the public hearing, the Board made the CEQA Findings required by CEQA, approved this Agreement, incorporating by reference the General Plan Consistency Findings [and adopted Resolution Nos. _____].

J. On _____, 2015, the Board adopted Ordinance Nos. _____, amending the Planning Code, Zoning Map, and General Plan, and adopted Ordinance No. _____, approving this Agreement (File No. _____) and authorizing the Planning

Director to execute this Agreement on behalf of the City (the "**Enacting Ordinance**"). The Enacting Ordinance took effect on _____, 2015.

Now therefore, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

AGREEMENT

1. DEFINITIONS

In addition to the definitions set forth in the above preamble paragraph, Recitals and elsewhere in this Agreement, the following definitions shall apply to this Agreement:

1.1 "**5M Community Benefit Fee**" means an amount equal to eight dollars thirty-five cents (\$8.35) per square foot of new gross floor area as defined in Planning Code Section 102 of commercial or residential uses (exclusive of Existing Uses) as same is set forth in the applicable Approval.

1.2 "**5M SUD**" means Planning Code Section 249.74— as adopted by the Board in Ordinance No. ____.

1.3 "**Administrative Code**" means the San Francisco Administrative Code.

1.4 "**Affiliate**" or "**Affiliates**" means an entity or person that directly or indirectly controls, is controlled by or is under common control with, a Party (or a managing partner or managing member of a Party, as the case may be). For purposes of the foregoing, "**control**" means the ownership of more than fifty percent (50%) of the equity interest in such entity, the right to dictate major decisions of the entity, or the right to appoint fifty percent (50%) or more of the managers or directors of such entity.

1.5 "**Agreement**" means this Development Agreement, the Exhibits which have been expressly incorporated herein and any amendments thereto.

1.6 "Applicable Laws" has the meaning set forth in Section 5.2 (where not capitalized, "applicable Law" has its plain meaning and refers to Laws as otherwise defined herein).

1.7 "Approvals" means the City approvals, entitlements, and permits listed on Exhibit I.

1.8 "Assignment and Assumption Agreement" has the meaning set forth in Section 12.2.

1.9 "Backup Payment" has the meaning set forth in the Housing Program.

1.10 "BMR units" has the meaning set forth in the Housing Program.

1.11 "Board of Supervisors" or "Board" means the Board of Supervisors of the City and County of San Francisco.

1.12 "Building" or "Buildings" means each of the existing, modified and new buildings on the Project Site, as described in the Project Description attached as Exhibit B.

1.13 "CEQA" has the meaning set forth in Recital F.

1.14 "CEQA Findings" has the meaning set forth in Recital G.

1.15 "CEQA Guidelines" has the meaning set forth in Recital F.

1.16 "Chapter 56" has the meaning set forth in Recital D.

1.17 "City" means the City as defined in the opening paragraph of this Agreement. Unless the context or text specifically provides otherwise, references to the City means the City acting by and through the Planning Director or, as necessary, the Planning Commission or the Board of Supervisors.

1.18 "City Agency" or "City Agencies" means the City departments, agencies, boards, commissions, and bureaus that execute or consent to this Agreement, or are controlled by

persons or commissions that have executed or consented to this Agreement, that have subdivision or other permit, entitlement or approval authority or jurisdiction over development of the Project, or any improvement located on or off the Project Site, including, without limitation, the City Administrator, Planning Department, Mayor's Office of Housing and Community Development ("**MOHCD**"), Office of Economic and Workforce Development ("**OEWD**"), SFMTA, DPW, DBI, together with any successor City agency, department, board, or commission. Nothing in this Agreement shall affect the exclusive jurisdiction under the City's Charter of a City department that has not approved or consented to this Agreement in connection with the issuance of a Subsequent Approval.

1.19 "**City Attorney's Office**" means the Office of the City Attorney of the City and County of San Francisco.

1.20 "**City Costs**" means the actual and reasonable costs incurred by a City Agency in preparing, adopting or amending this Agreement, in performing its obligations or defending its actions under this Agreement or otherwise contemplated by this Agreement, as determined on a time and materials basis, including reasonable attorneys' fees and costs but excluding work, hearings, costs or other activities contemplated or covered by Processing Fees; provided, however, City Costs shall not include any costs incurred by a City Agency in connection with a City Default or which are payable by the City under Section 9.6 when Developer is the prevailing party.

1.21 "**City Parties**" has the meaning set forth in Section 4.7.

1.22 "**City-Wide**" means all real property within the territorial limits of the City and County of San Francisco, not including any property owned or controlled by the United States or by the State of California and therefore not subject to City regulation.

1.23 "**Commence Construction**" means groundbreaking in connection with the commencement of physical construction of the applicable Building foundation, but specifically excluding the demolition or partial demolition of existing structures.

1.24 "**Community Benefits**" has the meaning set forth in Section 4.1.

1.25 "**Costa-Hawkins Act**" has the meaning set forth in Section 5.11.

1.26 "**Default**" has the meaning set forth in Section 9.3.

1.27 "**Dempster Building**" has the meaning set forth in Exhibit B.

1.28 "**Dempster MOU**" has the meaning set forth in Section 3.2.2.

1.29 "**Design for Development**" means that certain 5M Design for Development adopted by the City Planning Commission by Resolution No. ____ on _____, 2015 as same may be amended from time to time.

1.30 "**Developer**" has the meaning set forth in the opening paragraph of this Agreement, and shall also include any and all successor Transferees of all or any part of the Project Site during the Term.

1.31 "**Development Agreement Statute**" has the meaning set forth in Recital D, as in effect as of the Effective Date.

1.32 "**DPW**" means the San Francisco Department of Public Works.

1.33 "**Effective Date**" has the meaning set forth in Section 2.1.

1.34 "**Enacting Ordinance**" has the meaning set forth in Recital J.

1.35 "**Excusable Delay**" has the meaning set forth in Section 11.5.2.

1.36 "**Existing Standards**" has the meaning set forth in Section 5.2.

1.37 "**Existing Uses**," means all existing lawful uses of the existing Buildings and improvements (and including, without limitation, pre-existing, non-conforming uses under

the Planning Code) on the Project Site as of the Effective Date, as the same may be modified by the Approvals and any Subsequent Approvals.

1.38 "**Federal or State Law Exception**" has the meaning set forth in Section 5.6.

1.39 "**FEIR**" has the meaning set forth in Recital G.

1.40 "**Finally Granted**" means (i) any and all applicable appeal periods for the filing of any administrative or judicial appeal challenging the issuance or effectiveness of any of the Approvals, this Agreement or the FEIR shall have expired and no such appeal shall have been filed, or if such an administrative or judicial appeal is filed, the Approvals, this Agreement or the FEIR, as applicable, shall have been upheld by a final decision in each such appeal without adverse effect on the applicable Approval, this Agreement or the FEIR and the entry of a final judgment, order or ruling upholding the applicable Approval, this Agreement or the FEIR and (ii) if a referendum petition relating to this Agreement is timely and duly circulated and filed, certified as valid and the City holds an election, the date the election results on the ballot measure are certified by the Board of Supervisors in the manner provided by the Elections Code reflecting the final defeat or rejection of the referendum.

1.41 "**Future Changes to Existing Standards**" has the meaning set forth in Section 5.3.

1.42 "**General Plan Consistency Findings**" has the meaning set forth in Recital H.

1.43 "**Housing Program**" means the Affordable Housing Program attached hereto as Exhibit E.

1.44 "**Impact Fees and Exactions**" means any fees, contributions, special taxes, exactions, impositions and dedications charged by the City in connection with the development of Projects, including but not limited to transportation and transit fees, child care requirements or in-lieu fees, housing (including affordable housing) requirements or fees, dedication or reservation requirements, and obligations for on-or off-site improvements. Impact Fees and Exactions shall not include the Mitigation Measures, Processing Fees, taxes or special assessments or school district fees, SFPUC Capacity Charges and any fees, taxes, assessments impositions imposed by Non-City Agencies, all of which shall be due and payable by Developer as and when due in accordance with applicable Laws.

1.45 "**Law(s)**" means the Constitution and laws of the United States, the Constitution and laws of the State of California, the laws of the City and County of San Francisco, and any codes, statutes, rules, regulations, or executive mandates thereunder, and any State or Federal court decision (including any order, injunction or writ) thereunder. The term "**Laws**" shall refer to any or all Laws as the context may require.

1.46 "**Litigation Extension**" has the meaning set forth in Section 11.5.1.

1.47 "**Losses**" has the meaning set forth in Section 4.7.

1.48 "**Material Change**" means any modification that would materially alter the rights, benefits or obligations of the City or Developer under this Agreement that is not consistent with the 5M SUD or the Design for Development or that (i) extends the Term, (ii) changes the permitted uses of the Project Site, (iii) decreases the Community Benefits, (iv) increases the maximum height, density, bulk or size of the Project, (vii) changes parking ratios, or (viii) reduces or changes the Impact Fees and Exactions.

1.49 "**Mitigation Measures**" means the mitigation measures (as defined by CEQA) applicable to the Project as set forth in the MMRP or that are necessary to mitigate adverse environmental impacts identified through the CEQA process as part of a Subsequent Approval.

1.50 "**MMRP**" means that certain mitigation monitoring and reporting program attached hereto as Exhibit J.

1.51 "**Mortgage**" means a mortgage, deed of trust or other lien on all or part of the Project Site to secure an obligation made by the applicable property owner.

1.52 "**Mortgagee**" means a person or entity that obtains title to all or part of the Project Site as a result of foreclosure proceedings or conveyance or other action in lieu thereof, or other remedial action.

1.53 "**Municipal Code**" means the San Francisco Municipal Code.

1.54 Intentionally left blank.

1.55 "**Non-City Agency**" has the meaning set forth in Section 7.3.

1.56 "**Non-City Approval**" has the meaning set forth in Section 7.3.

1.57 "**OEWD**" means the San Francisco Office of Economic and Workforce Development.

1.58 "**Official Records**" means the official real estate records of the City and County of San Francisco, as maintained by the City's Assessor-Recorder's Office.

1.59 "**Party**" and "**Parties**" has the meaning set forth in the opening paragraph of this Agreement.

1.60 "**Planning Code**" means the San Francisco Planning Code.

1.61 "**Planning Commission**" means the Planning Commission of the City and County of San Francisco.

1.62 "**Planning Department**" means the Planning Department of the City and County of San Francisco.

1.63 "**Planning Director**" means the Director of Planning of the City and County of San Francisco.

1.64 "**Processing Fees**" means the standard fee imposed by the City upon the submission of an application for a permit or approval, which is not an Impact Fee or Exaction, in accordance with the City practice on a City-Wide basis.

1.65 "**Project**" means the mixed use development project as described in Recital B and Exhibit B and the Approvals, together with Developer's rights and obligations under this Agreement.

1.66 "**Project Site**" has the meaning set forth in Recital A, and as more particularly described in Exhibit A.

1.67 "**Public Health and Safety Exception**" has the meaning set forth in Section 5.6.

~~1.68 "**Scheduling Plan**" means the illustrative schedule attached hereto as Exhibit C.~~

~~1.69~~ 1.68 _____ Intentionally left blank.

~~1.70~~ 1.69 _____ "**SFMTA**" means the San Francisco Municipal Transportation Agency.

~~1.71~~ 1.70 _____ "**SFPUC**" means the San Francisco Public Utilities Commission.

~~1.72~~1.71 _____ "**SFPUC Capacity Charges**" means all water and sewer capacity and connection fees and charges payable to the SFPUC, as and when due in accordance with the applicable City requirements.

~~1.73~~1.72 _____ "**Subdivision Code**" means the San Francisco Subdivision Code.

~~1.74~~1.73 _____ "**Subdivision Map Act**" means the California Subdivision Map Act, California Government Code § 66410 *et seq.*

~~1.75~~1.74 _____ "**Subsequent Approval**" means any other land use approvals, entitlements, or permits from the City other than the Approvals, that are consistent with the Approvals and that are necessary or advisable for the implementation of the Project, including without limitation, demolition permits, grading permits, site permits, Building permits, lot line adjustments, sewer and water connection permits, major and minor encroachment permits, street and sidewalk modifications, street improvement permits, permits to alter, certificates of occupancy, transit stop relocation permits, subdivision maps, improvement plans, lot mergers, lot line adjustments, and re-subdivisions. A Subsequent Approval shall also include any amendment to the foregoing land use approvals, entitlements, or permits, or any amendment to the Approvals that are sought by Developer and approved by the City in accordance with the standards set forth in this Agreement.

~~1.76~~1.75 _____ "**Term**" has the meaning set forth in Section 2.2.

~~1.77~~1.76 _____ "**Third-Party Challenge**" has the meaning set forth in Section 7.4.

~~1.78~~1.77 _____ "**Transfer Agreement**" means that certain Agreement for Transfer of Real Estate attached as Schedule 2 of Exhibit E for the transfer of certain property outside the Project Site from Developer to the City to be used by the City for the development of affordable

housing or to fund the development of affordable housing, as may be determined by City, as further described in the Housing Program.

~~1.79~~1.78 **"Transfer," "Transferee" and "Transferred Property"** have the meanings set forth in Sections 12.1, and in all events excludes (1) a transfer of membership interests in Developer or any Transferee, (2) grants of easement or of occupancy rights for existing or completed Buildings or other improvements (including, without limitation, space leases in Buildings), (3) the placement of a Mortgage on the Project Site, and (4) a transfer of the Dempster Building and a transfer under the Transfer Agreement in accordance with this Agreement.

~~1.80~~1.79 **"Transportation Program"** means the transportation program set forth in Exhibit G.

~~1.81~~1.80 **"Vacation Ordinance"** has the meaning set forth in Exhibit I.

~~1.82~~1.81 **"Vested Elements"** has the meaning set forth in Section 5.1.

~~1.83~~1.82 **"Workforce Agreement"** means the Workforce Agreement attached hereto as Exhibit F.

2. **EFFECTIVE DATE; TERM**

2.1 Effective Date. This Agreement shall take effect upon the later of (i) the full execution and delivery of this Agreement by the Parties and (ii) the date the Enacting Ordinance is effective and operative ("**Effective Date**").

2.2 Term. The term of this Agreement shall commence upon the Effective Date and shall continue in full force and effect for fifteen (15) years thereafter unless extended or earlier terminated as provided herein ("**Term**"); provided, however, (i) the Term shall be extended for each day of a Litigation Extension, and (ii) Developer shall have the right to

terminate this Agreement with respect to a parcel upon completion of the Building within that parcel, and the Community Benefit Programs and other improvements tied to that Building, as set forth in Section 7.1. The term of any conditional use permit, any tentative Subdivision Map and any subsequent subdivision map shall be for the longer of (i) the Term (as it relates to the applicable parcel) or (ii) the term otherwise allowed under the Subdivision Map Act.

3. GENERAL RIGHTS AND OBLIGATIONS

3.1 Development of the Project. Developer shall have the vested right to develop the Project in accordance with and subject to the provisions of this Agreement and the City shall consider and process all Subsequent Approvals for development of the Project in accordance with and subject to the provisions of this Agreement. The Parties acknowledge that Developer has obtained all Approvals from the City required to commence construction of the Project, other than any required Subsequent Approvals and that Developer may proceed in accordance with this Agreement with the construction and, upon completion, use and occupancy of the Project as a matter of right, subject to the attainment of any required Subsequent Approvals and any Non-City Approvals.

3.2 Transfer of Properties. In connection with the Project, Developer will:

3.2.1 transfer certain real property located off of the Project Site to the City in accordance with the Transfer Agreement (or alternatively pay to the City the Backup Payment); and

3.2.2 transfer certain real property, referred to as the Dempster Building located on the Project Site at 447 Minna Street, to the Community Arts and Stabilization Trust ("CAST") or to another nonprofit organization (or to the City), as set forth in Section 7.8 and Exhibit H, to be used for arts, and other cultural and community purposes when and as described

in the Memorandum of Understanding (the "**Dempster MOU**") entered into by Developer and CAST, dated July 5, 2015. The Dempster MOU shall not be materially amended with respect to the rights, obligations and conditions to the transfer or use of the Dempster Building, as described in Section 7.8 below, without the prior review and written approval of City, acting by and through its Director of Planning, which approval shall not be unreasonably withheld or delayed.

4. PUBLIC BENEFITS; DEVELOPER OBLIGATIONS AND CONDITIONS TO DEVELOPER'S PERFORMANCE

4.1 Community Benefits Exceed Those Required by Existing Ordinances and Regulations. The Parties acknowledge and agree that the development of the Project in accordance with this Agreement provides a number of public benefits to the City beyond those achievable through existing Laws, including, but not limited to, those set forth in this Article 4 (the "**Community Benefits**"). The City acknowledges and agrees that a number of the Community Benefits would not be otherwise achievable without the express agreement of Developer under this Agreement. Developer acknowledges and agrees that, as a result of the benefits to Developer under this Agreement, Developer has received good and valuable consideration for its provision of the Community Benefits, and that the City would not be willing to enter into this Agreement without the Community Benefits. Payment or delivery of each of the Community Benefits is tied to a specific Building as described in the Community Benefits Schedule attached as Exhibit D or as described elsewhere in this Agreement. Upon Developer's Commencement of Construction, the Community Benefits obligations tied to that Building shall survive the expiration or termination of this Agreement to the date of completion of the

applicable Community Benefit. Time is of the essence with respect to the completion of the Community Benefits.

4.1.1 Community Benefits. Developer shall provide the following Community Benefits (collectively, the “**Community Benefit Programs**”):

- (a) the 5M Community Benefit Fee;
- (b) the Housing Program benefits as further described in Exhibit E;
- (c) the Workforce Agreement benefits including the Workforce Jobs Readiness Training as further described in Exhibit F;
- (d) the Transportation Program benefits as further described in Exhibit G;
- (e) the transfer of the Dempster Building to CAST, as described in Section 3.2.2 and in Section 7.8;
- (f) the Arts Program benefits as described in Section 5.4.2.1 and Exhibit H;
- (g) the Youth Development Program benefits, as described in Exhibit C; and
- (h) a One Million Dollar (\$1,000,000) contribution to the City’s Real Property Director for capital improvements to and associated technical studies for the San Francisco Old Mint building at the time and as provided in Exhibit D; and
- (i) a Three Hundred Thousand Dollar (\$300,000) contribution to the Planning Department to fund staff time, consultant work and other studies or measures in

furtherance of adopting a Filipino Cultural Heritage District in the vicinity of the Project at the time and as provided in Exhibit D.

Form

Developer shall pay the 5M Community Benefits Fee or complete each of the Community Benefits on or before the dates provided in this Agreement (including the Community Benefits Schedule attached hereto as Exhibit D) and the Approvals. Any payments or property received by the City as part of the Community Benefits shall be used by the City as described in this Agreement. Upon Developer's request, the City shall provide to Developer evidence of the use of the funds by the City consistent with the requirements of this Agreement.

4.2 Conditions to Performance of Community Benefits. Developer's obligation to perform Community Benefits is expressly conditioned upon each and all of the following conditions precedent:

- (a) All Approvals shall have been Finally Granted;
- (b) The City and any applicable Non-City Agency shall have performed or granted any and all of their respective actions, approvals or authorizations and/or issued such permits or licenses required in order to permit Developer to Commence Construction of the Building or Project component to which Community Benefit applies, and same shall have been Finally Granted except to the extent that such actions, approvals or authorizations, or permits or licenses have not been performed or granted due to the failure of Developer to timely initiate and then diligently and in good faith pursue such actions, approvals, authorizations or issuances; and
- (c) Developer shall have obtained all Subsequent Approvals necessary to Commence Construction of the applicable Building to which the Community Benefit or Project component applies, and same shall have been Finally Granted, except to the

extent that such Subsequent Approvals have not been obtained or Finally Granted due to the failure of Developer to timely initiate and then diligently and in good faith pursue such Subsequent Approvals.

Whenever this Agreement requires completion of a Community Benefit at or before completion of a Building, the City may, except as set forth in Section 7.8, withhold a certificate of occupancy for that Building until the required Community Benefit is completed.

4.3 No Additional CEQA Review Required; Reliance on FEIR for Future Discretionary Approvals. The Parties acknowledge that the FEIR prepared for the Project complies with CEQA. The Parties further acknowledge that (a) the FEIR contains a thorough analysis of the Project and possible alternatives, (b) the Mitigation Measures have been adopted to eliminate or reduce to an acceptable level certain adverse environmental impacts of the Project, and (c) the Board of Supervisors adopted CEQA Findings, including a statement of overriding considerations in connection with the Approvals, pursuant to CEQA Guidelines Section 15093, for those significant impacts that could not be mitigated to a less than significant level. For these reasons, (i) the City does not intend to conduct any further environmental review or mitigation under CEQA for any aspect of the Project vested under this Agreement, and (ii) the City shall rely on the FEIR, to the greatest extent possible in accordance with applicable Laws, in all future discretionary actions related to the Project; provided, however, that nothing shall prevent or limit the discretion of the City to conduct additional environmental review in connection with any Subsequent Approvals to the extent that such additional environmental review is required by applicable Laws, including CEQA.

4.3.1 Compliance with CEQA Mitigation Measures. Developer shall comply with all Mitigation Measures imposed as applicable to each Project component, except

for any Mitigation Measures that are expressly identified as the responsibility of a different party or entity. Without limiting the foregoing, Developer shall be responsible for the completion of all Mitigation Measures identified as the responsibility of the "owner" or the "project sponsor". The Parties expressly acknowledge that the FEIR and the associated MMRP are intended to be used in connection with each of the Approvals and any Subsequent Approvals to the extent appropriate and permitted under applicable Law. Nothing in this Agreement shall limit the ability of the City to impose conditions on any new, discretionary permit resulting from Material Changes as such conditions are determined by the City to be necessary to mitigate adverse environmental impacts identified through the CEQA process and associated with the Material Changes or otherwise to address significant environmental impacts as defined by CEQA created by an approval or permit; provided, however, any such conditions must be in accordance with applicable Law.

4.4 Nondiscrimination. In the performance of this Agreement, Developer agrees not to discriminate against any employee, City employee working with Developer's contractor or subcontractor, applicant for employment with such contractor or subcontractor, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes.

4.5 City Cost Recovery

4.5.1 Developer shall timely pay to the City all Impact Fees and Exactions applicable to the Project or the Project Site as set forth in Section 5.4 of this Agreement.

4.5.2 Developer shall timely pay to the City all Processing Fees applicable to the processing or review of applications for the Approvals and Subsequent Approvals as set forth in Section 5.4 of this Agreement.

4.5.3 Developer shall pay to the City all City Costs incurred in connection with the drafting and negotiation of this Agreement, defending the Approvals and Subsequent Approvals as set forth in Section 7.4, and in processing and issuing any Subsequent Approvals or administering this Agreement (except for the costs that are covered by Processing Fees), within sixty (60) days following receipt of a written invoice complying with Section 4.5.4 from the City.

4.5.4 OEWD shall provide Developer on a quarterly basis (or such alternative period as agreed to by the Parties) a reasonably detailed statement showing costs incurred by OEWD, the City Agencies and the City Attorney's Office, including the hourly rates for each City staff member at that time, the total number of hours spent by each City staff member during the invoice period, any additional costs incurred by the City Agencies and a brief non-confidential description of the work completed (provided, for the City Attorney's Office, the billing statement will be reviewed and approved by OEWD but the cover invoice forwarded to Developer will not include a description of the work). OEWD will use reasonable efforts to provide an accounting of time and costs from the City Attorney's Office and each City Agency in each invoice; provided, however, if OEWD is unable to provide an accounting from one or more

of such parties OEWD may send an invoice to Developer that does not include the charges of such party or parties without losing any right to include such charges in a future or supplemental invoice. Developer's obligation to pay the City Costs shall survive the termination of this Agreement. Developer shall have no obligation to reimburse the City for any City Cost that is not invoiced to Developer within eighteen (18) months from the date the City Cost was incurred. The City will maintain records, in reasonable detail, with respect to any City Costs and upon written request of Developer, and to the extent not confidential, shall make such records available for inspection by Developer.

4.5.5 If Developer in good faith disputes any portion of an invoice, then within sixty (60) days following receipt of the invoice Developer shall provide notice of the amount disputed and the reason for the dispute, and the Parties shall use good faith efforts to reconcile the dispute as soon as practicable. Developer shall have no right to withhold the disputed amount. If any dispute is not resolved within ninety (90) days following Developer's notice to the City of the dispute, Developer may pursue all remedies at law or in equity to recover the disputed amount.

4.6 Prevailing Wages. Developer agrees that all persons performing labor in the construction of public improvements as defined in the Administrative Code, or otherwise as required by California law, on the Project Site shall be paid not less than the highest prevailing rate of wages for the labor so performed as provided under Section 6.22(E) of the Administrative Code, shall be subject to the same hours and working conditions, and shall receive the same benefits as in each case are provided for similar work performed in San Francisco, California, and Developer shall include this requirement in any contract entered into by Developer for the

construction of any such public improvements. Upon request, Developer and its contractors will provide to City any workforce payroll records as needed to confirm compliance with this section.

4.7 Indemnification of City. Developer shall indemnify, reimburse, and hold harmless the City and its officers, agents and employees (the "**City Parties**") from and, if requested, shall defend them against any and all loss, cost, damage, injury, liability, and claims ("**Losses**") arising or resulting directly or indirectly from (i) any third party claim arising from a default by Developer under this Agreement, (ii) Developer's failure to comply with any Approval, Subsequent Approval or Non-City Approval, (iii) the failure of any improvements constructed pursuant to the Approvals or Subsequent Approvals to comply with any Federal or State Laws, the Existing Standards or any permitted Future Changes to Existing Standards, (iv) any accident, bodily injury, death, personal injury or loss of or damage to property occurring on a Project Site (or off-site, with regard to the Public Improvements) in connection with the construction by Developer or its agents or contractors of any improvements pursuant to the Approvals, Subsequent Approvals or this Agreement, (v) a Third-Party Challenge instituted against the City or any of the City Parties, (vi) any dispute between Developer, its contractors or subcontractors relating to the construction of any part of the Project, and (vii) any dispute between Developer and any Transferee or any subsequent owner of any of the Project Site relating to any assignment of this Agreement or the obligations that run with the land, or any dispute between Developer and any Transferee or other person relating to which party is responsible for performing certain obligations under this Agreement, each regardless of the negligence of and regardless of whether liability without fault is imposed or sought to be imposed on the City or any of the City Parties, except to the extent that such indemnity is void or otherwise unenforceable under applicable Law, and except to the extent such Loss is the result of

the negligence or willful misconduct of the City Parties. The foregoing indemnity shall include, without limitation, reasonable attorneys' fees and costs and the City's reasonable cost of investigating any claims against the City or the City Parties. All indemnifications set forth in this Agreement shall survive the expiration or termination of this Agreement, to the extent such indemnification obligation arose from an event occurring before the expiration or termination of this Agreement. To the extent the indemnifications relate to Developer's obligations that survive the expiration or termination of this Agreement, the indemnifications shall survive for the term of the applicable obligation plus four years.

5. VESTING AND CITY OBLIGATIONS

5.1 Vested Rights. By the Approvals the City has made a policy decision that the Project, as described in and as may be modified in accordance with the Approvals, is in the best interests of the City and promotes the public health, safety and welfare. Developer shall have the vested right to develop the Project as set forth in this Agreement, including without limitation with the following vested elements: the locations and numbers of Buildings proposed, the land uses, height and bulk limits, including the maximum density, intensity and gross square footages, the permitted uses, the provisions for open space vehicular access and parking, (collectively, the "**Vested Elements**"; provided the Existing Uses on the Project Site shall also be included as Vested Elements). The Vested Elements are subject to and shall be governed by Applicable Laws. The expiration of any Building permit or Approval shall not limit the Vested Elements, and Developer shall have the right to seek and obtain subsequent Building permits or approvals, including Subsequent Approvals at any time during the Term, any of which shall be governed by Applicable Laws. Each Subsequent Approval, once granted, shall be deemed an Approval for purposes of this Section 5.1.

5.2 Existing Standards. The City shall process, consider, and review all Subsequent Approvals in accordance with (i) the Approvals, (ii) the San Francisco General Plan, the Municipal Code (including the Subdivision Code) and all other applicable City policies, rules and regulations as each of the foregoing is in effect on the Effective Date ("**Existing Standards**"), as the same may be amended or updated in accordance with permitted Future Changes to Existing Standards as set forth in Section 5.3, and (iii) this Agreement (collectively, "**Applicable Laws**").

5.3 Future Changes to Existing Standards. All future changes to Existing Standards and any other Laws, plans or policies adopted by the City or adopted by voter initiative after the Effective Date ("**Future Changes to Existing Standards**") shall apply to the Project and the Project Site except to the extent they conflict with this Agreement or the terms and conditions of the Approvals. In the event of such a conflict, the terms of this Agreement and the Approvals shall prevail, subject to the terms of Section 5.6.

5.3.1 Future Changes to Existing Standards shall be deemed to conflict with this Agreement and the Approvals if they:

(a) limit or reduce the density or intensity of the Project, or any part thereof, or otherwise require any reduction in the square footage or number of proposed Buildings or change the location of proposed Buildings or change or reduce other improvements from that permitted under this Agreement for the Project, the Existing Standards, or the Approvals;

(b) limit or reduce the height or bulk of the Project, or any part thereof, or otherwise require any reduction in the height or bulk of individual proposed Buildings

or other improvements that are part of the Project from that permitted under this Agreement, the Existing Standards, or the Approvals;

(c) limit, reduce or change the location of vehicular access or parking from that permitted under this Agreement, the Existing Standards, or the Approvals;

(d) limit any land uses for the Project from that permitted under this Agreement, the Existing Standards, the Approvals or the Existing Uses;

(e) change or limit the Approvals or Existing Uses;

(f) materially limit or control the rate, timing, phasing, or sequencing of the approval, development, or construction of all or any part of the Project in any manner, including the demolition of existing Buildings at the Project Site;

(g) require the issuance of permits or approvals by the City other than those required under the Existing Standards, except as otherwise provided in Section 5.4.2;

(h) limit or control the availability of public utilities, services or facilities or any privileges or rights to public utilities, services, or facilities for the Project as contemplated by the Approvals;

(i) materially and adversely limit the processing or procuring of applications and approvals of Subsequent Approvals that are consistent with Approvals; or,

(j) impose or increase any Impact Fees and Exactions, as they apply to the Project, except as permitted under Section 5.4.2 of this Agreement.

5.3.2 Developer may elect to have a Future Change to Existing Standards that conflicts with this Agreement and the Approvals applied to the Project or the Project Site by giving the City notice of its election to have a Future Change to Existing

Standards applied, in which case such Future Change to Existing Standards shall be deemed to be an Existing Standard; provided, however, if the application of such Future Change to Existing Standards would be a Material Change to the City's obligations hereunder, the application of such Future Change to Existing Standards shall require the concurrence of any affected City Agencies. Nothing in this Agreement shall preclude the City from applying Future Changes to Existing Standards to the Project Site for any development not within the definition of the "**Project**" under this Agreement. In addition, nothing in this Agreement shall preclude Developer from pursuing any challenge to the application of any Future Changes to Existing Standards to all or part of the Project Site.

5.3.3 The Parties acknowledge that, for certain parts of the Project, Developer must submit a variety of applications for Subsequent Approvals before Commencement of Construction. Developer shall be responsible for obtaining all Subsequent Approvals before the start of any construction to the extent required under Applicable Law. Notwithstanding anything in this Agreement to the contrary, when considering any such application for a Subsequent Approval, the City shall apply the applicable provisions, requirements, rules, or regulations that are contained in the California Building Standards Code, as amended by the City, including requirements of the San Francisco Building Code, Public Works Code (which includes the Stormwater Management Ordinance), Subdivision Code, Mechanical Code, Electrical Code, Plumbing Code, Fire Code or other uniform construction codes applicable on a City-Wide basis.

5.3.4 Developer shall have the right, from time to time and at any time, to file subdivision map applications (including phased final map applications and development-specific condominium map or plan applications) with respect to some or all of the Project Site, to

subdivide, reconfigure or merge the parcels comprising the Project Site as may be necessary or desirable in order to develop a particular part of the Project as shown generally in Exhibit B. The specific boundaries of parcels shall be set by Developer and approved by the City during the subdivision process. Nothing in this Agreement shall authorize Developer to subdivide or use any of the Project Site for purposes of sale, lease or financing in any manner that conflicts with the Subdivision Map Act or with the Subdivision Code. Nothing in this Agreement shall prevent the City from enacting or adopting changes in the methods and procedures for processing subdivision and parcel maps so long as such changes do not conflict with the provisions of this Agreement or with the Approvals.

5.4 Fees and Exactions.

5.4.1 Generally. The Project shall only be subject to the Processing Fees and Impact Fees and Exactions as set forth in this Section 5.4, and the City shall not impose any new Processing Fees or Impact Fees and Exactions on the development of the Project or impose new conditions or requirements for the right to develop the Project (including required contributions of land, public amenities or services) except as set forth in this Agreement. The Parties acknowledge that the provisions contained in this Section 5.4 are intended to implement the intent of the Parties that Developer have the right to develop the Project pursuant to specified and known criteria and rules, and that the City receive the benefits which will be conferred as a result of such development without abridging the right of the City to act in accordance with its powers, duties and obligations, except as specifically provided in this Agreement.

5.4.2 Impact Fees and Exactions. During the first ten (10) years of the Term, as extended by the Litigation Extension (if any), no Impact Fees and Exactions shall apply to the Project or components thereof except for (i) the SFPUC Capacity Charges in effect at the

time of assessment and (ii) those in effect as of the Effective Date. Starting on the tenth (10th) anniversary of the Effective Date, as extended by the Litigation Extension (if any), all Impact Fees and Exactions in effect at the time of assessment shall apply to any development on the Project Site under this Agreement. For the purposes of this Section 5.4.2, any sums payable as part of the Community Benefits Fee shall not be considered Impact Fees and Exactions.

5.4.2.1 Art Fee. Notwithstanding the provisions of Planning Code Section 429.3, sixty percent (60%) of the Public Art Fee contributions from the Project Site will be used for the payment of capital costs, including, without limitation, the costs of interior or exterior design, engineering, and construction, relating to the redevelopment of the Dempster Building, and forty percent (40%) of the Public Art Fee contributions will be used for public art and cultural programming purposes in the publicly accessible open space within the Project Site, as further provided in Exhibit H, the Arts Program.

5.4.3 Processing Fees. Except as provided in Section 5.4.4, for three (3) years following the Effective Date, as extended by the number of days in any extension of the Term under Section 11.5.1, Processing Fees for the Project shall be limited to the Processing Fees in effect, on a City-Wide basis, as of the Effective Date (provided that to the extent Processing Fees are based on time and materials costs, such fees may be calculated based on the schedule for time and materials costs in effect on the date the work is performed by the City). Thereafter, Processing Fees for the Project shall be limited to the Processing Fees in effect, on a City-Wide basis, at the time that Developer applies for the Subsequent Approval for which such Processing Fee is payable in connection with the applicable portion of the Project.

5.4.4 Recognition of Project Review Process/No Conditional Use Fee. In recognition of the extensive Design for Development and 5M SUD process, notwithstanding

any other provision of Applicable Law, no Processing Fee has been charged under Planning Code Section 352 in connection with the conditional use portions of the Approvals nor shall a Processing Fee be charged or be due for any Conditional Use application filed in connection with any Subsequent Approval, modification of any Approval, or any implementation action in connection with the Project under Section 249.74(e) of the 5M SUD.

5.4.5 Office Allocation. Notwithstanding the provisions of Planning Code Section 321(d)(2), within the Project Site the Developer shall have the greater of the period provided by Applicable Laws or three (3) years from the date on which a Project authorization for an office development is granted to obtain a site permit for an office development Project, as may be extended by a Litigation Extension (if any), but otherwise subject to the provisions of Planning Code Section 321(d)(2).

5.5 Limitation on City's Future Discretion. In accordance with Section 4.3, the City in granting the Approvals and, as applicable, vesting the Project through this Agreement is limiting its future discretion with respect to the Project and Subsequent Approvals to the extent that they are consistent with the Approvals and this Agreement. For elements included in a request for a Subsequent Approval that have not been reviewed or considered by the applicable City Agency previously (including but not limited to additional details or plans for a proposed building), the City Agency shall exercise its discretion consistent with the provisions of the 5M SUD and the other Approvals and otherwise in accordance with customary practice. In no event shall a City Agency deny issuance of a Subsequent Approval based upon items that are consistent with the Approvals and this Agreement. Consequently, the City shall not use its discretionary authority to change the policy decisions reflected by the Approvals and this Agreement or otherwise to prevent or to delay development of the Project as contemplated in the

Approvals and this Agreement. Nothing in the foregoing shall impact or limit the City's discretion with respect to: (i) proposed Subsequent Approvals that seek a Material Change to the Approvals, or (ii) Board of Supervisor approvals of subdivision maps, as required by Law, not contemplated by the Approvals.

5.6 Changes in Federal or State Laws.

5.6.1 City's Exceptions. Notwithstanding any provision in this Agreement to the contrary, each City Agency having jurisdiction over the Project shall exercise its discretion under this Agreement in a manner that is consistent with the public health and safety and shall at all times retain its respective authority to take any action that is necessary to protect the physical health and safety of the public (the "**Public Health and Safety Exception**") or reasonably calculated and narrowly drawn to comply with applicable changes in Federal or State Law affecting the physical environment (the "**Federal or State Law Exception**"), including the authority to condition or deny a Subsequent Approval or to adopt a new Law applicable to the Project so long as such condition or denial or new regulation (i) is limited solely to addressing a specific and identifiable issue in each case required to protect the physical health and safety of the public or (ii) is required to comply with a Federal or State Law and in each case not for independent discretionary policy reasons that are inconsistent with the Approvals or this Agreement and (iii) is applicable on a City-Wide basis to the same or similarly situated uses and applied in an equitable and non-discriminatory manner. Developer retains the right to dispute any City reliance on the Public Health and Safety Exception or the Federal or State Law Exception.

5.6.2 Changes in Federal or State Laws. If Federal or State Laws issued, enacted, promulgated, adopted, passed, approved, made, implemented, amended, or interpreted

after the Effective Date have gone into effect and (i) preclude or prevent compliance with one or more provisions of the Approvals or this Agreement, or (ii) materially and adversely affect Developer's or the City's rights, benefits or obligations, such provisions of this Agreement shall be modified or suspended as may be necessary to comply with such Federal or State Law. In such event, this Agreement shall be modified only to the extent necessary or required to comply with such Law, subject to the provisions of Section 5.6.4, as applicable.

5.6.3 Changes to Development Agreement Statute. This Agreement has been entered into in reliance upon the provisions of the Development Agreement Statute. No amendment of or addition to the Development Agreement Statute which would affect the interpretation or enforceability of this Agreement or increase the obligations or diminish the development rights of Developer hereunder, or increase the obligations or diminish the benefits to the City hereunder shall be applicable to this Agreement unless such amendment or addition is specifically required by Law or is mandated by a court of competent jurisdiction. If such amendment or change is permissive rather than mandatory, this Agreement shall not be affected.

5.6.4 Termination of Agreement. If any of the modifications, amendments or additions described in Section 5.3.3 or this Section 5.6 or any changes in Federal or State Laws described above would materially and adversely affect the construction, development, use, operation or occupancy of the Project as currently contemplated by the Approvals, or any material portion thereof, such that the Project becomes economically infeasible (a "**Law Adverse to Developer**"), then Developer shall notify the City and propose amendments or solutions that would maintain the benefit of the bargain (that is this Agreement) for both Parties. If any of the modifications, amendments or additions described in Sections 5.6.2 or 5.6.3 or any changes in Federal or State Laws described thereunder would

materially and adversely affect or limit the Community Benefits (a “**Law Adverse to the City**”), then the City shall notify Developer and propose amendments or solutions that would maintain the benefit of the bargain (that is this Agreement) for both Parties. Upon receipt of a notice under this Section 5.6.4, the Parties agree to meet and confer in good faith for a period of not less than ninety (90) days in an attempt to resolve the issue. If the Parties cannot resolve the issue in ninety (90) days or such longer period as may be agreed to by the Parties, then the Parties shall mutually select a mediator at JAMS in San Francisco for nonbinding mediation for a period of not less than thirty (30) days. If the Parties remain unable to resolve the issue following such mediation, then (i) Developer shall have the right to terminate this Agreement following a Law Adverse to Developer upon not less than thirty (30) days prior notice to the City, and (ii) the City shall have the right to terminate this Agreement following a Law Adverse to the City upon not less than thirty (30) days prior notice to Developer; provided, notwithstanding any such termination, Developer shall be required to complete the Community Benefits for development commenced in connection with a particular new Building as set forth in Section 4.1.

5.7 No Action to Impede Approvals. Except and only as required under Section 5.6, the City shall take no action under this Agreement nor impose any condition on the Project that would conflict with this Agreement or the Approvals. An action taken or condition imposed shall be deemed to be in conflict with this Agreement or the Approvals if such actions or conditions result in the occurrence of one or more of the circumstances identified in Section 5.3.1.

5.8 Criteria for Approving Subsequent Approvals. The City shall not disapprove applications for Subsequent Approval based upon any item or element that is consistent with this Agreement and the Approvals, and shall consider all such applications in

accordance with its customary practices (subject to the requirements of this Agreement). The City may subject a Subsequent Approval to any condition that is necessary to bring the Subsequent Approval into compliance with Applicable Laws. The City shall in no event be obligated to approve an application for a Subsequent Approval that would effect a Material Change. If the City denies any application for a Subsequent Approval that implements a Project as contemplated by the Approvals, the City must specify in writing the reasons for such denial and shall suggest modifications required for approval of the application. Any such specified modifications shall be consistent with Applicable Laws and City staff shall approve the application if it is subsequently resubmitted for City review and corrects or mitigates, to the City's reasonable satisfaction, the stated reasons for the earlier denial in a manner that is consistent and compliant with Applicable Laws and does not include new or additional information or materials that give the City a reason to object to the application under the standards set forth in this Agreement. The City agrees to rely on the FEIR, to the greatest extent possible, as more particularly described in Section 4.3. With respect to any Subsequent Approval, the City agrees to rely on the General Plan Consistency Findings to the greatest extent possible in accordance with applicable Laws; provided, however, that nothing shall prevent or limit the discretion of the City in connection with any Subsequent Approvals that, as a result of amendments to the Approvals, require new or revised General Plan consistency findings.

If any City Agency with jurisdiction objects to a Subsequent Approval for any Building or any Improvement set forth in Section 1 of Exhibit G (including if the Improvement is part of a larger permit application) based upon the proposed width of a sidewalk, street or alley, then within five (5) business days of the objection being raised (whether raised formally or informally), representatives from Developer, MTA, DPW, Planning, and the objecting City

Agency shall meet and confer in good faith to attempt to find a mutually satisfactory resolution to the objection that does not conflict with City policy, including the City's Better Streets Plan, its Transit First Policy, or any applicable streetscape plan, the Approvals or this Agreement. If the matter is not resolved within fourteen (14) days following the objection, then the Planning Director shall notify the Clerk of the Board of Supervisors and the members of the Board of Supervisors' Land Use and Transportation Committee. The City Agencies and Developer agree to act in good faith to resolve the matter quickly and in a manner that does not conflict with City policy, the Approvals, this Agreement or applicable law. By entering into this Agreement, the City's Board of Supervisors has reviewed and approved the sidewalk, street and alley widths, as set forth in Exhibit G and the Design for Development, as consistent with the City's central policy objective to ensure street safety for all users while maintaining adequate clearances, including for fire apparatus vehicles.

5.9 Estoppel Certificates. Developer may, at any time, and from time to time, deliver notice to the Planning Director requesting that the Planning Director certify to Developer, a potential Transferee, or a potential lender to Developer, in writing that to the best of the Planning Director's knowledge: (i) this Agreement is in full force and effect and a binding obligation of the Parties; (ii) this Agreement has not been amended or modified, and if so amended or modified, identifying the amendments or modifications and stating their date and providing a copy or referring to the recording information; (iii) Developer is not in Default in the performance of its obligations under this Agreement, or if in Default, to describe therein the nature and amount of any such Defaults; and (iv) the findings of the City with respect to the most recent annual review performed pursuant to Section 8. The Planning Director, acting on behalf

of the City, shall execute and return such certificate within forty-five (45) days following receipt of the request.

5.10 Existing, Continuing Uses and Interim Uses. The Parties acknowledge that the Existing Uses are lawfully authorized uses and may continue as such uses may be modified by the Project, provided that any modification thereof not a component of or contemplated by the Project is subject to Planning Code Section 178 and the applicable provisions of Section 5. Developer may install interim or temporary uses on the Project Site, which uses must be consistent with those uses allowed under the Project's zoning and the 5M SUD.

5.11 Costa-Hawkins Rental Housing Act.

5.11.1 Non-Applicability of Costa-Hawkins Act. Chapter 4.3 of the California Government Code directs public agencies to grant concessions and incentives to private developers for the production of housing for lower income households. The Costa-Hawkins Rental Housing Act, California Civil Code sections 1954.50 et seq. (the “**Costa-Hawkins Act**”) provides for no limitations on the establishment of the initial and all subsequent rental rates for a dwelling unit with a certificate of occupancy issued after February 1, 1995, with exceptions, including an exception for dwelling units constructed pursuant to a contract with a public agency in consideration for a direct financial contribution or any other form of assistance specified in Chapter 4.3 of the California Government Code (section 1954.52(b)). The Parties agree that the Costa-Hawkins Act does not and in no way shall limit or otherwise affect the restriction of rental charges for the BMR Units. This Agreement falls within the express exception to the Costa-Hawkins Act, Section 1954.52(b) because this Agreement is a contract with a public entity in consideration for contributions and other forms of assistance specified in

Chapter 4.3 (commencing with Section 65919 of Division 1 of Title 7 of the California Government Code). The City and Developer would not be willing to enter into this Agreement without the understanding and agreement that Costa-Hawkins Act provisions set forth in California Civil Code section 1954.52(a) do not apply to the BMR Units as a result of the exemption set forth in California Civil Code section 1954.52(b) for the reasons set forth in this Section 5.11.

5.11.2 General Waiver. Developer, on behalf of itself and all of its successors and assigns of all or any portion of the Project Site, agrees not to challenge and expressly waives, now and forever, any and all rights to challenge the requirements of this Agreement related to the establishment of the BMR Units under the Costa-Hawkins Act (as the Costa-Hawkins Act may be amended or supplanted from time to time). If and to the extent such general covenants and waivers are not enforceable under Law, the Parties acknowledge and that they are important elements of the consideration for this Agreement and the Parties should not have the benefits of this Agreement without the burdens of this Agreement. Accordingly, if Developer challenges the application of this covenant and waiver, then such breach will be an Event of Default and City shall have the right to terminate this Agreement as to the portion of the Project under the ownership or control of Developer.

5.11.3 Inclusion in All Assignment and Assumption Agreements and Recorded Restrictions. Developer shall include the provisions of this Section 5.11 in any and all assignment and assumption agreements, and any and all recorded restrictions, for any portion of the Project Site that includes or will include BMR Units.

5.12 Taxes. Nothing in this Agreement limits the City's ability to impose new or increased taxes or special assessments, or any equivalent or substitute tax or assessment,

provided (i) the City shall not institute on its own initiative proceedings for any new or increased special tax or special assessment for a land-secured financing district (including the special taxes under the Mello-Roos Community Facilities Act of 1982 (Government Code §§ 53311 *et seq.*) but not including business improvement districts or community benefit districts formed by a vote of the affected property owners) that includes the Project Site unless the new district is City-Wide or Developer gives its prior written consent to or requests such proceedings, and (ii) no such tax or assessment shall be targeted or directed at the Project, including, without limitation, any tax or assessment targeted solely at all or any part of the Project Site. Nothing in the foregoing prevents the City from imposing any tax or assessment against the Project Site, or any portion thereof, that is enacted in accordance with Law and applies to all similarly-situated property on a City-Wide basis.

6. NO DEVELOPMENT OBLIGATION

There is no requirement under this Agreement that Developer initiate or complete development of the Project, or any portion thereof. There is also no requirement that development be initiated or completed within any period of time or in any particular order, subject to the requirement to complete applicable Community Benefits with each portion of the Project started by Developer as set forth in Section 4.2. The development of the Project is subject to numerous factors that are not within the control of Developer or the City, such as availability of financing, interest rates, access to capital, and similar factors. Except as expressly required by this Agreement, the City acknowledges that Developer may develop the Project in such order and at such rate and times as Developer deems appropriate within the exercise of its sole and subjective business judgment. In *Pardee Construction Co. v. City of Camarillo*, 37 Cal.3d 465 (1984), the California Supreme Court ruled that the failure of the parties therein to

provide for the timing of development resulted in a later adopted initiative restricting the timing of development and controlling the parties' agreement. It is the intent of the Parties to avoid such a result by acknowledging and providing for the timing of development of the Project in the manner set forth herein. The City acknowledges that such a right is consistent with the intent, purpose and understanding of the Parties to this Agreement, and that without such a right, Developer's development of the Project would be subject to the uncertainties sought to be avoided by the Development Agreement Statute, Chapter 56 and this Agreement.

7. MUTUAL OBLIGATIONS

7.1 Notice of Completion, Revocation or Termination. Upon any early revocation or termination of this Agreement (as to all or any part of the Project Site), the Parties agree to execute a written statement acknowledging such revocation or termination, signed by the appropriate agents of the City and Developer, and record such instrument in the Official Records. In addition, upon Developer's request, when one or more Buildings have been completed, and all of the Community Benefits tied to those specific Buildings have also been completed, the City and Developer shall execute and record a notice of completion in the form attached as Exhibit L for the applicable property on which the Buildings or other facilities or improvements are located.

7.2 General Cooperation Agreement to Cooperate. The Parties agree to cooperate with one another to expeditiously implement the Project in accordance with the Approvals, any Subsequent Approvals and this Agreement, and to undertake and complete all actions or proceedings reasonably necessary or appropriate to ensure that the objectives of this Agreement, the Approvals and any Subsequent Approvals are implemented. Except for ordinary administrative costs of the City, nothing in this Agreement obligates the City to spend any sums

of money or incur any costs other than City Costs or costs that Developer must reimburse through the payment of permitted Processing Fees. The Parties agree that the Planning Department (or such other department to whom the obligation is delegated by the Director of the Planning Department after notice to Developer) will act as the City's lead agency to facilitate coordinated City review of applications for the Project. As such, Planning Department (or such other department) staff will: (i) work with Developer to ensure that all such applications to the City are technically sufficient and constitute complete applications and (ii) interface with City staff responsible for reviewing any application under this Agreement to facilitate an orderly, efficient approval process that avoids delay and redundancies.

7.2.1 Specific Actions by the City. The City actions and proceedings subject to this Agreement shall be through the Planning Department, as well as affected City Agencies (and when required by applicable Law, the Board of Supervisors), and shall include instituting and completing proceedings for temporary or permanent closing or occupancy, widening, modifying (including changes from vehicular to pedestrian use) or changing the grades of streets, alleys, sidewalks, and other rights-of-way, and other necessary modifications of the streets, the street layout, and other public or private rights-of-way in or near the Project Site, including streetscape improvements, encroachment permits, improvement permits, and any requirement to abandon, remove, and relocate public utilities (and, when applicable, City utilities) within the public rights-of-way as identified in the Approvals and Subsequent Approvals. Except as set forth in Section 9.4.4, City Agencies shall process with due diligence all submissions and applications by Developer on all permits, approvals, construction or occupancy permits for the Project subject to the acceptance of the same as complete.

7.3 Non-City Approvals Cooperation to Obtain Permits. The Parties acknowledge that certain portions of the Project may require the approval of Federal, State, and local governmental agencies that are independent of the City and not a Party to this Agreement ("**Non-City Agencies**"). The City will reasonably cooperate with reasonable requests by Developer in connection with Developer's efforts to obtain permits, agreements, or entitlements from Non-City Agencies as may be necessary or desirable for the development, operation and use of the Project (each, a "**Non-City Approval**"). The City's commitment to Developer under this Agreement is subject to the following conditions:

(a) Throughout the permit process for any Non-City Approval, Developer shall consult and coordinate with each affected City Agency in Developer's efforts to obtain the permits, agreements, or entitlements, and each such City Agency shall cooperate reasonably with Developer in Developer's efforts to obtain the same.

(b) Developer shall not agree to conditions or restrictions in any Non-City Approval that could create: (1) any obligations on the part of any City Agency, unless the City Agency agrees in writing, following the receipt of any necessary governmental approvals, to assume such obligations; or (2) any restrictions on City property, unless in each instance the City, including each affected City Agency, has previously approved in its sole discretion the conditions or restrictions in writing following the receipt of any necessary governmental approvals.

(c) The City shall have no duty to cooperate with public utilities and communication service providers to the extent that the cooperation efforts requested by Developer are materially in excess of the City's typical efforts in connection with other major development and construction projects in the City.

7.3.1 Costs. Developer shall bear all costs associated with applying for and obtaining any necessary Non-City Approval. Developer, at no cost to the City, shall be solely responsible for complying with any Non-City Approval and any and all conditions or restrictions imposed as part of a Non-City Approval. Developer shall pay or otherwise discharge any fines, penalties, or corrective actions imposed as a result of Developer's failure to comply with any Non-City Approval.

7.4 Cooperation in the Event of Third-Party Challenge. In the event any administrative, legal or equitable action or proceeding is instituted by any party other than the City or Developer challenging the validity or performance of any provision of this Agreement, the Project, the Approvals or Subsequent Approvals, the adoption or certification of the FEIR or other actions taken pursuant to CEQA, or other approvals under Laws relating to the Project, any action taken by the City or Developer in furtherance of this Agreement, or any combination thereof relating to the Project or any portion thereof ("**Third-Party Challenge**"), the Parties shall cooperate in defending against such challenge. The City shall promptly notify Developer of any Third-Party Challenge instituted against the City.

7.4.1 Developer shall assist and cooperate with the City at 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. Developer shall reimburse the 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; provided, however, Developer shall have the right to monthly invoices for all such costs.

7.4.2 To the extent that any such action or proceeding challenges or a judgment is entered limiting Developer's right to proceed with the Project or any material portion thereof under this Agreement (whether the Project commenced or not), including the City's actions taken pursuant to CEQA, Developer may elect to terminate this Agreement. Upon any such termination (or, upon the entry of a judgment terminating this Agreement, if earlier), the City and Developer shall jointly seek to have the Third-Party Challenge dismissed and Developer shall have no obligation to reimburse City defense costs that are incurred after the dismissal.

7.4.3 The filing of any Third Party Challenge shall not delay or stop the development, processing or construction of the Project or the issuance of Subsequent Approvals unless the third party obtains a court order preventing the activity.

7.5 Permits to Enter City Property. Subject to the rights of any third party, the rights of the public and the City's reasonable agreement on the scope of the proposed work and insurance and security requirements, each City Agency with jurisdiction shall grant permits to enter City-owned property on the City's standard form permit, including, without limitation, provisions regarding release, waivers and indemnification in keeping with the City's standard practices, so long as the same is consistent with Applicable Law, and otherwise on commercially reasonable terms, in order to permit Developer to enter City-owned property as necessary to construct the Project or comply with or implement the Approvals or other requirements in this Agreement.

7.6 Good Faith and Fair Dealing. The Parties shall cooperate with each other and act in good faith in complying with the provisions of this Agreement and implementing the Approvals and any Subsequent Approvals. In their course of performance under this Agreement,

the Parties shall cooperate and shall undertake such actions as may be reasonably necessary to implement the Project as contemplated by this Agreement, including such actions as may be necessary to satisfy or effectuate any applicable conditions precedent to the performance of the Community Benefits.

Upon Developer's request, the City agrees to use reasonable good faith efforts to assist Developer in applying for and obtaining authorization to utilize for the M-2 Building and, to the extent available, for any on-site BMR units: (i) multi-family tax-exempt or taxable bond financing; (ii) housing tax credits; (iii) grants, subsidies, and residual receipt loans from public entities other than the City; and (iv) any other method of low-cost financing that may be available or become available, as contemplated in the Approvals and as set forth in this Housing Program. All costs incurred by the City in such efforts shall be City Costs.

7.7 Other Necessary Acts. Each Party shall use good faith efforts to take such further actions as may be reasonably necessary to carry out this Agreement, the Approvals and any Subsequent Approvals, in accordance with the terms of this Agreement (and subject to all applicable Laws) in order to provide and secure to each Party the full and complete enjoyment of its rights and privileges hereunder.

7.8 Dempster Building. Subject to Section 4.2(a), Developer shall transfer the Dempster Building in accordance with the provisions of Section 3.2.2, provided, however, if the transfer of the Dempster Building to CAST or another nonprofit is not completed before issuance of a certificate of occupancy for Building N-1 or H-1, whichever occurs first, despite Developer's good faith efforts to do so; then, the City shall either (1) extend the period for the transfer of the Dempster Building and waive such transfer as a condition of the issuance of a certificate of occupancy for Building N-1 or H-1, as applicable, or (2) accept the transfer of the

fee interest in the Dempster Building and assume the transferor's obligations under the Dempster MOU with respect thereto and the condition shall be deemed satisfied. If CAST fails to close escrow when required under the Dempster MOU for any reason other than a Developer default, the City and Developer shall promptly and in good faith meet and confer and select a substitute nonprofit organization to receive the donation of the Dempster Building and the applicable portion of the Public Art Fee to be used for renovation or operation of the Dempster Building. If the City and Developer are not able to reach agreement on a substitute nonprofit arts organization within ninety (90) days, the City shall have the right to designate a substitute nonprofit organization or to accept the donation of the Dempster Building itself upon the same basis and conditions provided in the Dempster MOU. Upon Developer's transfer to CAST or another nonprofit as set forth in this Section 7.8, or upon the City's election not to take title to the Dempster Building (which election must occur within one hundred twenty (120) days after satisfaction of all conditions to transfer and Developer's offer of the Dempster Building to the City as set forth above), Developer and the City shall have no further obligation under this Agreement for the transfer of the Dempster Building and the provisions of Section 4.1.1(e) shall be deemed satisfied.

8. PERIODIC REVIEW OF DEVELOPER'S COMPLIANCE

8.1 Annual Review. Pursuant to Section 65865.1 of the Development Agreement Statute and Section 56.17 of the Administrative Code (as of the Effective Date), at the beginning of the second week of each January following final adoption of this Agreement and for so long as the Agreement is in effect (the "**Annual Review Date**"), the Planning Director shall commence a review to ascertain whether Developer has, in good faith, complied with the Agreement. The failure to commence such review in January shall not waive the Planning

Director's right to do so later in the calendar year; provided, however, that such review shall be deferred to the following January if not commenced on or before August 1st. The Planning Director may elect to forego an annual review if no significant construction work occurred on the Project Site during that year, or if such review is otherwise not deemed necessary.

8.2 Review Procedure. In conducting the required initial and annual reviews of Developer's compliance with this Agreement, the Planning Director shall follow the process set forth in this Section 8.2.

8.2.1 Required Information from Developer. Upon request by the Planning Director, but not more than sixty (60) nor less than forty-five (45) days before the Annual Review Date, Developer shall provide a letter to the Planning Director explaining, with appropriate backup documentation, Developer's compliance with this Agreement, including, but not limited to, compliance with the requirements regarding Community Benefits. The burden of proof, by substantial evidence, of compliance is upon Developer. The Planning Director shall post a copy of Developer's submittals on the Planning Department's website.

8.2.2 City Report. Within sixty (60) days after Developer submits such letter, the Planning Director shall review the information submitted by Developer and all other available evidence regarding Developer's compliance with this Agreement, and shall consult with applicable City Agencies as appropriate. All such available evidence including final staff reports shall, upon receipt by the City, be made available as soon as possible to Developer. The Planning Director shall notify Developer in writing whether Developer has complied with the terms of this Agreement (the "**City Report**"), and post the City Report on the Planning Department's website. If the Planning Director finds Developer not in compliance with this Agreement, then the City may pursue available rights and remedies in accordance with this

Agreement and Chapter 56. The City's failure to initiate or to timely complete the annual review shall not be a default and shall not be deemed to be a waiver of the right to do so at a later date. All costs incurred by the City under this Section shall be included in the City Costs.

8.2.3 Effect on Transferees. If Developer has effected a Transfer so that its interest in the Project Site has been divided between Developer and/or Transferees, then the annual review hereunder shall be conducted separately with respect to Developer and each Transferee, and if appealed, the Planning Commission and Board of Supervisors shall make its determinations and take its action separately with respect to Developer and each Transferee, as applicable, pursuant to Administrative Code Chapter 56. If the Board of Supervisors terminates, modifies or takes such other actions as may be specified in Administrative Code Chapter 56 and this Agreement in connection with a determination that Developer or a Transferee has not complied with the terms and conditions of this Agreement, such action by the Planning Director, Planning Commission, or Board of Supervisors shall be effective only as to the Party to whom the determination is made and the portions of the Project Site in which such Party has an interest.

8.2.4 Default. The rights and powers of the City under this Section 8.2 are in addition to, and shall not limit, the rights of the City to terminate or take other action under this Agreement on account of the commission by Developer of an Event of Default.

9. ENFORCEMENT OF AGREEMENT; DEFAULT; REMEDIES

9.1 Enforcement. The only Parties to this Agreement are the City and Developer (and any successors and Transferees). This Agreement is not intended, and shall not be construed, to benefit or be enforceable by any other person or entity whatsoever.

9.2 Meet and Confer Process. Before sending a notice of default in accordance with Section 9.3, the Party which may assert that the other Party has failed to

perform or fulfill its obligations under this Agreement shall first attempt to meet and confer with the other Party to discuss the alleged failure and shall permit such Party a reasonable period, but not less than ten (10) days, to respond to or cure such alleged failure; provided, however, the meet and confer process shall not be required (i) for any failure to pay amounts due and owing under this Agreement, or (ii) if a delay in sending a notice pursuant to Section 9.3 would impair, prejudice or otherwise adversely affect a Party or its rights under this Agreement. The Party asserting such failure shall request that such meeting and conference occur within three (3) business days following the request and if, despite the good faith efforts of the requesting Party, such meeting has not occurred within seven (7) business days of such request, such Party shall be deemed to have satisfied the requirements of this Section and may proceed in accordance with the issuance of a notice of default under Section 9.3.

9.3 Default. The following shall constitute a "Default" under this Agreement:

(i) the failure to make any payment within sixty (60) days following notice that such payment was not made when due and demand for compliance; and (ii) the failure to perform or fulfill any other material term, provision, obligation, or covenant of this Agreement and the continuation of such failure for a period of sixty (60) days following notice and demand for compliance. Notwithstanding the foregoing, if a failure can be cured but the cure cannot reasonably be completed within sixty (60) days, then it shall not be considered a Default if a cure is commenced within said 60-day period and diligently prosecuted to completion thereafter. Any notice of default given by a Party shall specify the nature of the alleged failure and, where appropriate, the manner in which said failure satisfactorily may be cured (if at all). Notwithstanding any other provision in this Agreement to the contrary, if Developer conveys or transfers some but not all of the Project and there is more than one Party that assumes obligations

of "Developer" under this Agreement, there shall be no cross-default between the separate Parties that assumed Developer obligations. Accordingly, if a Transferee Defaults, it shall not be a Default by any other Transferee or Party that owns a different portion of the Project Site.

9.4 Remedies.

9.4.1 Specific Performance. Subject to, and as limited by, the provisions of Section 9.4.3, 9.4.4 and 9.4.5, in the event of a Default the remedies available to a Party shall include specific performance of this Agreement in addition to any other remedy available at law or in equity.

9.4.2 Termination. Subject to the limitation set forth in Section 9.4.4, in the event of a Default, the non-defaulting Party may elect to terminate this Agreement by sending a notice of termination to the other Party, which notice of termination shall state the Default. This Agreement will be considered terminated effective upon the date set forth in the notice of termination, which shall in no event be earlier than sixty (60) days following delivery of the notice.

9.4.3 Limited Damages. The Parties have determined that except as set forth in this Section 9.4.3, (i) monetary damages are generally inappropriate, (ii) it would be extremely difficult and impractical to fix or determine the actual damages suffered by a Party as a result of a Default hereunder, and (iii) equitable remedies and remedies at law not including damages but including specific performance and termination are particularly appropriate remedies for enforcement of this Agreement. Consequently, Developer agrees that the City shall not be liable to Developer for damages under this Agreement, and the City agrees that Developer shall not be liable to the City for damages under this Agreement, and each covenants not to sue the other for or claim any damages under this Agreement and expressly waives its right to

recover damages under this Agreement, except as follows: (1) either Party shall have the right to recover actual damages only (and not consequential, punitive or special damages, each of which is hereby expressly waived) for a Party's failure to pay sums to the other Party as and when due under this Agreement, (2) the City shall have the right to recover actual damages for Developer's failure to make any payment due under any indemnity in this Agreement, (3) for any Community Benefit for which specific performance is determined by a court of competent jurisdiction not to be an available remedy (and the attached Exhibit does not include a liquidated damages remedy), except if and to the extent directly or indirectly resulting from action or inaction by or on behalf of City or any City Agencies, the City shall have the right to monetary damages according to proof against Developer equal to the costs that would have been incurred by Developer to complete the Community Benefit, (4) either Party shall have the right to recover reasonable attorneys' fees and costs as set forth in Section 9.6, and (5) the City shall have the right to administrative penalties or liquidated damages if and only to the extent expressly stated in an Exhibit or in Applicable Laws. For purposes of the foregoing, "**actual damages**" means the actual amount of the sum due and owing under this Agreement, with interest as provided by Law, together with such judgment collection activities as may be ordered by the judgment, and no additional sums.

9.4.4 City Processing/Certificates of Occupancy. The City shall not be required to process any requests for approval or take other actions under this Agreement during any period in which payments from Developer are past due. The City shall have the right to withhold a final certificate of occupancy for a Building until all of the Community Benefits tied to that Building have been completed. Subject to the conditions as to offsite obligations in Exhibit G, for a Building to be deemed completed Developer shall have completed all of the

streetscape and open space improvements described in Exhibit B for that Building; provided, if the City issues a final certificate of occupancy before such items are completed, then Developer shall promptly complete such items following issuance.

9.5 Time Limits; Waiver; Remedies Cumulative. Failure by a Party to insist upon the strict or timely performance of any of the provisions of this Agreement by the other Party, irrespective of the length of time for which such failure continues, shall not constitute a waiver of such Party's right to demand strict compliance by such other Party in the future. No waiver by a Party of any condition or failure of performance, including a Default, shall be effective or binding upon such Party unless made in writing by such Party, and no such waiver shall be implied from any omission by a Party to take any action with respect to such failure. No express written waiver shall affect any other condition, action or inaction, or cover any other period of time, other than any condition, action or inaction and/or period of time specified in such express waiver. One or more written waivers under any provision of this Agreement shall not be deemed to be a waiver of any subsequent condition, action or inaction, and the performance of the same or any other term or provision contained in this Agreement. Nothing in this Agreement shall limit or waive any other right or remedy available to a Party to seek injunctive relief or other expedited judicial and/or administrative relief to prevent irreparable harm.

9.6 Attorneys' Fees. Should legal action be brought by either Party against the other for a Default under this Agreement or to enforce any provision herein, the prevailing Party in such action shall be entitled to recover its reasonable attorneys' fees and costs. For purposes of this Agreement, "**reasonable attorneys' fees and costs**" means the reasonable fees and expenses of counsel to the Party, which may include printing, duplicating and other expenses, air

freight charges, hiring of experts and consultants, and fees billed for law clerks, paralegals, librarians and others not admitted to the bar but performing services under the supervision of an attorney. The term "**reasonable attorneys' fees and costs**" shall also include, without limitation, all such reasonable fees and expenses incurred with respect to appeals, mediation, arbitrations, and bankruptcy proceedings, and whether or not any action is brought with respect to the matter for which such fees and costs were incurred. For the purposes of this Agreement, the reasonable fees of attorneys of City Attorney's Office shall be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of the Law for which the City Attorney's Office's services were rendered who practice in the City of San Francisco in law firms with approximately the same number of attorneys as employed by the Office of the City Attorney.

10. FINANCING; RIGHTS OF MORTGAGEES.

10.1 Owner's Right to Mortgage. Nothing in this Agreement limits the right of Developer to mortgage or otherwise encumber all or any portion of the Project Site for the benefit of any Mortgagee as security for one or more loans. Developer represents that there are no Mortgages on the Project Site as of the Effective Date.

10.2 Mortgagee Not Obligated to Construct. Notwithstanding any of the provisions of this Agreement, including, but not limited to, those which are or are intended to be covenants running with the land, a Mortgagee, including any Mortgagee who obtains title to the Project Site or any part thereof as a result of foreclosure proceedings, or conveyance or other action in lieu thereof, or other remedial action, shall in no way be obligated by the provisions of this Agreement to construct or complete the Project or any part thereof or to guarantee such construction or completion. The foregoing provisions shall not be applicable to any party who,

after a foreclosure, conveyance or other action in lieu thereof, or other remedial action, obtains title to some or all of the Project Site from or through the Mortgagee, or any other purchaser at a foreclosure sale other than the Mortgagee itself, on which certain Community Benefits must be completed as set forth in Section 4.2. Nothing in this Section or any other Section or provision of this Agreement shall be deemed or construed to permit or authorize any Mortgagee or any other person or entity to devote the Project Site or any part thereof to any uses other than uses consistent with this Agreement and the Approvals, and nothing in this Section shall be deemed to give any Mortgagee or any other person or entity the right to construct any improvements under this Agreement (other than as needed to conserve or protect improvements or construction already made) unless or until such person or entity assumes Developer's obligations under this Agreement.

10.3 Copy of Notice of Default and Notice of Failure to Cure to Mortgagee.

Whenever the City shall deliver any notice or demand to the Developer with respect to any breach or default by the Developer in its obligations under this Agreement, the City shall at the same time forward a copy of such notice or demand to each Mortgagee having a Mortgage on the real property which is the subject of the breach or default who has previously made a written request to the City therefor, at the last address of such Mortgagee specified by such Mortgagee in such notice. In addition, if such breach or default remains uncured for the period permitted with respect thereto under this Agreement, the City shall deliver a notice of such failure to cure such breach or default to each such Mortgagee at such applicable address. A delay or failure by the City to provide such notice required by this Section shall extend for the number of days until notice is given, the time allowed to the Mortgagee for cure. In accordance with Section 2924 of the California Civil Code, the City requests that a copy of any notice of default and a copy of any

notice of sale under any Mortgage be mailed to the City at the address for notices under this Agreement.

10.4 Mortgagee's Option to Cure Defaults. After receiving any notice of failure to cure referred to in Section 10.3, each Mortgagee shall have the right, at its option, to commence within the same period as the Developer to remedy or cause to be remedied any event of default, plus an additional period of: (a) thirty (30) days to cure a monetary event of default; and (b) sixty (60) days to cure a non-monetary event of default which is susceptible of cure by the Mortgagee without obtaining title to the applicable property. If an event of default is not cured within the applicable cure period, the City nonetheless shall refrain from exercising any of its remedies with respect to the event of default if, within the Mortgagee's applicable cure period: (i) the Mortgagee notifies the City that it intends to proceed with due diligence to foreclose the Mortgage or otherwise obtain title to the subject property; and (ii) the Mortgagee commences foreclosure proceedings within sixty (60) days after giving such notice, and thereafter diligently pursues such foreclosure to completion; and (iii) after obtaining title, the Mortgagee diligently proceeds to cure those events of default: (A) which are required to be cured by the Mortgagee and are susceptible of cure by the Mortgagee, and (B) of which the Mortgagee has been given notice by the City. Any such Mortgagee or Transferee of a Mortgagee who shall properly complete the improvements relating to the Project Site or applicable part thereof shall be entitled, upon written request made to the Agency, to a Certificate of Completion.

10.5 Mortgagee's Obligations with Respect to the Property. Notwithstanding anything to the contrary in this Agreement, no Mortgagee shall have any obligations or other liabilities under this Agreement unless and until it acquires title by any method to all or some portion of the Project Site (referred to hereafter as "**Foreclosed Property**"). A Mortgagee that

acquires title by foreclosure to any Foreclosed Property shall take title subject to all of the terms and conditions of this Agreement, to the extent applicable to the Foreclosed Property, including any claims for payment or performance of obligations which are due as a condition to enjoying the benefits of this Agreement. Upon the occurrence and continuation of an uncured default by a Mortgagee or Transferee in the performance of any of the obligations to be performed by such Mortgagee or Transferee pursuant to this Agreement, the City shall be afforded all its remedies for such uncured default as provided in this Agreement.

10.6 No Impairment of Mortgage. No default by the Developer under this Agreement shall invalidate or defeat the lien of any Mortgagee. Neither a breach of any obligation secured by any Mortgage or other lien against the mortgaged interest nor a foreclosure under any Mortgage or other lien, shall defeat, diminish, render invalid or unenforceable or otherwise impair the Developer's rights or obligations or constitute a default under this Agreement.

10.7 Cured Defaults. Upon the curing of any event of default by Mortgagee within the time provided in this Article 10 the City's right to pursue any remedies with respect to the cured event of default shall terminate.

11. AMENDMENT; TERMINATION; EXTENSION OF TERM

11.1 Amendment or Termination. This Agreement may only be amended with the mutual written consent of the City and Developer, provided following a Transfer, the City and Developer or any Transferee may amend this Agreement as it affects Developer or the Transferee and the portion of the Project Site owned by Developer or the Transferee without affecting other portions of the Project Site or other Transferees. Other than upon the expiration of the Term and except as provided in Sections 2.2, 5.6.4, 7.4.3, 9.4.2 and 11.2, this Agreement

may only be terminated with the mutual written consent of the Parties. Any amendment to this Agreement that does not constitute a Material Change may be agreed to by the Planning Director (and, to the extent it affects any rights or obligations of a City department, with the approval of that City Department). Any amendment that is a Material Change will require the approval of the Planning Director, the Planning Commission and the Board of Supervisors (and, to the extent it affects any rights or obligations of a City department, after consultation with that City department).

11.2 Early Termination Rights. Developer shall, upon thirty (30) days prior notice to the City, have the right, in its sole and absolute discretion, to terminate this Agreement in its entirety at any time if Developer does not Commence Construction on any part of the Project Site by the date which is five (5) years following the Effective Date. Thereafter, the City shall, upon sixty (60) days prior notice to Developer, have the right, in its sole and absolute discretion, to terminate this Agreement if the Developer has not Commenced Construction; provided Developer can prevent any such termination by the City by providing to the City notice, within the above sixty (60) day period, of Developer's intent to start construction and the Developer thereafter Commences Construction within one hundred twenty (120) days following delivery of Developer's notice to the City, or, if unable to actually Commence Construction within said time period, demonstrates reasonable, good faith and continuing efforts to Commence Construction, such as by pursuing all necessary Subsequent Approvals, and thereafter promptly Commences Construction upon receipt of the Subsequent Approvals. Any termination under this Section 11.2 shall result in the termination of the entirety of this Agreement affecting all of the Project Site, and any Transferee shall assume the risk of a termination of this Agreement by Developer or the City under this Section 11.2.

11.3 Termination and Vesting. Any termination under this Agreement shall concurrently effect a termination of the Approvals with respect to the terminated portion of the Project Site, except as to any Approval pertaining to a Building that has Commenced Construction in reliance thereon. In the event of any termination of this Agreement by Developer resulting from a Default by the City and except to the extent prevented by such City Default, Developer's obligation to complete the applicable Community Benefits shall continue as to the Building which has Commenced Construction and all relevant and applicable provisions of this Agreement shall be deemed to be in effect as such provisions are reasonably necessary in the construction, interpretation or enforcement to this Agreement as to any such surviving obligations. The City's and Developer's rights and obligations under this Section 11.3 shall survive the termination of this Agreement.

11.4 Amendment Exemptions. No issuance of a Subsequent Approval, or amendment of an Approval or Subsequent Approval, shall by itself require an amendment to this Agreement. And no change to the Project that is permitted under the 5M SUD shall by itself require an amendment to this Agreement. Upon issuance or approval, any such matter shall be deemed to be incorporated automatically into the Project and vested under this Agreement (subject to any conditions set forth in the amendment or Subsequent Approval). Notwithstanding the foregoing, if there is any direct conflict between the terms of this Agreement and a Subsequent Approval, or between this Agreement and any amendment to an Approval or Subsequent Approval, then the Parties shall concurrently amend this Agreement (subject to all necessary approvals in accordance with this Agreement) in order to ensure the terms of this Agreement are consistent with the proposed Subsequent Approval or the proposed amendment to an Approval or Subsequent Approval. The Planning Department and the Planning Commission,

as applicable, shall have the right to approve changes to the Project as described in the Exhibits in keeping with its customary practices and the 5M SUD, and any such changes shall not be deemed to conflict with or require an amendment to this Agreement or the Approvals so long as they do not constitute a Material Change. If the Parties fail to amend this Agreement as set forth above when required, however, then the terms of this Agreement shall prevail over any Subsequent Approval or any amendment to an Approval or Subsequent Approval that conflicts with this Agreement.

11.5 Extension Due to Legal Action or Referendum; Excusable Delay.

11.5.1 Litigation and Referendum Extension. If any litigation is filed challenging this Agreement or an Approval having the direct or indirect effect of delaying this Agreement or any Approval (including but not limited to any CEQA determinations), including any challenge to the validity of this Agreement or any of its provisions, or if this Agreement or an Approval is suspended pending the outcome of an electoral vote on a referendum, then the Term of this Agreement and all any Approvals shall be extended for the number of days equal to the period starting from the commencement of the litigation or the suspension (or as to Approvals, the date of the initial grant of such Approval) to the end of such litigation or suspension (a "**Litigation Extension**"). The Parties shall document the start and end of a Litigation Extension in writing within thirty (30) days from the applicable dates.

11.5.2 "**Excusable Delay**" means the occurrence of an event beyond a Party's reasonable control which causes such Party's performance of an obligation to be delayed, interrupted or prevented, including, but not limited to: changes in Federal or State Laws; strikes or the substantial interruption of work because of labor disputes; inability to obtain materials; freight embargoes; civil commotion, war or acts of terrorism; inclement weather, fire, floods,

earthquakes or other acts of God; epidemics or quarantine restrictions; litigation; unforeseen site conditions (including archaeological resources or the presence of hazardous materials); or the failure of any governmental agency, public utility or communication service provider to issue a permit, authorization, consent or approval required to permit construction within the standard or customary time period for such issuing authority following Developer's submittal of a complete application for such permit, authorization, consent or approval, together with any required materials. Excusable Delay shall not include delays resulting from failure to obtain financing or have adequate funds, changes in market conditions, or the rejection of permit, authorization or approval requests based upon Developer's failure to satisfy the substantive requirements for the permit, authorization or approval request. In the event of Excusable Delay, the Parties agree that (i) the time periods for performance of the delayed Party's obligations impacted by the Excusable Delay shall be strictly limited to the period of such delay, interruption or prevention and the delayed Party shall, to the extent commercially reasonable, act diligently and in good faith to remove the cause of the Excusable Delay or otherwise complete the delayed obligation, and (ii) following the Excusable Delay, a Party shall have all rights and remedies available under this Agreement, if the obligation is not completed within the time period as extended by the Excusable Delay. If an event which may lead to an Excusable Delay occurs, the delayed Party shall notify the other Party in writing of such occurrence as soon as possible after becoming aware that such event may result in an Excusable Delay, and the manner in which such occurrence is likely to substantially interfere with the ability of the delayed Party to perform under this Agreement.

12. TRANSFER OR ASSIGNMENT; RELEASE; CONSTRUCTIVE NOTICE

12.1 Permitted Transfer of this Agreement. At any time, Developer shall have the right to convey, assign or transfer all or any part of its right, title and interest in and to all or part of the Project Site (a “**Transfer**”) without the City's consent, provided that it also transfers to such party (the “**Transferee**”) all of its interest, rights or obligations under this Agreement with respect to such portions of the Project Site (the “**Transferred Property**”). Developer shall not, by Transfer, separate a portion of the Project Site from the Community Benefits tied to that portion of the Project Site, as described in this Agreement, without the prior written consent of the Planning Director. If Developer Transfers one or more parcels such that there are separate fee owners within the Project Site, the obligation to perform and complete the applicable Community Benefits and other improvements associated with a Building; shall be the sole responsibility of the applicable Transferee (*i.e.*, the person or entity that owns the legal parcel on which the Building is located). Notwithstanding the foregoing (i) off-site improvements associated with the Dempster Building may be retained by Developer, and (ii) any ongoing obligations (such as open space operation and maintenance) may be transferred to a residential, commercial or Project Site-wide management association (“**CMA**”), provided such CMA reflects commercially reasonable requirements and standards generally applicable to similar developments and has the financial capacity and ability to perform the obligations so transferred.

12.2 Notice of Transfer. Developer shall provide not less than ten (10) days' notice to the City before any proposed Transfer of its interests, rights and obligations under this Agreement, together with a copy of the assignment and assumption agreement for that parcel (each, an “**Assignment and Assumption Agreement**”) with a legal description of the parcel. Each Assignment and Assumption Agreement shall be in recordable form, in substantially the

form attached as Exhibit K (including the indemnifications, the agreement and covenant not to challenge the enforceability of this Agreement, and not to sue the City for disputes between Developer and any Transferee) and any material changes to the attached form will be subject to the review and approval of the Director of Planning not to be unreasonably withheld or delayed. Notwithstanding the foregoing any Transfer of Community Benefit obligations to a CMA as set forth in Section 12.1 shall not require the transfer of land to the CMA.

12.3 Release of Liability. Upon recordation of an approved Assignment and Assumption Agreement, Developer shall be released from any prospective liability or obligation under this Agreement related to the Transferred Property as specified in the Assignment and Assumption Agreement, and the Transferee shall be deemed to be "**Developer**" under this Agreement with all rights and obligations related thereto, with respect to such Transferred Property. Notwithstanding anything to the contrary contained in this Agreement, if a Transferee Defaults under this Agreement, such Default shall not constitute a default by Developer or any other Transferee with respect to any other portion of the Project Site and shall not entitle the City to terminate or modify this Agreement with respect to such other portion of the Project Site, except as otherwise provided herein. Additionally, the annual review provided by Section 8 shall be conducted separately as to Developer and each Transferee and only as to those obligations that Developer or such Transferee has under this Agreement.

12.4 Responsibility for Performance. The City is entitled to enforce each and every such obligation assumed by each Transferee directly against the Transferee as if the Transferee were an original signatory to this Agreement with respect to such obligation. Accordingly, in any action by the City against a Transferee to enforce an obligation assumed by the Transferee, the Transferee shall not assert as a defense against the City's enforcement of

performance of such obligation that such obligation (i) is attributable to Developer's breach of any duty or obligation to the Transferee arising out of the Transfer or the Assignment and Assumption Agreement or any other agreement or transaction between Developer and the Transferee, or (ii) relates to the period before the Transfer. The foregoing notwithstanding, the Parties acknowledge and agree that a failure to complete a Mitigation Measure may, if not completed, delay or prevent a different party's ability to start or complete a specific Building or improvement under this Agreement if and to the extent the completion of the Mitigation Measure is a condition to the other party's right to proceed as specifically described in the Mitigation Measure, and Developer and all Transferees assume this risk. Accordingly, in some circumstances the City may withhold Subsequent Approvals based upon the acts or omissions of a different party.

12.5 Constructive Notice. Every person or entity who now or hereafter owns or acquires any right, title or interest in or to any portion of the Project Site is, and shall be, constructively deemed to have consented to every provision contained herein, whether or not any reference to this Agreement is contained in the instrument by which such person acquired an interest in the Project Site. Every person or entity who now or hereafter owns or acquires any right, title or interest in or to any portion of the Project Site and undertakes any development activities at the Project Site, is, and shall be, constructively deemed to have consented and agreed to, and is obligated by all of the terms and conditions of this Agreement, whether or not any reference to this Agreement is contained in the instrument by which such person acquired an interest in the Project Site.

12.6 Rights of Developer. The provisions in this Section 12 shall not be deemed to prohibit or otherwise restrict Developer from (i) granting easements or licenses to

facilitate development of the Project Site, (ii) encumbering the Project Site or any portion of the improvements thereon by any Mortgage, (iii) granting an occupancy leasehold interest in portions of the Project Site, (iv) entering into a joint venture agreement or similar partnership agreement to fulfill its obligations under this Agreement, or (v) transferring all or a portion of the Project Site pursuant to a foreclosure, conveyance in lieu of foreclosure, or other remedial action in connection with a Mortgage.

12.7 Transfers to REITs and UPREITs. The Parties recognize that there are no limitations on transfer of constituent membership interests in Developer. Nevertheless, in the interests of clarity the Parties agree that reappportionments and transfers by Forest City Enterprises, Inc. or any of its direct or indirect subsidiaries or affiliates ("FCE") of beneficial interests in Developer shall be permitted without prior notice to or review or consent from City, notwithstanding any provisions in this Article 12, so long as such reappportionments or transfers are to (1) affiliates or wholly-owned subsidiaries of FCE, or (2) any real estate investment trust sponsored by FCE or any successor, by operation of law or otherwise (a "REIT"), and/or any umbrella limited partnership related to any such REIT and in which the REIT has an ownership interest (an "UPREIT"), or any entity that is an affiliate of either the UPREIT or the REIT. In no event or circumstance shall any City consent or approval be required with respect to the trading or issuance of shares or other securities of FCE or a REIT or UPREIT in the public or private markets or where such Transfers are a part of a merger, consolidation or sale of all or substantially all of the assets or stock of FCE, a REIT, an UPREIT or any of their respective affiliates. The provisions of this Section 12.7 shall similarly apply to permit the transfer of any other constituent member interest in Developer. Reappportionments or transfers of membership interests under this Section 12.7 shall not require an Assignment and Assumption Agreement,

and the rights and obligations Developer (or Transferee) and the City under this Agreement shall not be affected in any way by such reapportionment or transfer.

13. DEVELOPER REPRESENTATIONS AND WARRANTIES

13.1 Interest of Developer; Due Organization and Standing. Developer represents that it is the legal or beneficial owner of the Project Site, with authority to enter into this Agreement on behalf of all fee owners of the Project Site. Developer is a Delaware limited liability company, duly organized and validly existing and in good standing under the Laws of the State of Delaware. Developer has all requisite power to own its property and authority to conduct its business as presently conducted. Developer represents and warrants that there is no existing lien or encumbrance recorded against the Project Site that, upon foreclosure or the exercise of remedies, would permit the beneficiary of the lien or encumbrance to eliminate or wipe out the obligations set forth in this Agreement that run with applicable land.

13.2 No Inability to Perform; Valid Execution. Developer represents and warrants that it is not a party to any other agreement that would conflict with Developer's obligations under this Agreement and it has no knowledge of any inability to perform its obligations under this Agreement. The execution and delivery of this Agreement and the agreements contemplated hereby by Developer have been duly and validly authorized by all necessary action. This Agreement will be a legal, valid and binding obligation of Developer, enforceable against Developer in accordance with its terms.

13.3 Conflict of Interest. Through its execution of this Agreement, Developer acknowledges that it is familiar with the provisions of Section 15.103 of the City's Charter, Article III, Chapter 2 of the City's Campaign and Governmental Conduct Code, and Section 87100 *et seq.* and Section 1090 *et seq.* of the California Government Code, and certifies

that it does not know of any facts which constitute a violation of said provisions and agrees that it will immediately notify the City if it becomes aware of any such fact during the Term.

13.4 Notification of Limitations on Contributions. Through execution of this Agreement, Developer acknowledges that it is familiar with Section 1.126 of City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City, whenever such transaction would require approval by a City elective officer or the board on which that City elective officer serves, from making any campaign contribution to the officer at any time from the commencement of negotiations for the contract until three (3) months after the date the contract is approved by the City elective officer or the board on which that City elective officer serves. San Francisco Ethics Commission Regulation 1.126-1 provides that negotiations are commenced when a prospective contractor first communicates with a City officer or employee about the possibility of obtaining a specific contract. This communication may occur in person, by telephone or in writing, and may be initiated by the prospective contractor or a City officer or employee. Negotiations are completed when a contract is finalized and signed by the City and the contractor. Negotiations are terminated when the City and/or the prospective contractor end the negotiation process before a final decision is made to award the contract.

13.5 Other Documents. To the current, actual knowledge of Alexa Arena, after reasonable inquiry, no document furnished by Developer to the City with its application for this Agreement nor this Agreement contains any untrue statement of material fact or omits a material fact necessary to make the statements contained therein, or herein, not misleading under the circumstances under which any such statement shall have been made.

13.6 No Bankruptcy. Developer represents and warrants to the City that Developer has neither filed nor is the subject of any filing of a petition under the federal

bankruptcy law or any federal or state insolvency laws or Laws for composition of indebtedness or for the reorganization of debtors, and, to the best of Developer's knowledge, no such filing is threatened.

14. MISCELLANEOUS PROVISIONS

14.1 Entire Agreement. This Agreement, including the preamble paragraph, Recitals and Exhibits, and the agreements between the Parties specifically referenced in this Agreement, constitutes the entire agreement between the Parties with respect to the subject matter contained herein.

14.2 Incorporation of Exhibits. Except for the Approvals which are listed solely for the convenience of the Parties, each Exhibit to this Agreement is incorporated herein and made a part hereof as if set forth in full. Each reference to an Exhibit in this Agreement shall mean that Exhibit as it may be updated or amended from time to time in accordance with the terms of this Agreement.

14.3 Binding Covenants; Run With the Land. Pursuant to Section 65868 of the Development Agreement Statute, from and after recordation of this Agreement, all of the provisions, agreements, rights, powers, standards, terms, covenants and obligations contained in this Agreement shall be binding upon the Parties and, subject to Section 12, their respective heirs, successors (by merger, consolidation, or otherwise) and assigns, and all persons or entities acquiring the Project Site, any lot, parcel or any portion thereof, or any interest therein, whether by sale, operation of law, or in any manner whatsoever, and shall inure to the benefit of the Parties and their respective heirs, successors (by merger, consolidation or otherwise) and assigns. Subject to the provisions on Transfers set forth in Section 12, all provisions of this Agreement shall be enforceable during the Term as equitable servitudes and constitute covenants and

benefits running with the land pursuant to applicable Law, including but not limited to California Civil Code Section 1468.

14.4 Applicable Law and Venue. This Agreement has been executed and delivered in and shall be interpreted, construed, and enforced in accordance with the Laws of the State of California. All rights and obligations of the Parties under this Agreement are to be performed in the City and County of San Francisco, and the City and County of San Francisco shall be the venue for any legal action or proceeding that may be brought, or arise out of, in connection with or by reason of this Agreement.

14.5 Construction of Agreement. The Parties have mutually negotiated the terms and conditions of this Agreement and its terms and provisions have been reviewed and revised by legal counsel for both the City and Developer. Accordingly, no presumption or rule that ambiguities shall be construed against the drafting Party shall apply to the interpretation or enforcement of this Agreement. Language in this Agreement shall be construed as a whole and in accordance with its true meaning. The captions of the paragraphs and subparagraphs of this Agreement are for convenience only and shall not be considered or referred to in resolving questions of construction. Each reference in this Agreement to this Agreement or any of the Approvals shall be deemed to refer to this Agreement or the Approvals as amended from time to time pursuant to the provisions of this Agreement, whether or not the particular reference refers to such possible amendment. In the event of a conflict between the provisions of this Agreement and Chapter 56, the provisions of this Agreement will govern and control.

14.6 Project Is a Private Undertaking; No Joint Venture or Partnership. The development proposed to be undertaken by Developer on the Project Site is a private development. The City has no interest in, responsibility for, or duty to third persons concerning

any of said improvements. Developer shall exercise full dominion and control over the Project Site, subject only to the limitations and obligations of Developer contained in this Agreement.

14.6.1 Nothing contained in this Agreement, or in any document executed in connection with this Agreement, shall be construed as creating a joint venture or partnership between the City and Developer. Neither Party is acting as the agent of the other Party in any respect hereunder. Developer is not a state or governmental actor with respect to any activity conducted by Developer hereunder.

14.7 Recordation. Pursuant to the Development Agreement Statute and Chapter 56, the Clerk of the Board of Supervisors shall have a copy of this Agreement recorded in the Official Records within ten (10) days after the Effective Date of this Agreement or any amendment thereto, with costs to be borne by Developer.

14.8 Obligations Not Dischargeable in Bankruptcy. Developer's obligations under this Agreement are not dischargeable in bankruptcy.

14.9 Survival. Following expiration of the Term, this Agreement shall be deemed terminated and of no further force and effect except for any provision which, by its express terms, survive the expiration or termination of this Agreement.

14.10 Signature in Counterparts. This Agreement may be executed in duplicate counterpart originals, each of which is deemed to be an original, and all of which when taken together shall constitute one and the same instrument.

14.11 Notices. Any notice or communication required or authorized by this Agreement shall be in writing and may be delivered personally or by registered mail, return receipt requested. Notice, whether given by personal delivery or registered mail, shall be deemed to have been given and received upon the actual receipt by any of the addressees

designated below as the person to whom notices are to be sent. Either Party to this Agreement may at any time, upon notice to the other Party, designate any other person or address in substitution of the person and address to which such notice or communication shall be given. Such notices or communications shall be given to the Parties at their addresses set forth below:

To City:

John Rahaim
Director of Planning
San Francisco Planning Department
1650 Mission Street, Suite 400
San Francisco, California 94102

with a copy to:

Dennis J. Herrera, Esq.
City Attorney
City Hall, Room 234
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102
Attn: Real Estate/Finance, 5M Project

To Developer:

5M Project, LLC
5 Third Street, Suite 200
San Francisco, CA 94103
Attn: Martin Cepkauskas

with a copy to:

Forest City Residential Development
875 Howard Street, Suite 330
San Francisco, CA 94103
Attn: Alexa Arena

14.12 Limitations on Actions. Pursuant to Section 56.19 of the Administrative Code, any decision of the Board of Supervisors made pursuant to Chapter 56 shall be final. Any court action or proceeding to attack, review, set aside, void, or annul any final decision or determination by the Board of Supervisors shall be commenced within ninety (90) days after such decision or determination is final and effective. Any court action or

proceeding to attack, review, set aside, void or annul any final decision by (i) the Planning Director made pursuant to Administrative Code Section 56.15(d)(3) or (ii) the Planning Commission pursuant to Administrative Code Section 56.17(e) shall be commenced within ninety (90) days after said decision is final.

14.13 Severability. Except as is otherwise specifically provided for in this Agreement with respect to any Laws which conflict with this Agreement, if any term, provision, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions of this Agreement shall continue in full force and effect unless enforcement of the remaining portions of this Agreement would be unreasonable or grossly inequitable under all the circumstances or would frustrate the purposes of this Agreement.

14.14 MacBride Principles. The City urges companies doing business in Northern Ireland to move toward resolving employment inequities and encourages them to abide by the MacBride Principles as expressed in San Francisco Administrative Code Section 12F.1 *et seq.* The City also urges San Francisco companies to do business with corporations that abide by the MacBride Principles. Developer acknowledges that it has read and understands the above statement of the City concerning doing business in Northern Ireland.

14.15 Tropical Hardwood and Virgin Redwood. The 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 Sections 802(b) and 803(b) of the San Francisco Environment Code.

14.16 Sunshine. Developer understands and agrees that under the City's Sunshine Ordinance (Administrative Code, Chapter 67) and the California Public Records Act

(California Government Code Section 250 *et seq.*), this Agreement and any and all records, information, and materials submitted to the City hereunder are public records subject to public disclosure. To the extent that Developer in good faith believes that any financial materials reasonably requested by the City constitutes a trade secret or confidential proprietary information protected from disclosure under the Sunshine Ordinance and other Laws, Developer shall mark any such materials as such. When a City official or employee receives a request for information that has been so marked or designated, the City may request further evidence or explanation from Developer. If the City determines that the information does not constitute a trade secret or proprietary information protected from disclosure, the City shall notify Developer of that conclusion and that the information will be released by a specified date in order to provide Developer an opportunity to obtain a court order prohibiting disclosure.

14.17 Waiver of Personal Liability Non-Liability of City Officials and Others.

Notwithstanding anything to the contrary in this Agreement, no individual board member, director, commissioner, officer, employee, official or agent of City or other City Parties shall be personally liable to Developer, its successors and assigns, in the event of any default by City, or for any amount which may become due to Developer, its successors and assigns, under this Agreement.

14.18 Non-Liability of Developer Officers and Others. Notwithstanding

anything to the contrary in this Agreement, no individual board member, director, officer, employee, official, partner, employee or agent of Developer or any Affiliate of Developer shall be personally liable to City, its successors and assigns, in the event of any default by Developer, or for any amount which may become due to City, its successors and assign, under this Agreement.

14.19 No Third Party Beneficiaries. There are no third party beneficiaries to this Agreement.

[signatures follow on next page]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year first above written.

CITY:

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation

Approved as to form:

DENNIS J. HERRERA, City Attorney

By: _____
John Rahaim
Director of Planning

By: _____
Charles Sullivan, Deputy City Attorney

Approved on _____, 2015
Board of Supervisors Ordinance No. _____

Approved and Agreed:

By: _____
Naomi Kelly, City Administrator

By: _____
Mohammad Nuru,
Director of Public Works

Developer:

5M PROJECT, LLC,
a Delaware limited liability company

By: _____
Martin Cepkauskas
Vice President

CONSENT TO DEVELOPMENT AGREEMENT

San Francisco Municipal Transportation Agency

The Municipal Transportation Agency of the City and County of San Francisco ("SFMTA") has reviewed the Development Agreement (the "**Development Agreement**") between the City and 5M Project, LLC, a Delaware limited liability company ("**Developer**") to which this Consent to Development Agreement (this "**SFMTA Consent**") is attached and incorporated. Except as otherwise defined in this SFMTA Consent, initially capitalized terms have the meanings given in the Development Agreement.

By executing this SFMTA Consent, the undersigned confirms that the SFMTA Board of Directors, after considering at a duly noticed public hearing the CEQA Findings, including the Statement of Overriding Considerations and the Mitigation Monitoring and Reporting Program contained or referenced therein, consented to and agrees to be bound by the Development Agreement as it relates to matters under SFMTA jurisdiction, including the Transportation Program and the transportation-related Mitigation Measures.

By executing this SFMTA Consent, the SFMTA does not intend to in any way limit, waive or delegate the exclusive authority of the SFMTA as set forth in Article VIIIA of the City's Charter.

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation, acting by and through the
SAN FRANCISCO MUNICIPAL TRANSPORTATION
AGENCY

By: _____
EDWARD D. REISKIN,
Director of Transportation

APPROVED AS TO FORM:
DENNIS J. HERRERA, City Attorney

By: _____
Deputy City Attorney

San Francisco Municipal Transportation Agency Board of Directors
Resolution No. _____
Adopted: _____, 2015

CONSENT TO DEVELOPMENT AGREEMENT
Arts Commission

A. The Arts Commission of the City and County of San Francisco has reviewed the Development Agreement (the "**Development Agreement**") between the City and 5M Project, LLC, a Delaware limited liability company ("**Developer**") to which this Consent to Development Agreement (this "**Arts Commission Consent**") is attached and incorporated. Except as otherwise defined in this Arts Commission Consent, initially capitalized terms have the meanings given in the Development Agreement.

B. By executing this Arts Commission Consent, the undersigned confirms that the Arts Commission, after considering at a duly noticed public hearing the CEQA Findings, including the Statement of Overriding Considerations and the Mitigation Monitoring and Reporting Program contained or referenced therein, consented to and agrees to be bound by the Development Agreement as it relates to matters under the Arts Commission's jurisdiction, including the Arts Program.

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation, acting by and through the
SAN FRANCISCO ARTS COMMISSION

By: _____
Mr. Tom DeCaigny, Director

APPROVED AS TO FORM:
DENNIS J. HERRERA, City Attorney

By: _____
Susan Dawson, Deputy City Attorney

San Francisco Arts Commission
Resolution No. _____
Adopted: _____, 2015

EXHIBIT A

5M Project Legal Descriptions

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF SAN FRANCISCO, COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

Building H-1 Site

BEGINNING at the point of intersection of the Southwesterly line of 5th Street with the Southeasterly line of Natoma Street; running thence Southeasterly along said line of 5th Street, 105 feet; thence at a right angle Southwesterly 75 feet; thence at a right angle Northwesterly 105 feet to the Southeasterly line of Natoma Street; thence Northeasterly along said Southeasterly line, 75 feet to the point of beginning.

BEING a portion of 100 Vara Block No. 381
Assessor's Block 3725, Lot 005

COMMENCING at a point on the Westerly line of 5th Street, distant thereon 30 feet Northerly from the Northwest corner of Howard and 5th Streets; thence running Northerly along the Westerly line of 5th Street, 25 feet; thence at right angles Westerly 75 feet, parallel with Howard Street; thence at right angles Southerly 25 feet; thence at right angles Easterly 75 feet to 5th Street, the point of beginning.

SAID LOT BEING a subdivision of the 100 Vara Lot shown upon the Official Map of San Francisco as Number 381 of the 100 Vara Lot Survey, Assessor's Block 3725, Lot 006

BEGINNING at a point on the Northwesterly line of Howard Street, distant thereon 70 feet Southwesterly from the Southwesterly line of 5th Street; running thence Southwesterly along said line of Howard Street, 29 feet and 3-1/2 inches; thence at a right angle Northwesterly 80 feet; thence at a right angle Southwesterly 25 feet and 8-1/2 inches; thence at a right angle Northwesterly 80 feet to the Southeasterly line of Natoma Street; thence at a right angle Northeasterly along said line of Natoma street, 50 feet; thence at a right angle Southeasterly 130 feet; thence at a right angle Northeasterly 5 feet; thence at a right angle Southeasterly 30 feet to the point of beginning.

BEING a portion of 100 Vara Block No. 381
Assessor's Block 3725, Lot 008

COMMENCING at a point on the Northwestern line of Howard Street, distant thereon 99 feet, 3-1/2 inches Southwesterly from the point formed by the intersection of the said Northwestern line of Howard Street with the Southwesterly line of 5th Street; running thence Southwesterly along the said Northwestern line of Howard Street, 25 feet, 8-1/2 inches; thence at a right angle Northwesterly 80 feet; thence at a right angle Northeasterly, 25 feet 8-1/2 inches; and thence at a right angle Southeasterly 80 feet to the Northwestern line of Howard Street and the point of commencement.

BEING a portion of 100 Vara Lot Number 196
Assessor's Block 3725, Lot 009

COMMENCING at the point of intersection of the Northwestern line of Howard Street and the Northerly line of Mary Street; running thence Northeasterly and along said line of Howard Street, 47 feet, 6 inches; thence at a right angle Northwesterly 160 feet to the Northeasterly line of Natoma Street; thence at a right angle Southwesterly along said line of Natoma Street, 47 feet, 6 inches to the Northeasterly line of Mary Street; thence at a right angle Southeasterly along said line of Mary Street, 160 feet to the point of commencement.

BEING a portion of 100 Vara Lot Number 381
Assessor's Block 3725, Lot 012

BEGINNING at a point on the Northwestern line of Howard Street, distant thereon 125 feet Southwesterly from the Southwesterly line of 5th Street; running thence Southwesterly along said line of Howard Street, 92 feet and 11-3/4 inches to a point distant thereon 47 feet and 6 inches Northeasterly from the Northeasterly line of Mary Street; thence at a right angle Northwesterly 160 feet to the Southeasterly line of Natoma Street; thence Northeasterly along said line of Natoma Street, 92 feet and 11-3/4 inches; thence at a right angle Southeasterly 160 feet to the point of beginning.

BEING a portion of 100 Vara Lot Number 381
Assessor's Block 3725, Lot 098

Building N1, New Examiner and Mary Court East Site

Parcel 1:

BEGINNING at the point of intersection of the Southwesterly line of 5th Street and the Southeasterly line of Minna Street; running thence Southeasterly, along said line of 5th Street, 75 feet; thence at a right angle Southwesterly 275 feet to the Northwesterly line of Mary Street; thence at a right angle Northwesterly, along said line of Mary Street, 75 feet to the Southeasterly line of Minna Street; thence at a right angle Northeasterly, along said line of Minna Street, 275 feet to the point of beginning.

EXCEPTING THEREFROM so much thereof as conveyed to the City and County of San Francisco in that certain Exchange Deed dated December 30, 1966 and recorded January 27, 1967 in Book B113, Official Records, Page 623, more particularly described as follows:

BEGINNING at a point on the Southeasterly line of Minna Street, distant thereon 265 feet Southwesterly from the Southwesterly line of 5th Street; and thence running Southwesterly, along said line of Minna Street, 10 feet to the Northeasterly line of Mary Street; thence at a right angle Southeasterly, along said line of Mary Street, 75 feet; thence at a right angle Northeasterly 10 feet; thence at a right angle Northwesterly 75 feet to the point of beginning.

BEING a portion of 100 Vara Block No. 381

Parcel 2:

BEGINNING at a point on the Southwesterly line of 5th Street, distant thereon 30 feet Northwesterly from the Northwesterly line of Natoma Street; running thence Northwesterly, along said line of 5th Street, 50 feet; thence at a right angle Southwesterly 75 feet; thence at a right angle Southeasterly 50 feet; thence at a right angle Northeasterly 75 feet to the point of beginning.

BEING a portion of 100 Vara Block No. 381

Parcel 3:

BEGINNING at the point of intersection of the Southwesterly line of 5th Street and the Northwesterly line of Natoma Street; running thence Northwesterly, and along said line of 5th Street, 30 feet; thence at a right angle Southwesterly 75 feet; thence at a right angle Southeasterly 30 feet to the Northwesterly line of Natoma Street; thence at a right angle Northeasterly, along said line of Natoma Street, 75 feet to the point of beginning.

BEING a portion of 100 Vara Block No. 381

Parcel 4:

BEGINNING at a point on the Northwesterly line of Natoma Street, distant thereon 75 feet Southwesterly from the Southwesterly line of 5th Street; running thence Southwesterly, and along said Northwesterly line of Natoma Street 150 feet; thence at a right angle Northwesterly 80 feet; thence at a right angle Northeasterly 150 feet; thence at a right angle Southeasterly 80 feet to the point of beginning.

BEING a portion of 100 Vara Block No. 381

Parcels 1 through 4 constituting Assessor's Block 3725, Lot 097

Building M-2 Site

BEGINNING at a point on the Southeasterly line of Mission Street, distant thereon 97 feet and 6 inches Southwesterly from the Southwesterly line of Mary Street; running thence Southwesterly and along said line of Mission Street 20 feet; thence at a right angle Southeasterly 160 feet to the Northwesterly line of Minna Street; thence at a right angle Northeasterly along said line of Minna Street 20 feet; thence at a right angle Northwesterly 160 feet to the point of beginning.

BEING a portion of 100 Vara Block No. 381
Assessor's Block 3725, Lot 089

BEGINNING at a point on the Southeasterly line of Mission Street, distant thereon 57 feet and 6 inches Southwesterly from the Southwesterly line of Mary Street; running thence Southwesterly and along said line of Mission Street 40 feet; thence at a right angle Southeasterly 160 feet to the Northwesterly line of Minna Street; thence at a right angle Northeasterly along said line of Minna Street 40 feet; thence at a right angle Northwesterly 160 feet to the point of beginning.

BEING a portion of 100 Vara Block No. 381
Assessor's Block 3725, Lot 090

BEGINNING at the point of intersection of the Southeasterly line of Mission Street with the Southwesterly line of Mary Street; running thence Southwesterly along the Southeasterly line of Mission Street 57 feet 6 inches; thence at a right angle Southeasterly 160 feet to the Northwesterly line of Minna Street; thence Northeasterly and along the Northwesterly line of Minna Street 57 feet and 6 inches to the Southwesterly line of Mary Street; and thence Northwesterly and along the Southwesterly line of Mary Street 160 feet to the point of beginning.

BEING a portion of 100 Vara Block No. 381
Assessor's Block 3725, Lot 091

M-1 Building Site

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF SAN FRANCISCO, COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

BEGINNING at the point formed by the intersection of the Southeasterly line of Mission Street with the Southwesterly line of 5th Street; and running thence Southeasterly along said line of 5th Street 160 feet to the Northwesterly line of Minna Street; thence at a right angle Southwesterly, along said line of Minna Street, 275 feet to the Northeasterly line of Mary Street; thence at a right angle Northwesterly, along said line of Mary Street, 160 feet to the southeasterly line of Mission Street; and thence at a right angle Northeasterly, along said line of Mission Street, 275 feet to the point of beginning.

EXCEPTING THEREFROM so much thereof as conveyed to the City and County of San Francisco in that certain Exchange Deed dated December 30, 1966 and recorded January 27, 1967 in Book B113, Official Records, Page 623, more particularly described as follows:

BEGINNING at a point on the Southeasterly line of Mission Street, distant thereon Southwesterly 265 feet from the Southwesterly line of 5th Street; and thence running Southwesterly along said line of Mission Street 10 feet to the Northwesterly line of Mary Street; thence at a right angle Southeasterly, along said line of Mary Street, 160 feet to the Northwesterly line of Minna Street; thence at a right angle Northwesterly, along said line of Minna Street, 10 feet; thence at a right angle Northwesterly 160 feet to the point of beginning.

BEING a portion of 100 Vara Block No. 381
Assessor's Block 3725, Lot 093

Camelline Building

BEGINNING at the point of intersection of the Northeasterly line of Mary Street with the Northwesterly line of Natoma Street; running thence Northeasterly, along the Northwesterly line of Natoma Street, 40 feet; thence at a right angle Northwesterly 80 feet; thence at a right angle Southwesterly 40 feet to the Northeasterly line of Mary Street; thence at a right angle Southeasterly, along the last mentioned line, 80 feet to the point of beginning.

BEING a portion of 100 Vara Block No. 381
Assessor's Block 3725, Lot 042

Dempster Printing Building

BEGINNING at a point on the Southeasterly line of Minna Street, distant thereon 402 feet 6 inches Northeasterly from the Northeasterly line of 6th Street; running thence Northeasterly and along said line of Minna Street 40 feet; thence at a right angle Southeasterly 75 feet; thence at a right angle Southwesterly 40 feet; thence at a right angle Northwesterly 75 feet to the point of beginning.

BEING a portion of 100 Vara Lot No. 202, in Block No. 381
Assessor's Block 3725, Lot 076

Mary Court West Site

BEGINNING at the point of intersection of the Southwesterly line of Mary Street and the Southeasterly line of Minna Street; running thence Southwesterly along said line of Minna Street 57 feet and 6 inches; thence at a right angle Southeasterly 25 feet; thence at a right angle Southwesterly 5 feet; thence at a right angle Southeasterly 24 feet; thence at a right angle Northeasterly 62 feet and 6 inches to the Southwesterly line of Mary Street; thence Southwesterly along said line of Mary Street 52 feet to the point of beginning.

BEING part of 100 Vara Block No. 381
Assessor's Block 3725, Lot 043

BEGINNING at a point on the Southwesterly line of Mary Street, distant thereon 80 feet Northwesterly from the Northwesterly line of Natoma Street; running thence Northwesterly and along said line of Mary Street 23 feet; thence at a right angle Southwesterly 62 feet and 6 inches; thence at a right angle Southeasterly 23 feet; thence at a right angle Northeasterly 62 feet and 6 inches to the point of beginning.

BEING a portion of 100 Vara Block No. 381
Assessor's Block 3725, Lot 044

BEGINNING at a point on the Southwesterly line of Mary Street, distant thereon 40 feet Northwesterly from the Northwesterly line of Natoma Street; running thence Northwesterly along said Southwesterly line of Mary Street 40 feet; thence at a right angle Southwesterly 76 feet and 2 inches; thence at a right angle Southeasterly 40 feet; thence at a right angle Northeasterly 76 feet and 2 inches to the point of beginning.

BEING a portion of 100 Vara Block No. 381
Assessor's Block 3725, Lot 045

BEGINNING at the point of intersection of the Northwesterly line of Natoma Street and the Southwesterly line of Mary Street; running thence Northwesterly and along said line of Mary Street 40 feet; thence at a right angle Southwesterly 76 feet and 2 inches; thence at a right angle Southeasterly 40 feet to the Northwesterly line of Natoma Street; thence at a right angle Northeasterly along said line of Natoma Street 76 feet and 2 inches to the point of beginning.

BEING a portion of 100 Vara Block No. 381
Assessor's Block 3725, Lot 046

BEGINNING at a point on the Northwesterly line of Natoma Street, distant thereon 76 feet and 2 inches Southwesterly from the Southwesterly line of Mary Street; running thence Southwesterly along said line of Natoma Street 28 feet and 2 inches; thence at a right angle Northwesterly 80 feet; thence at a right angle Northeasterly 28 feet and 2 inches; thence at a right angle Southeasterly 80 feet to the point of beginning.

BEING a portion of 100 Vara Block No. 381
Assessor's Block 3725, Lot 047

BEGINNING at a point on the Southeasterly line of Minna Street, distant thereon 57 feet and 6 inches Southwesterly from the Southwesterly line of Mary Street, (which point of beginning is perpendicularly distant 155 feet Northwesterly from the Northwesterly line of Natoma Street); running thence Southwesterly along said line of Minna Street 40 feet; thence at a right angle Southeasterly 75 feet; thence at a right angle Northeasterly 35 feet; thence at a right angle Northwesterly 47 feet; thence at a right angle Northeasterly 5 feet; thence at a right angle Northwesterly 28 feet to the Southeasterly line of Minna Street and the point of beginning.

BEING a portion of 100 Vara Block 381
Assessor's Block 3725, Lot 077

Chronicle/Examiner Connector Air Space Parcel

ALL OF THE AIRSPACE between elevations 34 feet and 103 feet per datum of the City and County of San Francisco and bounded by the following described area:

BEGINNING at the point of intersection of the Southwesterly line of Fifth Street with the Northwesterly line of Minna Street and thence running Southwesterly along said line of Minna Street 265 feet; thence at a right angle Southeasterly 40 feet to the Southeasterly line of Minna Street; thence at a right angle Northeasterly, along said Southeasterly line of Minna Street 265 feet; thence at a right angle Northwesterly 40 feet to the point of beginning.

BEING a portion of the airspace above and across Minna Street, as said street existed prior to the vacation of a portion thereof, by Ordinance No. 188-60, adopted by the Board of Supervisors on August 22, 1966 and approved by the Mayor on August 26, 1966 and as conveyed by Exchange Deed from the City and County of San Francisco to The Chronicle Publishing Company, a Nevada Corporation and The Hearst Corporation, a Delaware corporation recorded January 27, 1967, Instrument No. P38074, Book B133, Page 623, Official Records.

Assessor's Block 3725, Lot 094

Minna Street Air Space Parcel

ALL OF THE SPACE between a horizontal plane at elevation 31.00 feet and a horizontal plane at elevation 103.00 feet per datum of the City and County of San Francisco bounded by planes projected vertically above the surface limits of certain land described as follows:

BEGINNING at the point of intersection of the Southwesterly line of Fifth Street with the Northwesterly line of Natoma Street and thence running Southwesterly along said line of Natoma Street 265.00 feet to the Northeasterly line of Mary Street; thence Southeasterly along the Southeasterly prolongation of the Northeasterly line of Mary Street 35 feet to the Southeasterly line of Natoma Street; thence Northeasterly, along the Southeasterly line of Natoma Street 265.00 feet to the Southwesterly line of Fifth Street; thence Northwesterly along the Northwesterly prolongation of the Southwesterly line of Fifth Street 35.00 feet to the point of beginning.

BEING a portion of the airspace above and across Natoma Street, as said street existed prior to the vacation of a portion thereof, by Ordinance No. 524-79, adopted by the Board of Supervisors on October 22, 1976 and approved by the Mayor on November 2, 1976 and as conveyed by Quitclaim Deed from the City and County of San Francisco to The Chronicle

Publishing Company, a Nevada Corporation and The Hearst Corporation, a Delaware corporation recorded November 14, 1979, Instrument No. C47229, Book C896, Page 503, of Official Records.

Assessor's Block 3725, Lot 099

Natoma Street Air Space Parcel

All of the space between a horizontal plane at elevation 36.00 feet and a horizontal plane at elevation 103.00 feet per datum of the City and County of San Francisco bounded by planes projected Vertically above the surface limits of certain land described as follows:

BEGINNING at the point of intersection of the Southwesterly line of Mary Street with the Northwesterly line of Minna Street and thence running Southwesterly along said line Minna Street 97.50 feet; thence at a right angle Southeasterly 40 feet to the Southeasterly line of Minna Street; thence Northeasterly along the Southeasterly line of Minna Street 97.50 feet to the Southwesterly line of Mary Street; thence Northwesterly along the Northwesterly prolongation of the Southwesterly line of Mary Street 40.00 feet to the point of beginning.

BEING a portion of the airspace above and across Minna Street, as said street existed prior to the vacation of a portion thereof, by Ordinance No. 524-79, adopted by the Board of Supervisors on October 22, 1976 and approved by the Mayor on November 2, 1976 and as conveyed by Quitclaim Deed from the City and County of San Francisco to The Chronicle Publishing Company, a Nevada Corporation and The Hearst Corporation, a Delaware corporation recorded November 14, 1979, Instrument No. C47229, Book C896, Page 503, of Official Records.

Assessor's Block 3725, Lot 100

EXHIBIT B
5M PROJECT
PROJECT DESCRIPTION¹

The Project is a mixed-use development of new construction, rehabilitated and renovated existing buildings, and open space, constituting up to 1,697,600 gross square feet (gsf)² of building space, including up to: 821,300 gsf of residential uses (approximately 690 units), 807,600 gsf of office uses (including active office uses at or below the ground floor), 68,700 gsf of other active ground floor uses (including mezzanine and basement spaces), 59,500 square feet of open space and approximately 463331 vehicle parking spaces, 429 Class 1 bicycle spaces and 66 Class 2 bicycle spaces. The Project contains up to seven buildings (three new buildings and four retained buildings), with six open space areas and associated streetscape improvements, all as further described in the Design for Development, and below.

1. **Building H-1³**

- Demolition of existing buildings and surface parking lots at 172 Fifth Street, 190 Fifth Street, 910 Howard Street, 912 Howard Street, 918 Howard Street and 924 Howard Street (Assessor's Block/Lot No. 3725/005, 006, 008, 009, 012 & 098) for construction of the following:
 - An up to 617,900 gsf, 395-foot tall 25-story office building with approximately 584,900 gsf of office space above the ground floor, 33,000 square feet of active ground floor and mezzanine space (including 7,100 gsf of retail and 8,600 gsf of office uses, 17,300 square feet of lobby/core and building services space);
 - Up to three subterranean levels of vehicle and bicycle parking and loading, including up to: 254122 vehicular parking spaces, 6 loading spaces and 104 Class 1 bicycle spaces, and 23 Class 2 spaces;
 - A three-stall off-street freight loading dock on the ground floor, with a combined automobile parking entrance/exit and freight loading entrance from Howard Street and freight loading exit onto Natoma Street;
 - An approximately 11,000 square-foot private terrace on the southwest side of the building at or about the tenth floor; and

¹ Any capitalized term used in this Exhibit that is not defined herein shall have the meaning given to such term in this Agreement.

² Gross square footage excludes subterranean parking and loading, parking and loading ingress and egress, as well as a full mechanical floor for commercial Building H-1. All quantities stated herein are approximate and nothing herein shall be deemed to require maximum site development, unless otherwise noted. Size and location of private open spaces and related elements may be modified and/or relocated during design development in accordance with Approvals or Subsequent Approvals.

³ As more particularly described in Planning Commission Motion No. [--], dated July __, 2015, and any Subsequent Approvals.

- Construction of an up to 1,600 square-foot pedestrian improvement adjacent to Building H-1 along Mary Street.
- Demolition of existing surface parking on 435-39 and 441-45 Minna Street, 44 and 50 Mary Street, and 432-38 and 440 Natoma Street (Assessor's Block 3725, Lots 043- 047, 077), and construction of Mary Court West, approximately 14,600 sf open space;
- Construction and installation of the following streetscape improvements:
 - Removal of two metered vehicle parking spaces on Howard Street adjacent to the Building and replacement with a passenger loading/unloading zone adjacent to the Project on Howard Street, and addition of a metered commercial loading space;
 - Widening the Fifth Street sidewalk between Natoma and Howard Streets from 10 feet to 18 feet, with a 60-foot long, approximately 8-foot deep inset for three commercial loading spaces;
 - Widening the Mary Street sidewalk adjacent to Mary Court West, from 5 to 10 feet;
 - Streetscape improvements to sidewalks adjacent to Mary Court West;
 - Conversion of Mary Street between Minna and Howard Streets to a shared public way;
 - Sidewalk improvements on Howard Street adjacent to the off-site parcel at 198 Fifth Street;
 - Streetscape improvements to sidewalks adjacent to the Natoma, Fifth, Howard and Mary Street building frontages and street trees within an approximately 300-foot long portion of the south Howard Street sidewalk extending west from Fifth Street.

2. Building N-1⁴

- Demolition of a portion of the existing building at 110 Fifth Street (Assessor's Block/Lot No. 3725/097) to provide an approximately 18,000 square foot footprint for construction of the following:
 - An up to 400-unit, 470-foot tall 45-story residential building with approximately 570,500 gsf devoted to residential use, 13,200 square feet of active ground floor uses (composed of 7,300 gsf of active ground floor retail space; 5,900 square feet lobby/core and building services space);
 - Up to three subterranean levels of vehicle and bicycle parking and loading accessible from Minna Street, including up to: 156 vehicle spaces⁵ and 176 Class 1 bicycle spaces, and 24 Class 2 bicycle spaces;

⁴ As more particularly described in Planning Commission Motion No. [---], dated July __, 2015, and any Subsequent Approvals.

⁵ Building N-1 is entitled to use of an additional ~~135~~63 parking spaces, accessory to Building N-1, in the garage of Building H-1

- A one-stall off-street freight loading bay within the building, accessible from a separate entrance on Minna Street.
 - Approximately 23,000 sf open space atop Building M-1 (Chronicle Building), including up to 400 sf of café/pop up retail kiosk type space, an access elevator, stairway and a ground-floor entrance lobby on the southern (Minna Street) façade of M-1;⁶
 - Construction of a 3,600 square-foot private open space terrace on the north side of the building on or about the sixth floor of the building.
 - Construction and installation of the following streetscape improvements:
 - Widening of the Fifth Street sidewalk adjacent to the building, between Minna and Natoma Streets, from 10 feet to 18 feet with an approximately 60-foot long, 8-foot deep inset for three commercial loading spaces;
 - Streetscape improvements to the sidewalks on the Fifth and Minna Street building frontages.
3. Building M-2⁷
- Demolition of existing surface parking at 939-949 Mission Street (Assessor's Block/Lot No. 3725/089-091) for construction of the following:
 - An up to 288-unit, 200-foot tall 20-story residential building with approximately 250,800 gsf devoted to residential use, and 13,500 square feet of active ground floor uses (composed of 6,800 gsf of active retail space and 6,700 square feet of lobby/core and building services).
 - Up to three subterranean levels of vehicle and bicycle parking and loading with an entrance and exit from and onto Minna Street, including up to: 53 vehicle spaces, 149 Class 1 bicycle spaces and 19 Class 2 bicycle spaces.
 - Construction of an approximately 3,600 square-foot private open space terrace on the west side of Building M-2.
 - Demolition of existing surface parking on Assessor's Block/Lot 3725/097 and construction of Mary Court East, approximately 11,500 square feet of open space.
 - Construction and installation of the following streetscape improvements:
 - New curb and striping on Mission Street for a passenger loading zone and two commercial metered parking spaces, and on Minna Street, removal of up to six parking spaces and replacement with two commercial metered spaces adjacent to the building.
 - Conversion of Mary Street between Mission and Minna Streets to a pedestrian-only alley, the North Mary Pedestrian Alley, closed to vehicular

⁶ Construction of this open space may be carried out together with separate renovations of Building M-1 (Chronicle) described in Item 4 below, if those proceed prior to construction of Building N-1.

⁷ As more particularly described in Planning Commission Motion No.[-]; dated July __, 2015, and any Subsequent Approvals.

and bicycle traffic, and construction associated improvements to the sidewalks and roadway;

- An up to 1,600 square-foot pedestrian improvement adjacent to Building M-2 along North Mary Pedestrian Alley;
- Streetscape improvements on the sidewalks adjacent to the Mission Street building frontage, and streetscape improvements to Minna and Mary Street sidewalks adjacent to Mary Court East constructed with Building M-2.

4. Building M-1⁸

- Renovation of an existing 179,200 square-foot office building located at 901-925 Mission Street (Assessor's Block/Lot 3725/093, commonly referred to as the San Francisco Chronicle Building), as follows:
 - Conversion of up to 40,000 square feet of storage within the building basement to office use;
 - Exterior and interior renovations to accommodate changes to mechanical, electrical and plumbing systems and building circulation necessitated by the demolition of a portion of the existing two-story above-ground connector between Building M-1 and the San Francisco Examiner Building (Block/Lot 3725/097);
 - Exterior and interior renovations to create additional ground floor building ingress/egress on the secondary Minna and/or Mary Street building façades;
- Building M-1 would remain three stories and 50 feet tall, and would include three floors, two first-floor mezzanines and a basement comprising up to: 170,700 gsf of office space, 1,100 gsf of ground floor retail use and 3,400 gsf of lobby/core space.
- Construction and installation of the following streetscape improvements:
 - Widening of the Fifth Street sidewalk from 10 feet to 18 feet (with a 60-foot long 8-foot deep inset for on-street loading) between Minna and Mission Street, and related sidewalk improvements;
 - Sidewalk improvements to the adjacent Mission and Minna Street frontages.
- As noted above, approximately 23,000 sf open space, including up to 400 sf of café/pop up retail kiosk type space, an access elevator, stairway and a ground-floor entrance lobby on the southern (Minna Street) façade, will be constructed in connection with Building N-1.

5. Examiner Building⁹

- Renovation and partial demolition of an existing 92,100 square-foot office building located at 110 Fifth Street, (Assessor's Block 3725 Lot 097, commonly referred to as

⁸ As more particularly described in Planning Commission Motion No.[--], dated July __, 2015, and any Subsequent Approvals.

⁹ As more particularly described in Planning Commission Motion No.[--], dated July __, 2015, and any Subsequent Approvals.

the San Francisco Examiner Building) including an approximately 14,800 square-foot above-ground connector over Minna Street between the Examiner Building and Building M-1, as follows:

- Demolition of the eastern approximately two-thirds of the existing building and connector;
 - Exterior and interior renovations to the remaining, post-demolition building, including mechanical, electrical and plumbing systems and building circulation;
 - Conversion of up to 9,600 square feet of storage within the building basement to retail use.
- After demolition and renovation, the Examiner Building would remain three stories and 50 feet tall, and would be a 34,900 gsf building composed of up to: 21,800 gsf of office use above the ground floor (including 7,000 gsf of office use within the remaining above-ground connector), 11,800 gsf of active ground floor and basement retail space, and 1,300 gsf of lobby/core space.
- Construction and installation of streetscape improvements to the sidewalk on the Minna Street frontage of the Examiner Building.
6. Camelline Building (430 Natoma Street, Assessor's Block/Lot 3725/042).
- Retention of the existing building for continued use as a 9,600 square foot office building.
7. Dempster Printing Building (447 Minna Street, Assessor's Block/Lot 3725/076).
- Retention of the existing building with exterior and interior structural rehabilitation and interior renovation for continued use as a 12,000 square-foot office building.

Exhibit C
Youth Development Program

Developer shall make contributions to support youth development in the total amount of \$3,500,000 (Three Million Five Hundred Thousand Dollars) (the "**Youth Development Funds**"). Of this amount, (1) \$1,000,000 (One Million Dollars) shall be paid to the City's Department of Children, Youth and Families ("**DCYF**"), (2) \$1,500,000 (One Million Five Hundred Thousand Dollars) shall be paid to MOHCD, and (3) 1,000,000 (One Million Dollars) shall be paid to the City's Department of Parks and Recreation ("**RecPark**").¹ The Youth Development Funds shall be paid to DCYF, MOHCD and RecPark, respectively, in the amounts and on or before the dates specified in Exhibit D and allocated as set forth in this Exhibit.

1. DCYF Funding. DCYF shall allocate approximately one-third of the DCYF funds to each of use categories set forth subsections (a)-(c) below, with each category receiving approximately one-third of each of the three payments specified in Exhibit D.

(a) SoMa Summer and After School Youth Programming. DCYF shall allocate funds to support after school youth programming during the summer and after school, including educational and social activities. The funds will be allocated through a competitive process, or as otherwise determined by DCYF, and shall be distributed to South of Market (SoMa)-based youth serving organizations that have a minimum of five (5) years of experience in serving youth in SoMa, including after school programs at Bessie Carmichael and summer programs that target both academic enrichment and augment the recreational activities offered to youth in the neighborhood. Recipient organizations should also have experience leading and facilitating events and have a history of creating partnerships with local community-based organizations in SoMa as a way to augment offerings and programs to benefit local youths. Potential community-based organizations that would be qualified for such funds include but are not limited to United Playaz, West Bay, and Filipino American Development Foundation/Galing Bata.

¹ Any capitalized term used in this Exhibit C that is not defined herein shall have the meaning given to such term in this Agreement.

Exhibit C
Youth Development Program

(b) Bessie Carmichael Student Achievement. DCYF shall allocate funds to support student achievement at Bessie Carmichael. The funds will be distributed to the San Francisco Education Fund, a 501(c)(3) non-profit organization. The purpose of this funding is to facilitate progress with student achievement and improvement plans and implement strategies in partnership with nonprofits to support increased literacy, math proficiency, and college and career readiness.

(c) Bessie Carmichael Principal's Discretionary Fund. DCYF shall allocate funds to the Bessie Carmichael Principal's Discretionary Fund to be distributed to the San Francisco Unified School District for allocation to, and be used for programs at Bessie Carmichael School. The purpose of this funding is to support critical programs at the school, such as the Science Technology Arts and Math Initiative which provides aligned teacher training and professional development.

(d) DCYF Discretion. If the DCYF Director determines that any entity designated above is no longer operating a program that is qualified to deliver the specified services, then the DCYF Director shall have the right to substitute an alternative SoMa-based organization to receive the funds, provided DCYF shall continue to allocate the funding generally for the purposes described above.

2. MOHCD Funding.

(a) Non-Profit Capital Funds. The MOHCD funds shall be paid in the amount and at the time set forth in Exhibit D, and distributed by MOHCD to Northern California Community Loan Fund either as a lump sum or in installments to be used for capital improvements, organizational expansion and/or building acquisition within the SoMa impact area identified in Attachment 1 so as to provide facilities for youth and family organization or organizations, and which facilities may also serve as a site for civic gatherings and neighborhood programming. Consideration will be given to organizations with a demonstrated track record of providing financial expertise, supplying grants and technical assistance to non-profit arts and cultural institutions in

Exhibit C
Youth Development Program

SoMa (including those that target high risk and/or disadvantaged populations) that are seeking to acquire permanently affordable program and office space.

3. RecPark Funding.

(a) Gene Friend Recreation Center. Developer shall pay the RecPark funds to RecPark at the times provided in Exhibit D. RecPark will use these funds to support renovations and upgrades to the Gene Friend Recreation Center and the adjacent outdoor play area located at 270 Sixth Street.

4. Accounting.

Developer shall have no right to challenge the appropriateness of or the amount of any expenditure, so long as it is used in good faith in accordance with the provisions of this Youth Development Program. The Youth Development Funds may be commingled with other funds of the City for purposes of investment and safekeeping, but the City shall maintain records as part of the City's accounting system to account for all the expenditures for a period of four (4) years following the date of the expenditure, and make such records available to Developer upon request. The failure of any recipient to use funds as required by this Exhibit C shall not be a City or Developer breach of the Agreement. The City shall have no obligation to make any payment or provide any funds except for what it has received from the Developer as set forth in this Exhibit C, and Developer shall have no obligation to make any payment or provide any funds except as set forth in this Exhibit C.

5. Board Authorization

By approving the Agreement, the Board of Supervisors authorizes the City to accept and expend the Youth Development Funds paid by the Developer as set forth in this Exhibit C. The Board of Supervisors also agrees that any interest earned on any Youth Development Funds held by the City shall remain in designated accounts for youth development purposes consistent with this Exhibit C and shall not be transferred to the City's general fund.

Exhibit D¹

Community Benefit Schedule

The Developer shall make the 5M Community Benefit Fee and applicable Impact Fee and Exaction payments in the amounts provided for each Building² listed on Schedule 1 determined, as applicable, on the actual square footage of the proposed Building at the time of issuance of the first construction document, provided, however, that where noted certain specified portions shall be paid in advance at the time the Approvals are Finally Granted.

The amounts payable as shown on Schedule 1, when tied to the square footage of a Building, are estimates based upon the anticipated square footage of that Building. The actual ~~square footage amount payable by Developer under the applicable provision of the San Francisco Planning and Administrative Codes or this Agreement~~ will be calculated in accordance with Planning Code and Administrative Code, as applicable, at the time of issuance of the relevant construction document. The uses of the Impact Fees and Exactions and Community Benefit Fee are described in the Exhibits to this Agreement and in Schedule 1.

While the Impacts Fees and Exactions will equal the applicable amounts required under the Planning and Administrative Codes, this Exhibit D reflects that the specified fees will be used by the City and allocated under this Agreement in a manner designed to first advance funds

¹ Any capitalized term used in this Exhibit not defined herein shall have the meaning given in this Agreement.

² "Building" as is shown on the Project Description, Exhibit B to this Agreement

and the contribution of land for affordable housing, and thereafter to fund transit and transportation but without reducing the overall amount to be used for transit and transportation.

The parties currently anticipate that the H-1 Building will start construction before the N-1 Building. If the N-1 Building starts construction before the H-1 Building, the Planning Director may, in consultation with the City's Controller, use the N-1 Building funds to first accomplish the uses specified in Schedule 1 for the H-1 Building, including the payment for the Eddy & Taylor Street project. Upon any such adjustment in the use of funds from the N-1 Building, a corresponding change will be made in the use of funds for the H-1 Building so that the overall community benefit funding remains the same.

In addition, in light of the fact that the payment amounts shown on Schedule 1 are estimates, the Planning Director, in consultation with the City Controller, may adjust dollar amounts in the line items for the use of funds as may be needed in order to achieve the overall community benefits reflected in this Agreement by increasing or decreasing any line item amount by up to 10%. For any increase or decrease of more than 10%, the Planning Director must get the prior approval of the Planning Commission. All Developer payments under Schedule 1 shall be made to the City and County of San Francisco, and delivered to the Planning Director at the address for notices set forth in this Agreement. The Planning Director, in consultation with the OEWD Director and the Controller, shall then direct funds to the appropriate City Agency accounts consistent with this Agreement.

Exhibit E**5M Affordable Housing Program**

All initially capitalized terms shall have the meaning given in Section 1 (Definitions) of the Agreement, unless separately defined in this Exhibit E.

A. 5M Affordable Housing.

The 5M Affordable Housing Program consists of following components:

1) Impact Fees and Exactions and 5M Community Benefit Fee. The Impact Fees and Exactions and the 5M Community Benefit Fee for the H-1 and N-1 Buildings shall be allocated to and used for affordable housing as provided in the Community Benefit Schedule attached to this Agreement as Exhibit D (collectively, as allocated, the “**Affordable Housing Fees**”). All Affordable Housing Fees shall be dedicated to affordable houses uses in the area described on Schedule 1 to this Exhibit E as the “**Housing Impact Area**”.

2) M-2 Rental Building. ~~Twenty percent (20%) of the units located in the M-2 Building shall be permanently restricted, for the life of the M-2 Building, for occupancy by very low income tenants meeting the applicable income eligibility and rent requirements set forth in Sections 42(g)(1) and 142(d)(1) of the Internal Revenue Code and California Health and Safety Code Section 52080, et. seq.~~ Thirty percent (30%) of the units located in the M-2 Building (the “Restricted Units”) shall be restricted, for the life of the M-2 Building, for rental by Households whose combined Annual Gross Income for all members is between 100 percent and 150 percent of Area Median Income. Approximately (a) 20% of the Restricted Units shall be rented to Households at 100% of Area Median Income, (b) 40% of the Restricted Units shall be rented to Households at 120% of Area Median Income, and (c) 40% of the Restricted Units shall be rented to Households at 150% of Area Median Income (each, a “Qualifying AMI Level”). Rental Rates for the Restricted Units shall not exceed the amounts published annually by MOH applicable to each Qualifying AMI Level. The Restricted Units shall be of comparable quality to, and offer a range of sizes and number of bedrooms that is approximately

proportional to the range of sizes and number of bedrooms of, the non-restricted units in the M-2 Building. Each Qualifying AMI Level shall have at least one (1) Restricted Unit made available in each of the following categories, to the extent such categories exist at the M-2 Building: studio, one-bedroom, two-bedroom, and three-bedroom. The Restricted Units shall comply, as applicable, with the Rental Program for BMR Units set forth in Section III of the City and County of San Francisco Inclusionary Affordable Housing Program Monitoring and Procedures Manual, effective May 10, 2013. The provisions of this paragraph 2 are hereby expressly deemed to satisfy the requirements of the San Francisco Inclusionary Affordable Housing Program and San Francisco Planning Code Section 415 et seq. The rental and re-rental of the Restricted Units shall account for the then-existing lottery preferences utilized by MOHCD and permitted by law. All capitalized terms not defined herein shall have the meaning given to them in Section 401 of the San Francisco Planning Code. In addition, Developer acknowledges that the Planning Department and MOHCD established certain protocols for implementation of Section 415 et seq., and Developer shall be deemed in full compliance with such protocols by distributing the Restricted Units throughout the bottom 2/3 of the building with regard to floors, and not designating more than 50% of the units on any floor as Restricted Units, except as may be approved by the MOHCD Director.

3) Transfer Parcel. Developer shall transfer the Transfer Parcel to the City, acting through MOHCD, in accordance with the Transfer Agreement attached as Schedule 2 to this Exhibit E. The City shall use the Transfer Parcel to develop affordable housing; provided if the City decides after acceptance that it cannot develop affordable housing on the Transfer Parcel, the City may sell the Transfer Parcel and use the net sales proceeds for affordable housing in the Housing Impact Area. If the City does not accept the Transfer Parcel following the City's due diligence for any reason, then Developer shall pay to the City Three Million Five Hundred Thousand Dollars (\$3,500,000) (the "**Backup Payment**") as set forth in the Transfer Agreement. The City shall use the Backup Payment for affordable housing in the Housing Impact Area and no other purpose.

B. Total Affordable Housing Anticipated to Equal to 3340% of Market Rate Housing.

With the Affordable Housing Fees, the Transfer Parcel and the M-2 Building on-site housing so dedicated as set forth above, the funds and property allocated to affordable housing generated by the Project is anticipated to equal 3340% of the market rate housing for the Project; all provided in the Housing Impact Area.

C. Housing Fees and Program Administered by MOHCD.

In order to effectuate the foregoing, all of the Affordable Housing Fees shall be dedicated to an affordable housing fund administered by MOHCD and used for predevelopment and development expenses and administrative costs associated with the acquisition, construction, and rehabilitation of permanently affordable housing units in the Housing Impact Area. If the City uses other funds, in advance of the City's receipt of the Affordable Housing Fees, to pay for any of the work contemplated by this Exhibit E, then the City may reimburse itself for such payments upon receipt of the Affordable Housing Fees and such reimbursement shall satisfy the requirement to use the Affordable Housing Fees in the Housing Impact Area. The City intends to provide financing for the construction of the City-approved affordable housing project at 168-186 Eddy Street (which is anticipated to generate 71 Project-generated units out of the anticipated 103 units to be constructed at this site). Thereafter, all Affordable Housing Fees shall be used as MOHCD shall determine, in its sole discretion, in any manner so long as consistent with this Agreement and used for affordable housing within the Housing Impact Area. If MOHCD determines that any of the Affordable Housing Fees cannot be used for a specific project as described in this Agreement, MOHCD shall use such funds for another affordable housing project in the Housing Impact Area.

D. Accounting.

Developer shall have no right to challenge the appropriateness of or the amount of any expenditure, so long as it is used in accordance with the provisions of this 5M Affordable Housing Program. The Affordable Housing Fees may be commingled with other funds of the City for purposes of investment and safekeeping, but the City shall maintain records as part of the City's accounting system to account for all the expenditures for a period of four (4) years following the date of the expenditure, and make such records available to Developer upon request.

E. Board Authorization.

By approving the Agreement, the Board of Supervisors authorizes the City (including MOHCD, the Director of Property and the Controller) to: (1) accept and expend the Affordable Housing Fees paid by the Developer as set forth in this Exhibit E, and to take such actions as may be reasonably necessary to create the proposed affordable housing units as described in this Exhibit E; and (2) to accept the Transfer Parcel and utilize the Transfer Parcel, or alternatively to accept the Transfer Parcel Payment and use it for affordable housing within the Housing Impact Area, each as provided in the Schedule 2. As to M-2 Building, the Board of Supervisors also: (1) authorizes and encourages MOHCD to use good faith reasonable efforts to assist, in a timely manner, Developer in connection with any and all applications relating to the Available Funding Sources to the California Tax Credit Allocation Committee, and the California Debt Limit Allocation Committee ("CDLAC"), and the issuance of any tax-exempt bond financing awarded by CDLAC with respect to any multifamily rental housing, and 2) authorizes City staff and agrees, subject to applicable Board approvals and the receipt of CDLAC allocation, to use good faith reasonable efforts to assist with the issuance of multifamily housing revenue bonds, or alternatively, to allow for an alternative bond issuer to do so. Subject to necessary Board of Supervisor approvals, the City intends to be the issuer of the bonds needed for the M-2 Rental Building.

The City also agrees that any interest earned on any the Affordable Housing Fees shall remain in designated accounts for use by MOHCD for affordable housing consistent with this Exhibit E and shall not be transferred to the City's general fund.

Notwithstanding the foregoing, nothing herein shall prevent or limit the absolute discretion of the City to conduct environmental review in connection with any future proposal for development on the Transfer Parcel or any other site within the Housing Impact Areas, to make any modifications or select feasible alternatives to such future proposals as may be deemed necessary to conform to any applicable Laws, including without limitation, CEQA, balance benefits against unavoidable significant impacts before taking final action, or determine not to proceed with such future proposals and to obtain any applicable permits or other authorization for uses on the Transfer Parcel or any other site within the Housing Impact Area.

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Exhibit F**Workforce Agreement**

Developer shall make contributions and require Project Sponsors, Contractors, Consultants, Subcontractors and Subconsultants, as applicable, to undertake activities to support workforce development in both the construction and end use phases of the Project, as set forth in this Exhibit F.¹

A. Workforce Job Readiness and Training Funds.

The Project shall contribute to OEWD \$1,500,000 (One Million Five Hundred Thousand Dollars) to support workforce job readiness and training ("**Workforce Job Readiness and Training Funds**"). Such funds shall be paid to OEWD at the time and allocated to and used as provided in Exhibit D to this Agreement. Priority for OEWD's use and allocation of Workforce Job Readiness and Training Funds shall be to organizations with an existing track record of working in the impacted communities within District 6.

1. **Barrier Removal Funds.** Approximately \$250,000 (Two Hundred and Fifty Thousand Dollars) of the Workforce Job Readiness and Training Funds shall be dedicated to reducing barriers to employment for at-risk populations, including low-income youth and young adults with histories of incarceration, homelessness, substance abuse or other factors that may create barriers to employment ("**Barrier Removal Funds**"). The Barrier Removal Funds shall be used and allocated by OEWD based on a competitive process to a qualified non-profit entity, and distributed over approximately two years (although OEWD may, in its discretion, advance funds sooner if OEWD identifies an earlier need for the funds consistent with this Exhibit F). The Barrier Removal Funds will be used to train enrolled individuals in areas such as life skill training, basic education (including assistance with attaining a GED or driver's license if applicable), job placement and retention services, and wrap-around social services, with a goal of allowing participants to be CityBuild-ready. OEWD shall give priority to allocating the Barrier

¹ Any capitalized term used in this Exhibit F, including its Attachments, that is not defined herein shall have the meaning given to such term in this Agreement.

Removal Funds to increase capacity of an established program. OEWD shall use good faith efforts to promptly initiate and complete the competitive process and begin distribution of the Barrier Removal Funds within one hundred and twenty (120) days after OEWD's initial receipt of such funds.

2. Job Seeking Resources for Disadvantaged Adults. Approximately \$250,000 (Two Hundred and Fifty Thousand Dollars) of the Workforce Job Readiness and Training Funds shall be dedicated to providing job seeking resources for disadvantaged adults, including individuals experiencing homelessness ("**Job Seeking Resources Funds**"). The Job Seeking Resources Funds shall be used and allocated by OEWD based on a competitive process to a qualified non-profit entity, and distributed over approximately two years (although OEWD may, in its discretion, advance funds sooner if OEWD identifies an earlier need for the funds consistent with this Exhibit F). The Job Seeking Resources Funds will be generally targeted to programs that include a comprehensive intake process, and that create a culturally competent, individualized plan for each client, including employment goals, training, and barrier removal. The programs may also include working with potential employers regarding any necessary accommodations or training, and ongoing support following job placement. OEWD shall give priority to allocating the Job Seeking Resources Funds to increase capacity of an established program with experience collaborating with other community-based organizations and social services agencies. OEWD shall use good faith efforts to promptly initiate and complete the competitive process and begin distribution of the Job Seeking Resources Funds within one hundred and twenty (120) days after OEWD's initial receipt of such funds.

3. Paid Information and Communications (ICT) Internships. Approximately \$250,000 (Two Hundred and Fifty Thousand Dollars) of the Workforce Job Readiness and Training Funds shall be dedicated to paid ICT internships. According to the San Francisco Controller's Office, the tech sector has accounted for more than 30% of the jobs added in San Francisco since 2010. Yet as tech firms draw talent from across the United States – and across the world – local residents are too often under-represented in the workforce. Paid ICT internships and apprenticeships, both with 5M tenants and with tech firms throughout San Francisco, will provide an opportunity for local residents to gain valuable experience and to

build professional networks in the tech world. The program will prioritize South of Market residents.

4. TechSF – Information and Communications Technology (ICT) Training Program. Approximately \$500,000 (Five Hundred Thousand Dollars) of the Workforce Job Readiness and Training Funds shall be dedicated to the TechSF ICT Training Program. TechSF is an OEWD training academy that provides occupational skills training, work experience opportunities, and job placement assistance to training participants and other individuals working in informational technology fields in various industries. TechSF offers training in high growth ICT occupations including Software Development, Web Design, Motion Graphics, Cloud Services, Network Administration and Support, and other skills in demand to serve a continuum of jobseekers and employers. South of Market residents will be targeted in the program's outreach efforts, and slots will be prioritized for South of Market residents.

5. Specialized Construction Training and Certifications. Approximately \$250,000 (Two Hundred and Fifty Thousand Dollars) of the Workforce Job Readiness and Training Funds shall be dedicated to specialized construction training and certifications. OEWD's CityBuild Academy Pre-apprenticeship Training Program is an 18-week construction training program in partnership with City College, trades unions, and employers. Leveraging its existing resources, CityBuild Academy will provide additional specialized training outside of the Pre-apprenticeship Training Program to prepare residents for construction work at 5M. Priority will be given to South of Market residents.

6. Accounting. Developer shall have no right to challenge the appropriateness of or the amount of any expenditure, so long as it is used in accordance with the provisions of this Exhibit F. The Workforce Job Readiness and Training Funds may be commingled with other funds of the City for purposes of investment and safekeeping, but the City shall maintain records as part of the City's accounting system to account for all the expenditures for a period of four (4) years following the date of the expenditure, and make such records available upon Developer's request.

7. Board Authorization. By approving the Agreement, the Board of Supervisors authorizes the City (including OEWD) to accept and expend the Workforce Job Readiness and

Training Funds paid by the Developer as set forth in this Exhibit F. The Board of Supervisors also agrees that any interest earned on any the Workforce Job Readiness and Training Funds shall remain in designated accounts for use by OEWD for workforce readiness and training consistent with this Exhibit F and shall not be transferred to the City's general fund.

B. First Source Hiring Program.

1. Each Project Sponsor shall, with respect to each Workforce Building², (i) include in each Contract for construction work a provision requiring each Contractor to enter into a FSHA Construction Agreement in the form attached hereto as Attachment A before beginning any construction work, and (ii) provide a signed copy thereof to the First Source Hiring Administration ("FSHA") and CityBuild within 10 business days of execution.

2. Each Project Sponsor shall, with respect to each Workforce Building, comply with the requirements of San Francisco Administrative Code Chapter 83 ("**Chapter 83**") and upon entering into leases or other occupancy contracts for commercial space at the Premises that are subject to Chapter 83 with a tenant ("**Commercial Tenant**"), will include in each such contract a requirement that the Commercial Tenant enter into a FSHA Operations Agreement in the form attached hereto as Attachment B, and (ii) provide a signed copy thereof to the FSHA within 10 business days of execution.

3. CityBuild shall represent the FSHA and will provide referrals of Qualified Economically Disadvantaged Individuals for Entry Level Positions on the construction work for each Workforce Building as required under Chapter 83. The FSHA will provide referrals of Qualified Economically Disadvantaged Individuals for the permanent Entry Level Positions located within the Premises where required under Chapter 83.

² Any capitalized term used in this Section B that is not defined will have the definition given to such term in Attachment A, including the following terms: Contract, Contractor, Entry Level Positions, Project Sponsor, Qualified Economically Disadvantaged Individuals for Entry Level Positions, and Workforce Building.

4. The owners or residents of the individual residential units and any residential Homeowner's Association within the Project shall have no obligations under this Section B and no obligation to enter into a FSHA Construction Agreement or FSHA Operations Agreement.

5. FSHA shall notify any Contractor, Subcontractor and Commercial Tenant, as applicable, in writing, with a copy to Project Sponsor, of any alleged breach on the part of that entity of its obligations under Chapter 83 or its FSHA Construction Agreement or the FSHA Operations Agreement, as applicable, before seeking an assessment of liquidated damages pursuant to Section 83.12 of the Administrative Code. FSHA sole remedies against a Contractor, Subcontractor or Commercial Tenant shall be as set forth in Chapter 83, including the enforcement process. Upon FSHA's request, a Project Sponsor shall reasonably cooperate with FSHA in any such enforcement action against any Contractor, Subcontractor or Commercial Tenant, provided in no event shall a Project Sponsor be liable for any breach by a Contractor, Subcontractor or Commercial Tenant.

6. If a Project Sponsor fulfills its obligations as set forth in this Section B, it shall not be held responsible for the failure of a Contractor, Subcontractor, Commercial Tenant or any other person or party to comply with the requirements of Chapter 83 or this Section B. If a Project Sponsor fails to fulfill its obligations under this Section B, the applicable provisions of Chapter 83 shall apply, though the City and the Project Sponsor shall have the right to invoke the process set forth in Section 9.2 of the Agreement..

7. This Section B is an approved "First Source Hiring Agreement" as referenced in Section 83.11 of the Administrative Code.

C. **Local Business Enterprise (LBE) Utilization Program.**

Each Project Sponsor of a Workforce Building, as defined in Attachment C, and its respective Contractors and Consultants, shall comply with the Local Business Enterprise Utilization Program set forth in Attachment C hereto.

Attachment A:

First Source Construction Hiring Agreement

This First Source Construction Hiring Agreement ("FSHA Construction Agreement") is made as of _____, by and between _____, the First Source Hiring Administration, (the "FSHA"), and the undersigned contractor ("Contractor"):

RECITALS

WHEREAS, Contractor has executed or will execute an agreement (the "Contract") to construct or oversee a portion of the project to construct _____ [specify number of new dwelling units, and/or square feet of commercial space and number of accessory, off-street parking spaces] ("Workforce Building") at _____, Lots _____ in Assessor's Block _____, San Francisco California ("Site"), and a copy of this FSHA Construction Agreement is attached as an exhibit to, and incorporated in, the Contract; and

WHEREAS, as a material part of the consideration given by Contractor under the Contract, Contractor has agreed to execute this First Source Construction Agreement and participate in the San Francisco Workforce Development System established by the City and County of San Francisco, pursuant to Chapter 83 of the San Francisco Administrative Code;

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

1. DEFINITIONS

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

- a. "Core" or "Existing" workforce: Contractor's "core" or "existing" workforce shall consist of any worker who appears on the Contractor's active payroll for at least 60 days of the 100 working days prior to the award of this Contract.
- b. Economically Disadvantaged Individual: An individual who is either (a) eligible for services under the Workforce Investment Act of 1998 (29 U.S.C.A. 2801, *et seq.*), as may be amended from time to time, or (b) designated as "economically disadvantaged" by the OEWD/First Source Hiring Administration as an individual who is at risk of relying upon, or returning to, public assistance.
- c. Hiring opportunity: When a Contractor adds workers to its existing workforce for the purpose of performing the Work under this Contract, a "hiring opportunity" is created. For example, if the carpentry subcontractor has an existing crew of five carpenters and needs seven carpenters to perform the work, then there are two hiring opportunities for carpentry on a Workforce Building.

- d. Job Notification: Written notice of job request from Contractor to CITYBUILD for any hiring opportunities. Contract shall provide Job Notifications to CITYBUILD with a minimum of 3 business days' notice.
- e. New hire: A "new hire" is any worker who is not a member of Contractor's core or existing workforce.
- f. Referral: A referral is an individual member of the CITYBUILD Referral Program who has received training appropriate to entering the construction industry workforce.
- g. Workforce Building: Buildings M-2, N-1 and H-1 as described in Exhibit B to the 5M Development Agreement, including initial tenant improvements therein, and any other Buildings or construction activities in the Project Site that require a Permit as defined in Chapter 83.
- h. Workforce participation goal: The workforce participation goal is expressed as a percentage of the Contractor's and its Subcontractors' new hires for a Workforce Building.
- i. Entry Level Position: A non-managerial position that requires no education above a high school diploma or certified equivalency, and less than two (2) years training or specific preparation, and shall include temporary and permanent construction jobs related to the development of a commercial activity.
- j. First Opportunity: Consideration by Contractor of System Referrals for filling Entry Level Positions prior to recruitment and hiring of non-System Referral job applicants.
- k. Job Classification: Categorization of employment opportunity or position by craft, occupational title, skills, and experience required, if any.
- l. Job Notification: Written notice, in accordance with Section 2(b) below, from Contractor to FSHA for any available Entry Level Position during the term of the Contract.
- m. Publicize: Advertise or post available employment information, including participation in job fairs or other forums.
- n. Qualified: An Economically Disadvantaged Individual who meets the minimum bona fide occupational qualifications provided by Contractor to the System in the job availability notices required this FSHA Construction Agreement.
- o. System: The San Francisco Workforce Development System established by the City and County of San Francisco, and managed by the Office of Economic and Workforce Development (OEWD), for maintaining (1) a pool of Qualified individuals, and (2) the mechanism by which such individuals are certified and referred to prospective employers covered by the First Source Hiring

requirements under Chapter 83 of the San Francisco Administrative Code. Under this agreement, CityBuild will act as the representative of the San Francisco Workforce Development System.

- p. System Referrals: Referrals by CityBuild of Qualified applicants for Entry Level Positions with Contractor.
- q. Subcontractor: A person or entity who has a direct contract with Contractor to perform a portion of the work under the Contract.
- r. Project Sponsor. Project Sponsor shall mean [*insert name of applicable Developer or Workforce Building owner*], including any successor during the term of this FSHA Operations Agreement.

2. PARTICIPATION OF CONTRACTOR IN THE SYSTEM

- a. The Contractor agrees to work in Good Faith with the Office of Economic and Workforce Development (OEWD)'s CityBuild Program to achieve the goal of 50% of new hires for employment opportunities in the construction trades and Entry-Level Position related to providing support to the construction industry.

The Contractor shall provide CityBuild the following information about the Contractor's employment needs under the Contract for each Workforce Building:

- i. On Attachment A-1, the CityBuild Workforce Projection Form 1, Contractor will provide a detailed numerical estimate of journey and apprentice level positions to be employed on each Workforce Building for each trade.
 - ii. Contractor is required to ensure that a CityBuild Workforce Projection Form 1 is also completed by each of its Subcontractors.
 - iii. Contractor will collaborate with CityBuild staff in completing the CityBuild Workforce Hiring Plan Form 2, to identify, by trade, the number of Core workers at Workforce Building project start and the number of workers at Workforce Building project peak; and the number of positions that will be required to fulfill the First Source local hiring expectation.
 - iv. Contractor and Subcontractors will provide documented verification that its "core" employees for this contract meet the definition listed in Section 1.a.
 - v. A negotiated and signed CityBuild Workforce Hiring Plan Form 2 will constitute the First Source Hiring Plan for each Workforce Building as required under Chapter 83.
- b. Contractor must (A) give good faith consideration to all CityBuild Referrals, (B) review the resumes of all such referrals, (C) conduct interviews for posted Entry

Level Positions in accordance with the non-discrimination provisions of this contract, and (D) affirmative obligation to notify CityBuild of any new entry-level positions throughout the life of the Workforce Building.

- c. Contractor must provide constructive feedback to CityBuild on all System Referrals in accordance with the following:
 - i. If Contractor meets the criteria in Section 5(a) below that establishes “good faith efforts” of Contractor, Contractor must only respond orally to follow-up questions asked by the CityBuild account executive regarding each System Referral; and
 - ii. After Contractor has filled at least 5 Entry Level Positions under this Agreement, if Contractor is unable to meet the criteria in Section 5(b) below that establishes “good faith efforts” of Contractor, Contractor will be required to provide written comments on all CityBuild Referrals.
- d. Contractor must provide timely notification to CityBuild as soon as the job is filled, and identify by whom.

3. CONTRACTOR RETAINS DISCRETION REGARDING HIRING DECISIONS

Contractor agrees to offer the System the First Opportunity to provide qualified applicants for employment consideration in Entry Level Positions, subject to any enforceable Collective Bargaining Agreements as defined in Section 8 below. Contractor shall consider all applications of Qualified System Referrals for employment. Provided Contractor utilizes nondiscriminatory screening criteria, Contractor shall have the sole discretion to interview and hire any System Referrals.

4. COMPLIANCE WITH COLLECTIVE BARGAINING AGREEMENTS

Notwithstanding any other provision hereunder, if Contractor is subject to any Collective Bargaining Agreement(s) requiring compliance with a pre-established applicant referral process, Contractor’s only obligations with regards to any available Entry Level Positions subject to such Collective Bargaining Agreement(s) during the term of the Contract shall be the following:

- a. Contractor shall notify the appropriate union(s) of the Contractor’s obligations under this FSHA Construction Agreement and request assistance from the union(s) in referring Qualified applicants for the available Entry Level Position(s), to the extent such referral can conform to the requirements of the Collective Bargaining Agreement(s).
- b. Contractor shall use “name call” privileges, in accordance with the terms of the applicable Collective Bargaining Agreement(s), to seek Qualified applicants from the System for the available Entry Level Position(s).

- c. Contractor shall sponsor Qualified apprenticeship applicants, referred through the System, for applicable union membership.

5. **CONTRACTOR'S GOOD FAITH EFFORT TO COMPLY WITH ITS OBLIGATIONS HEREUNDER**

Contractor will make good faith efforts to comply with its obligations to participate in the System under this FSHA Construction Agreement. Determinations of Contractor's good faith efforts shall be in accordance with the following:

- a. Contractor shall be deemed to have used good faith efforts if Contractor accurately completes and submits prior to the start of demolition and/or construction of a Workforce Building Attachment A-1: CityBuild Workforce Projection Form 1; and
- b. Contractor's failure to meet the criteria set forth from Section 5(c) to 5(m) does not impute "bad faith." Failure to meet the criteria set forth in Section 5(c) to 5(m) shall trigger a review of the referral process and the Contractor's efforts to comply with this FSHA Construction Agreement. Such review shall be conducted by FSHA in accordance with Section 11 (c) below.
- c. Meet with the Workforce Building project's Project Sponsor, general contractor, or CityBuild representative to review and discuss the plan to meet local hiring obligations under San Francisco's First Source Hiring Ordinance (Municipal Code- Chapter 83) or the City and County of San Francisco Administrative Code Chapter 6.
- d. Contact a CityBuild representative to review hiring projections and goals for this Workforce Building project. Contractor must take active steps to advise all of its subcontractors of the local hiring obligations on the Workforce Building project, including, but not limited to providing CityBuild access and presentation time at each pre-bid, each pre-construction, and if necessary, any progress meeting held throughout the life of the Workforce Building project.
- e. Submit to CityBuild a "Projection of Entry Level Positions" form or other formal written notification specifying expected hiring needs during the Workforce Building project's duration.
- f. Notify the respective union(s) regarding local hiring obligations and request their assistance in referring qualified San Francisco residents for any available position(s). This step applies to the extent that such referral would not violate the union's Collective Bargaining Agreement(s).
- g. Reserve "name call" privileges for qualified applicants referred through the CityBuild system. This should be done within the terms of applicable Collective Bargaining Agreement(s).

- h. Provide CityBuild with up-to-date list of all trade unions affiliated with any work on this project in a timely matter in order to facilitate CityBuild's notification to these unions of the Workforce Building project's workforce requirements.
- i. Submit a "Job Request" form to CityBuild for each apprentice level position that becomes available. Please allow a minimum of 3 Business Days for CityBuild to provide appropriate candidate(s). Contractor should simultaneously contact its union about the position as well, and let them know that Contractor has contacted CityBuild as part of its local hiring obligations.
- j. The Contractor has an ongoing, affirmative obligation and must advise each of its subs of their ongoing obligation to notify CityBuild of any/all apprentice level openings that arise throughout the duration of the Workforce Building project, including openings that arise from layoffs of original crew. Contractor shall not exercise discretion in informing CityBuild of any given position; rather, CityBuild is to be universally notified, and a discussion between the Contractor and CityBuild can determine whether a CityBuild graduate would be an appropriate placement for any given apprentice level position.
- k. Hire qualified candidate(s) referred through the CityBuild system. In the event of the firing/layoff of any CityBuild graduate, Contractor must notify CityBuild staff within two days of the decision and provide justification for the layoff; ideally, Contractor will request a meeting with the Workforce Building project's employment liaison as soon as any issue arises with a CityBuild placement in order to remedy the situation before termination becomes necessary.
- l. Provide a monthly report and/or any relevant workforce records or data from contractors to identify workers employed on the Workforce Building project, source of hire, and any other pertinent information as pertain to compliance with this FSHA Construction Agreement.
- m. Maintain accurate records of efforts to meet the steps and requirements listed above. Such records must include the maintenance of an on-site First Source Hiring Compliance binder, as well as records of any new hire made by the Contractor through a San Francisco CBO whom the Contractor believes meets the First Source Hiring criteria. Any further efforts or actions agreed upon by CityBuild staff and the Contractor on a Workforce Building project basis.

6. COMPLIANCE WITH THIS AGREEMENT OF SUBCONTRACTORS

In the event that Contractor subcontracts a portion of the work under the Contract, Contractor shall determine how many, if any, of the Entry Level Positions are to be employed by its Subcontractor(s) using Form 1: the CityBuild Workforce Projection Form and minimum hiring goals using Form 2: the CityBuild Workforce Hiring Plan, provided, however, that Contractor shall retain the primary responsibility for meeting the requirements imposed under this FSHA Construction Agreement. Contractor shall

ensure that this FSHA Construction Agreement is incorporated into and made applicable to such Subcontract.

7. EXCEPTION FOR ESSENTIAL FUNCTIONS

Nothing in this FSHA Construction Agreement precludes Contractor from using temporary or reassigned existing employees to perform essential functions of its operation; provided, however, the obligations of this FSHA Construction Agreement to make good faith efforts to fill such vacancies permanently with System Referrals remains in effect. For these purposes, "essential functions" means those functions absolutely necessary to remain open for business.

8. CONTRACTOR'S COMPLIANCE WITH EXISTING EMPLOYMENT AGREEMENTS

Nothing in this FSHA Construction Agreement shall be interpreted to prohibit the continuation of existing workforce training agreements or to interfere with consent decrees, collective bargaining agreements, project labor agreements or existing employment contracts (Collective Bargaining Agreements"). In the event of a conflict between this FSHA Construction Agreement and an existing agreement, the terms of the existing agreement shall supersede this FSHA Construction Agreement.

9. HIRING GOALS EXCEEDING OBLIGATIONS OF THIS AGREEMENT

Nothing in this FSHA Construction Agreement shall be interpreted to prohibit the adoption of hiring and retention goals, first source hiring and interviewing requirements, notice and job availability requirements, monitoring, record keeping, and enforcement requirements and procedures which exceed the requirements of this FSHA Construction Agreement.

10. OBLIGATIONS OF CITYBUILD

Under this FSHA Construction Agreement, CityBuild shall:

- a. Upon signing the CityBuild Workforce Hiring Plan, immediately initiate recruitment and pre-screening activities.
- b. Recruit Qualified individuals to create a pool of applicants for jobs who match Contractor's Job Notification and to the extent appropriate train applicants for jobs that will become available through the First Source Program;
- c. Screen and refer applicants according to qualifications and specific selection criteria submitted by Contractor;
- d. Provide funding for City-sponsored pre-employment, employment training, and support services programs;

- e. Follow up with Contractor on outcomes of System Referrals and initiate corrective action as necessary to maintain an effective employment/training delivery system;
- f. Provide Contractor with reporting forms for monitoring the requirements of this FSHA Construction Agreement; and
- g. Monitor the performance of the FSHA Construction Agreement by examination of records of Contractor as submitted in accordance with the requirements of this FSHA Construction Agreement.

11. CONTRACTOR'S REPORTING AND RECORD KEEPING OBLIGATIONS

Contractor shall:

- a. Maintain accurate records demonstrating Contractor's compliance with the First Source Hiring requirements of Chapter 83 of the San Francisco Administrative Code including, but not limited to, the following:
 - (1) Applicants
 - (2) Job offers
 - (3) Hires
 - (4) Rejections of applicants
- b. Submit completed reporting forms based on Contractor's records to CityBuild quarterly, unless more frequent submittals are reasonably required by FSHA. In this regard, Contractor agrees that if a significant number of positions are to be filled during a given period or other circumstances warrant, CityBuild may require daily, weekly, or monthly reports containing all or some of the above information.
- c. If based on complaint, failure to report, or other cause, the FSHA has reason to question Contractor's good faith effort, Contractor shall demonstrate to the reasonable satisfaction of the City that it has exercised good faith to satisfy its obligations under this FSHA Construction Agreement.

12. DURATION OF THIS AGREEMENT

This FSHA Construction Agreement shall be in full force and effect throughout the term of the Contract. Upon expiration of the Contract, or its earlier termination, this FSHA Construction Agreement shall terminate and it shall be of no further force and effect on the parties hereto.

13. NOTICE

All notices to be given under this FSHA Construction Agreement shall be in writing and sent by: certified mail, return receipt requested, in which case notice shall be deemed delivered three (3) business days after deposit, postage prepaid in the United States Mail,

a nationally recognized overnight courier, in which case notice shall be deemed delivered one (1) business day after deposit with that courier, or hand delivery, in which case notice shall be deemed delivered on the date received, all as follows:

If to FSHA: First Source Hiring Administration
 OEWD, 1 South Van Ness 5th Fl.
 San Francisco, CA 94103
 Attn: Ken Nim, Compliance Manager,
 ken.nim@sfgov.org

If to CityBuild: CityBuild Compliance Manager
 OEWD, 1 South Van Ness 5th Fl.
 San Francisco, CA 94103
 Attn: Ken Nim, Compliance Manager,
 ken.nim@sfgov.org

If to Project Sponsor:

Attn:

If to Contractor:

Attn:

- a. Any party may change its address for notice purposes by giving the other parties notice of its new address as provided herein. A "business day" is any day other than a Saturday, Sunday or a day in which banks in San Francisco, California are authorized to close.
- b. Notwithstanding the forgoing, any Job Notification or any other reports required of Contractor under this Agreement (collectively, "Contractor Reports") shall be delivered to the address of FSHA pursuant to this Section via first class mail, postage paid, and such Contractor Reports shall be deemed delivered two (2) business days after deposit in the mail in accordance with this Subsection.

14. ENTIRE AGREEMENT

This FSHA Construction Agreement and the 5M Development Agreement contain the entire agreement between the parties to this FSHA Construction Agreement and shall not be modified in any manner except by an instrument in writing executed by the parties or their respective successors in interest. This FSHA Construction Agreement shall inure to the benefit of and be binding on the parties and their respective successors and assigns. If there is more than one party comprising Contractor, their obligations shall be joint and several.

15. SEVERABILITY

If any term or provision of this FSHA Construction Agreement shall, to any extent, be held invalid or unenforceable, the remainder of this FSHA Construction Agreement shall not be affected.

16. COUNTERPARTS

This FSHA Construction Agreement may be executed in one or more counterparts. Each shall be deemed an original and all, taken together, shall constitute one and the same instrument.

17. HEADINGS

Section titles and captions contained in this FSHA Construction Agreement are inserted as a matter of convenience and for reference and in no way define, limit, extend or describe the scope of this FSHA Construction Agreement or the intent of any of its provisions

18. GOVERNING LAW

This FSHA Construction Agreement shall be governed and construed by the laws of the State of California, and interpreted consistent with the requirements of Chapter 83.

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

CONTRACTOR:

Date: _____

Signature: _____

Name of Authorized Signer: _____

Company: _____

Address: _____

Phone: _____

Email: _____



CITY AND COUNTY OF SAN FRANCISCO
 OFFICE OF ECONOMIC AND WORKFORCE DEVELOPMENT
 CITYBUILD PROGRAM



FIRST SOURCE HIRING PROGRAM
 ATTACHMENT A-1 - CITYBUILD
 CONSTRUCTION CONTRACTS

FORM 1: CITYBUILD WORKFORCE PROJECTION

Instructions

*The Prime Contractor must complete and submit Form 1 within 30 days of award of contract.
 All subcontractors with contracts in excess of \$100,000 must complete Form 1 and submit to the Prime Contractor within 30 days of award of contract.
 The Prime Contractor is responsible for collecting all completed Form 1's from all subcontractors.
 It is the Prime Contractor's responsibility to ensure the CityBuild Program receives completed Form 1's from all subcontractors in the specified time and keep a record of these forms in a compliance binder at the project jobsite.
 All contractors and subcontractors are required to attend a preconstruction meeting with CityBuild staff.*

Construction Project Name: _____	Construction Project Address: _____
Projected Start Date: _____	Contract Duration: _____ (calendar days)
Company Name: _____	Company Address: _____
Main Contact Name: _____	Main Phone Number: _____
Main Contact Email: _____	
Name of Person with Hiring Authority: _____	Hiring Authority Phone Number: _____
Hiring Authority Email: _____	

Name of Authorized Representative	Signature of Authorized Representative*	Date
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**By signing this form, the company agrees to participate in the CityBuild Program and comply with the provisions of the First Source Hiring Agreement pursuant to San Francisco Administrative Code Chapter 83.*

Table 1: Briefly summarize your contracted or subcontracted scope of work

Table 2: Complete on the following page

*List the construction trade crafts that are projected to perform work. Do not list Project Managers, Engineers, Administrative, and any other non-construction trade employees.
 Total Number of Workers on the Project: The total number of workers projected to work on the project per construction trade. This number will include existing workers and new hires. For union contractors this total will also include union dispatches.*

Total Number of New Hires: List the projected number of New Hires that will be employed on the project. For union contractors, New Hires will also include union dispatches.

Table 2: List all construction trades projected to perform work

Construction Trades	Journey or Apprentice	Union (Yes or No)	Total Work Hours	Total Number of Workers on the Project	Total Number of New Hires
	J <input type="checkbox"/> A <input type="checkbox"/>	Y <input type="checkbox"/> N <input type="checkbox"/>			
	J <input type="checkbox"/> A <input type="checkbox"/>	Y <input type="checkbox"/> N <input type="checkbox"/>			
	J <input type="checkbox"/> A <input type="checkbox"/>	Y <input type="checkbox"/> N <input type="checkbox"/>			
	J <input type="checkbox"/> A <input type="checkbox"/>	Y <input type="checkbox"/> N <input type="checkbox"/>			
	J <input type="checkbox"/> A <input type="checkbox"/>	Y <input type="checkbox"/> N <input type="checkbox"/>			
	J <input type="checkbox"/> A <input type="checkbox"/>	Y <input type="checkbox"/> N <input type="checkbox"/>			
	J <input type="checkbox"/> A <input type="checkbox"/>	Y <input type="checkbox"/> N <input type="checkbox"/>			
	J <input type="checkbox"/> A <input type="checkbox"/>	Y <input type="checkbox"/> N <input type="checkbox"/>			
	J <input type="checkbox"/> A <input type="checkbox"/>	Y <input type="checkbox"/> N <input type="checkbox"/>			

Table 3: List your core or existing employees projected to work on the project

Please provide information on your projected core or existing employees that will perform work on the jobsite.

"Core" or "Existing" workers are defined as any worker appearing on the Contractor's active payroll for at least 60 out of the 100 working days prior to the award of this Contract. If necessary, continue on a separate sheet.

Name of Core or Existing Employee	Construction Trade	Journey or Apprentice	City	Zip Code
		J <input type="checkbox"/> A <input type="checkbox"/>		
		J <input type="checkbox"/> A <input type="checkbox"/>		
		J <input type="checkbox"/> A <input type="checkbox"/>		
		J <input type="checkbox"/> A <input type="checkbox"/>		
		J <input type="checkbox"/> A <input type="checkbox"/>		
		J <input type="checkbox"/> A <input type="checkbox"/>		
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		J <input type="checkbox"/> A <input type="checkbox"/>		
		J <input type="checkbox"/> A <input type="checkbox"/>		
		J <input type="checkbox"/> A <input type="checkbox"/>		

FOR CITY USE ONLY: City/Build Staff: _____	Approved: Yes <input type="checkbox"/> No <input type="checkbox"/>	Date: _____
Reason: _____		



CITY AND COUNTY OF SAN FRANCISCO
 OFFICE OF ECONOMIC AND WORKFORCE
 DEVELOPMENT
 CITYBUILD PROGRAM



FIRST SOURCE HIRING PROGRAM
 CITYBUILD ATTACHMENT 3
 CONSTRUCTION CONTRACTS

FORM 3: CITYBUILD JOB NOTICE FORM

INSTRUCTIONS: To meet the requirements of the First Source Hiring Program (San Francisco Administrative Code Chapter 83), the Contractor shall notify CityBuild, the First Source Hiring Administrator, of all new hiring opportunities with a minimum of 3 business days prior to the start date.

1. Complete the form and fax to CityBuild 415-701-4896 or EMAIL: workforce.development@sfgov.org
2. Contact Workforce Development at 415-701-4848 or by email: local.hire.ordinance@sfgov.org

OR call the main line of the Office of Economic and Workforce Development (OEWD) at 415-701-4848 to confirm receipt of fax or email.

ATTENTION: Please also submit this form to your union or hiring hall if you are required to do so under your collective bargaining agreement or contract. CityBuild is not a Dispatching Hall, nor does this form act as a Request for Dispatch. All formal Requests for Dispatch will be conducted through your union or hiring hall.

Section A. Job Notice Information

Trade _____ # of Journeymen _____ # of Apprentices _____

Start Date _____ Start Time _____ Job Duration _____

Brief description of your scope of work: _____

Section B. Union Information (Union contractors complete Section B. Otherwise, leave Section B blank)

Local # _____ Union Contact Name _____ Union Phone # _____

Section C. Contractor Information

Project Name: _____

Jobsite Location: _____

Contractor: _____ Prime Sub

Contractor Address: _____

Contact Name: _____ Title: _____

Office Phone: _____ Cell Phone: _____ Email: _____

Alt. Contact: _____ Phone #: _____

Contractor Contact Signature _____ Date _____

OEWD USE ONLY Able to Fill Yes No



Edwin M. Lee, Mayor

**Attachment B: First Source Hiring Agreement
For Business, Commercial, Operation and Lease Occupancy of the Building**

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

RECITALS

WHEREAS, Lessee has plans to occupy the building at [Address] "Premises" which required a First Source Hiring Agreement between the project sponsor and FSHA due to the issuance of a building permit for 25,000 square feet or more of floor space or construction of ten or more residential units; and,

WHEREAS, the Project Sponsor was required to provide notice in leases, subleases and other occupancy contracts for use of the Premises ("Contract");and

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

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

1. DEFINITIONS

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

- a. Entry Level Position: Any non-managerial position that requires no education above a high school diploma or certified equivalency, and less than two (2) years training or specific preparation, and shall include temporary, permanent, trainee and intern positions.
- b. Workforce System: The First Source Hiring Administrator established by the City and County of San Francisco and managed by the Office of Economic and Workforce Development (OEWD).

- c. Referral: A member of the Workforce System who has been identified by OEWD as having the appropriate training, background and skill sets for a Lessee specified Entry Level Position.
- d. Lessee: Tenant, business operator and any other occupant of a Workforce Building requiring a First Source Hiring Agreement as defined in SF Administrative Code Chapter 83. Lessee shall include every person tenant, subtenant, or any other entity occupying a Workforce Building for the intent of doing business in the City and County of San Francisco and possessing a Business Registration Certificate with the Office of Treasurer.
- e. Project Sponsor shall mean [*insert name of applicable Developer or Workforce Building owner*], including any successor during the term of this FSHA Operations Agreement.
- e. Workforce Building: Buildings M-2, N-1 and H-1 as described in Exhibit B to the 5M Development Agreement, including initial tenant improvements therein, and any other Buildings or construction activities within the Project Site that require a Permit as defined in Chapter 83.

2. OEWD WORKFORCE SYSTEM PARTICIPATION

- a. Lessee shall notify OEWD's Business Team of every available Entry Level Position and provide OEWD 10 business days to recruit and refer qualified candidates prior to advertising such position to the general public. Lessee shall provide feedback including but not limited to job seekers interviewed, including name, position title, starting salary and employment start date of those individuals hired by the Lessee no later than 10 business days after date of interview or hire. Lessee will also provide feedback on reasons as to why referrals were not hired. Lessee shall have the sole discretion to interview any Referral by OEWD and will inform OEWD's Business Team why specific persons referred were not interviewed. Hiring decisions shall be entirely at the discretion of Lessee.
- b. This FSHA Operations Agreement shall be in full force and effect as to each Workforce Building until the earlier of (a) ten (10) years following the date Lessee opens for business at the Premises, or (b) termination of Lessee's lease or other occupancy agreement, at which time this FSHA Operations Agreement shall terminate and be of no further force and effect on the parties hereto.

3. GOOD FAITH EFFORT TO COMPLY WITH ITS OBLIGATIONS HEREUNDER

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

- a. Lessee will execute this FSHA Operations Agreement and Attachment B-1 upon entering into leases for the commercial space of the Workforce Building. Lessee

will also accurately complete and submit Attachment B-1 annually to reflect employment conditions.

- b. Lessee agrees to register with OEWD's Referral Tracking System, upon execution of this FSHA Operations Agreement.
- c. Lessee shall notify OEWD's Business Services Team of all available Entry Level Positions 10 business days prior to posting with the general public. The Lessee must identify a single point of contact responsible for communicating Entry-Level Positions and take active steps to ensure continuous communication with OEWD's Business Services Team.
- d. Lessee accurately completes and submits Attachment B-1, the "First Source Employer's Projection of Entry-Level Positions" form to OEWD's Business Services Team upon execution of this FSHA Operations Agreement.
- e. Lessee fills at least 50% of open Entry Level Positions with First Source referrals. Specific hiring decisions shall be the sole discretion of the Lessee.
- f. Nothing in this FSHA Operations Agreement shall be interpreted to prohibit the continuation of existing workforce training agreements or to interfere with consent decrees, collective bargaining agreements, or existing employment contracts. In the event of a conflict between this FSHA Operations Agreement and an existing agreement, the terms of the existing agreement shall supersede this FSHA Operations Agreement.

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

4. NOTICE

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

ATTN: Business Services, Office of Economic and Workforce Development
1 South Van Ness Avenue, 5th Floor, San Francisco, CA 94103
Email: Business.Services@sfgov.org

5. ENTIRE AGREEMENT

This FSHA Operations Agreement and the 5M Development Agreement contain the entire agreement between the parties and shall not be modified in any manner except by an instrument in writing executed by the parties or their respective successors. If any term or provision of this FSHA Operations Agreement shall be held invalid or

unenforceable, the remainder of this FSHA Operations Agreement shall not be affected. If this FSHA Operations Agreement is executed in one or more counterparts, each shall be deemed an original and all, taken together, shall constitute one and the same instrument. This FSHA Operations Agreement shall inure to the benefit of and be binding on the parties and their respective successors and assigns. If there is more than one party comprising Lessee, their obligations shall be joint and several.

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

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

Date: _____

Signature: _____

Name of Authorized Signer: _____

Company: _____

Address: _____

Phone: _____

Email: _____

Business Name: _____ Phone: _____
 Main Contact: _____ Email: _____

Signature of authorized representative* _____ Date _____

**By signing this form, the lessee agrees to participate in the Workforce System managed by the Office of Economic and Workforce Development (OEWD) and comply with the provisions of Exhibit B First Source Hiring Agreement pursuant to San Francisco Administrative Code Chapter 83.*

Instructions:

- Upon entering into leases for the commercial space of the building, the Lessee must submit to OEWD, a signed Attachment B and Attachment B-1. Lessee will also complete and submit an Attachment B-1 annually to reflect employment conditions.
- The employer must notify the First Source Hiring Program (Contact Info below) if an **Entry Level Position** becomes available.

Section 1: Select your Industry

- | | | |
|--|---|--|
| <input type="checkbox"/> Auto Repair | <input type="checkbox"/> Entertainment | <input type="checkbox"/> Personal Services |
| <input type="checkbox"/> Business Services | <input type="checkbox"/> Elder Care | <input type="checkbox"/> Professionals |
| <input type="checkbox"/> Consulting | <input type="checkbox"/> Financial Services | <input type="checkbox"/> Real Estate |
| <input type="checkbox"/> Construction | <input type="checkbox"/> Healthcare | <input type="checkbox"/> Retail |
| <input type="checkbox"/> Government Contract | <input type="checkbox"/> Insurance | <input type="checkbox"/> Security |
| <input type="checkbox"/> Education | <input type="checkbox"/> Manufacturing | <input type="checkbox"/> Wholesale |
| <input type="checkbox"/> Food and Drink | <input type="checkbox"/> I don't see my industry <i>(Please Describe)</i> _____ | |

Section 2: Describe Primary Business Activity

Section 3: Provide information on all Entry Level Positions

Entry-Level Position Title	Job Description	Number of New Hires	Projected Hiring Date

Please email, fax, or mail this form SIGNED to:

ATTN: Business Services
 Office of Economic and Workforce Development
 1 South Van Ness Avenue, 5th Floor, San Francisco, CA 94103
 Tel: 415-701-4848
 Fax: 415-701-4897
<mailto:Business.Services@sfgov.org>
 Website: www.workforcedevelopmentsf.org

ATTACHMENT C
LOCAL BUSINESS ENTERPRISE UTILIZATION PLAN
Exhibit F
Workforce Agreement

1. Purpose and Scope. This Attachment C ("LBE Utilization Plan") governs the Local Business Enterprise obligations of the Project pursuant to San Francisco Administrative Code Section 14B.20 and satisfies the obligations of each Project Sponsor and its Contractors and Consultants for a LBE Utilization Plan as set forth therein. In the event of any conflict between Administrative Code Chapter 14B and this Attachment, this Attachment shall govern.

2. Roles of Parties: In connection with the design and construction phases of each Workforce Building (as defined below), the Project will provide community benefits designed to foster employment opportunities for disadvantaged individuals by offering contracting and consulting opportunities to local business enterprises ("LBEs"). Each Project Sponsor of a Workforce Building shall participate in a local business enterprise program, and the City's Contract Monitoring Division ("CMD") will serve the roles as set forth below.

3. Definitions. For purposes of this Attachment, the definitions shall be as follows:

a. "CMD" shall mean the Contract Monitoring Division of the City Administrator's Office.

b. "Commercially Useful Function" shall mean that the business is directly responsible for providing the materials, equipment, supplies or services to the Project Sponsor, Construction Contractor or professional services firm retained to work on a Workforce Building, as the case may be (each, a "Contracting Party") as required by the solicitation or request for quotes, bids or proposals. Businesses that engage in the business of providing brokerage, referral or temporary employment services shall not be deemed to perform a "commercially useful function" unless the brokerage, referral or temporary employment services are those required and sought by the Project Sponsor or a Contractor or professional services firm. When the Project Sponsor or a Contractor or professional services firm requires and seeks products from an LBE supplier or distributor, no more than sixty percent of the cost of the product shall be credited towards LBE participation goals. If the listed supplier or distributor does not regularly stock or is a specially manufactured item(s), the required product, no more than five percent of the cost of the product shall be credited towards LBE participation goals.

c. "Consultant" shall mean a person or company that has entered into a professional services contract for monetary consideration with a Project Sponsor to provide advice or services to the Project Sponsor directly related to the architectural or landscape design, physical planning, and/or civil, structural or environmental engineering of a Workforce Building.

d. "Contract(s)" shall mean an agreement, whether a direct contract or subcontract, for Consultant or Contractor services for all or a portion of a Workforce Building.

e. "Contractor" shall mean a person or entity that enters into a direct Contract with a Project Sponsor to build or construct all or a portion of a Workforce Building.

ATTACHMENT C
LOCAL BUSINESS ENTERPRISE UTILIZATION PLAN
Exhibit F
Workforce Agreement

f. "Good Faith Efforts" shall mean procedural steps taken by the Project Sponsor, Contractor or Consultant with respect to the attainment of the LBE participation goals, as set forth in Section 6 below.

g. "Local Business Enterprise" or "LBE" means a business that is certified as an LBE under Chapter 14B.3.

h. "LBE Liaison" shall mean the Project Sponsor's primary point of contact with CMD regarding the obligations of this LBE Utilization Plan. Each prime Contractor(s) shall likewise have a LBE Liaison.

i. "Project Sponsor" shall mean the project sponsor of a Workforce Building.

j. "Subconsultant" shall mean a person or entity that has a direct Contract with a Consultant to perform a portion of the work under a Contract for a Workforce Building.

k. "Subcontractor" shall mean a person or entity that has a direct Contract with a Contractor to perform a portion of the work under a Contract for a Workforce Building.

l. "Workforce Building" shall mean all Buildings as described in Exhibit B to the 5M Development Agreement, including initial tenant improvements therein.

4. LBE Participation Goal. Project Sponsor agrees to participate in this LBE Utilization Program and CMD agrees to work with Project Sponsor in this effort, as set forth in this Attachment C. As long as this Attachment C remains in full force and effect, each Project Sponsor shall make good faith efforts as defined below to achieve an overall LBE participation goal of 10% of the total cost of all Contracts for a Workforce Building awarded to LBE Contractors, Subcontractors, Consultants or Subconsultants that are Small and Micro-LBEs, as set forth in Administrative Code Section 14B.8(A).

5. Project Sponsor Obligations. Each Project Sponsor shall comply with the requirements of this Attachment C as follows: Upon entering into a Contract with a Contractor or Consultant, each Project Sponsor will include each such Contract a provision requiring the Contractor or Consultant to comply with the terms of this Attachment C, and setting forth the applicable percentage goal for such Contract, and provide a signed copy thereof to CMD within 10 business days of execution. Such Contract shall specify the notice information for the Contractor or Consultant to receive notice pursuant to Section 16. Each Project Sponsor shall identify a "LBE Liaison" as its main point of contact for outreach/compliance concerns and shall be available to meet with CMD staff on a regular basis or as necessary regarding the implementation of this Attachment C. If a Project Sponsor fulfills its obligations as set forth in this Section 5 and otherwise cooperates in good faith at CMD's request with respect to any meet and confer process or enforcement action against a non-compliant Contractor, Consultant, Subcontractor or Subconsultant, then it shall not be held responsible for the failure of a Contractor, Consultant, Subcontractor or Subconsultant or any other person or party to comply with the requirements of this Attachment C.

ATTACHMENT C
LOCAL BUSINESS ENTERPRISE UTILIZATION PLAN
Exhibit F
Workforce Agreement

6. Good Faith Efforts. City acknowledges and agrees that each Project Sponsor, Contractor, Subcontractor, Consultant and Subconsultant shall have the sole discretion to qualify, hire or not hire LBEs. If a Contractor or Consultant does not meet the LBE hiring goal set forth above, it will nonetheless be deemed to satisfy the good faith effort obligation of this Section 6 and thereby satisfy the requirements and obligations of this Attachment C if the Contractor, Consultants and their Subcontractors and Subconsultants, as applicable, perform the good faith efforts set forth in this Section 6 as follows:

a. Advance Notice. Notify CMD in writing of all upcoming solicitations of proposals for work under a Contract at 15 business days before issuing such solicitations to allow opportunity for CMD to identify and outreach to any LBEs that it reasonably deems may be qualified for the Contract scope of work.

b. Contract Size. Where practicable, the Project Sponsor, Contractor, Consultant, Subcontractor or Subconsultant will divide the work in order to encourage maximum LBE participation or, encourage joint venturing. The Contracting Party will identify specific items of each Contract that may be performed by Subcontractors.

c. Advertise. The Project Sponsor, Contractor, Consultant, Subcontractor or Subconsultant will advertise for at least 30 days prior to the opening of bids or proposals, for professional services and contracting opportunities in media focused on small businesses including the Bid and Contract Opportunities website through the City's Office of Contract Administration (<http://mission.sfgov.org/OCABidPublication>) and other local and trade publications, and allowing subcontractors to attend outreach events, pre-bid meetings, and inviting LBEs to submit bids to Project Sponsor or its prime Contractor or Consultant, as applicable. As practicable, convene pre-bid or pre-solicitation meetings no less than 15 days prior to the opening of bids and proposals to all for LBEs to ask questions about the selection process and technical specifications/requirements. A Project Sponsor may request CMD's permission to award a contract without advertising if the work consists of specialty services or otherwise does not provide opportunities for LBE participation.

d. CMD Invitation. If a pre-bid meeting or other similar meeting is held with proposed Contractors, Subcontractors, Consultants or Subconsultants, invite CMD to the meeting to allow CMD to explain proper LBE utilization.

e. Public Solicitation. The Project Sponsor or its Prime Contractor(s) and/or Consultants, as applicable, will work with CMD to follow up on initial solicitations of interest by contacting LBEs to determine with certainty whether they are interested in performing specific items in a project.

f. Outreach and Other Assistance. The Project Sponsor or its Prime Contractor (s) and/or Consultants, as applicable, will a) provide LBEs with plans, specifications and requirements for all or part of the project; b) notify LBE trade associations that disseminate bid and contract information and provide technical assistance to LBEs. The designated LBE Liaison(s) will work with CMD to conduct outreach to LBEs for all consulting/contracting

ATTACHMENT C
LOCAL BUSINESS ENTERPRISE UTILIZATION PLAN
Exhibit F
Workforce Agreement

opportunities in the applicable trades and services in order to encourage them to participate on the project.

g. **Contacts.** Make contacts with LBEs, associations or development centers, or any agencies, which disseminate bid and contract information to LBEs and document any other efforts undertaken to encourage participation by LBEs.

h. **Good Faith/Nondiscrimination.** Make good faith efforts to enter into Contracts with LBEs and give good faith consideration to bids and proposals submitted by LBEs. Use nondiscriminatory selection criteria (for the purpose of clarity, exercise of subjective aesthetic taste in selection decisions for architect and other design professionals shall not be deemed discriminatory and the exercise of its commercially reasonable judgment in all hiring decisions shall not be deemed discriminatory).

i. **Incorporation into contract provisions.** Project Sponsor shall include in prime Contracts provisions that require prospective Contractors and Consultants that will be utilizing Subcontractors or Subconsultants to follow the above good faith efforts to subcontract to LBEs, including overall LBE participation goal and any LBE percentage that may be required under such Contract.

j. **Monitoring.** Allow CMD Contract Compliance unit to monitor Consultant/Contractor selection processes and, when necessary give suggestions as to how best to maximize LBEs ability to complete and win procurement opportunities.

k. **Insurance and Bonding.** Recognizing that lines of credit, insurance and bonding are problems common to local businesses, staff will be available to explain the applicable insurance and bonding requirements, answer questions about them, and, if possible, suggest governmental or third party avenues of assistance.

l. **Maintain Records and Cooperation.** Maintain records of LBEs that are awarded Contracts, not discriminate against any LBEs, and, if requested, meet and confer with CMD as reasonably required in addition to the meet and confer sessions described in Section 9 below to identify a strategy to meet the LBE goal;

m. **Quarterly Reports.** During construction, the LBE Liaison(s) shall prepare a quarterly report of LBE participation goal attainment and submit to CMD as required by Section 9 herein; and

n. **Meet and Confer.** Attend the meet and confer process described in Section 9.

7. **Good Faith Outreach.** Good faith efforts shall be deemed satisfied solely by compliance with Section 6. Contractors and Consultants, and Subcontractors and Subconsultants as applicable shall also work with CMD to identify from CMD's database of LBEs those LBEs who are most likely to be qualified for each identified opportunity under Section 6.b, and following CMD's notice under Section 8.a, shall undertake reasonable efforts at CMD's request

ATTACHMENT C
LOCAL BUSINESS ENTERPRISE UTILIZATION PLAN
Exhibit F
Workforce Agreement

to support CMD's outreach identified LBEs as mutually agreed upon by CMD and each Contractor or Consultant and its Subcontractors and Subconsultants, as applicable.

8. CMD Obligations. The following are obligations of CMD to implement this LBE Utilization Plan:

a. During the fifteen (15) business day notification period for upcoming Contracts required by Section 6.b, CMD will work with the Project Sponsor and its prime Contractor and/or Consultant as applicable to send such notification to qualified LBEs to alert them to upcoming Contracts.

b. Provide assistance to Contractors, Subcontractors, Consultants and Subconsultants on good faith outreach to LBEs.

c. Review quarterly reports of LBE participation goals; when necessary give suggestions as to how best to maximize LBEs ability to compete and win procurement opportunities.

d. Perform other tasks as reasonably required to assist the Project Sponsor and its Contractors, Subcontractors, Consultants and Subconsultants in meeting LBE participation goals and/or satisfying good faith efforts requirements.

9. Meet and Confer Process. Commencing with the first Contract that is executed for a Workforce Building, and every six (6) months thereafter, or more frequently if requested by either CMD, Project Sponsor or a Contractor or Consultant each Contractor and Consultant and the CMD shall engage in an informal meet and confer to assess compliance of such Contractor and Consultants and its Subcontractors and Subconsultants as applicable with this Attachment C. When deficiencies are noted, meet and confer with CMD to ascertain and execute plans to increase LBE participation.

10. Prohibition on Discrimination. Project Sponsors shall not discriminate in its selection of Contractors and Consultants, and such Contractors and Consultants shall not discriminate in their selection of Subcontractors and Subconsultants against any person on the basis of race, gender, or any other basis prohibited by law. As part of its efforts to avoid unlawful discrimination in the selection of Subconsultants and Subcontractors, Contractors and Consultants will undertake the Good Faith Efforts and participate in the meet and confer processes as set forth in Sections 6 and 9 above.

11. Collective Bargaining Agreements. Nothing in this Attachment C shall be interpreted to prohibit the continuation of existing workforce training agreements or to interfere with consent decrees, collective bargaining agreements, project labor agreement, project stabilization agreement, existing employment contract or other labor agreement or labor contract ("Collective Bargaining Agreements"). In the event of a conflict between this Attachment C and a Collective Bargaining Agreement, the terms of the Collective Bargaining Agreement shall supersede this Attachment C.

ATTACHMENT C
LOCAL BUSINESS ENTERPRISE UTILIZATION PLAN
Exhibit F
Workforce Agreement

12. Reporting and Monitoring. Each Contractor, Consultant, and its Subcontractors and Subconsultants as applicable shall maintain accurate records demonstrating compliance with the LBE participation goals, including keeping track of the date that each response, proposal or bid that was received from LBEs, including the amount bid by and the amount to be paid (if different) to the non-LBE contractor that was selected, documentation of any efforts regarding good faith efforts as set forth in Section 6. Project Sponsors shall create a reporting method for tracking LBE participation. Data tracked shall include the following (at a minimum):

- a. Name/Type of Contract(s) let (e.g. Civil Engineering contract, Environmental Consulting, etc.)
- b. Name of prime Contractors (including identifying which are LBEs and non-LBEs)
- c. Name of Subcontractors (including identifying which are LBEs and non-LBEs)
- d. Scope of work performed by LBEs (e.g. under an Architect, an LBE could be procured to provide renderings)
- e. Dollar amounts associated with both LBE and non-LBE Contractors at both prime and Subcontractor levels.
- f. Total LBE participation is defined as a percentage of total Contract dollars.

13. Written Notice of Deficiencies. If based on complaint, failure to report, or other cause, the CMD has reason to question the good faith efforts of a Project Sponsor, Contractor, Subcontractor, Consultant or Subconsultant, then CMD shall provide written notice to the Project Sponsor, each affected prime Contractor or Consultant and, if applicable, also to its Subcontractor or Subconsultant. The prime Contractor or Consultant and, if applicable, the Subcontractor or Subconsultant, shall have a reasonable period, based on the facts and circumstances of each case, to demonstrate to the reasonable satisfaction of the CMD that it has exercised good faith to satisfy its obligations under this Attachment C. When deficiencies are noted CMD staff will work with the appropriate LBE Liaison(s) to remedy such deficiencies.

14. Remedies. Notwithstanding anything to the contrary in the Development Agreement, the following process and remedies shall apply with respect to any alleged violation of this Attachment C:

Mediation and conciliation shall be the administrative procedure of first resort for any and all compliance disputes arising under this Attachment C. The Director of CMD shall have power to oversee and to conduct the mediation and conciliation.

Non-binding arbitration shall be the administrative procedure of second resort utilized by CMD for resolving the issue of whether a Project Sponsor, Contractor, Consultant, Subcontractor or Subconsultant discriminated in the award of one or more LBE Contracts to the extent that such issue is not resolved through the mediation and conciliation procedure described above. Obtaining a final judgment through arbitration on LBE contract related disputes shall be a condition precedent to the ability of the City or the

ATTACHMENT C
LOCAL BUSINESS ENTERPRISE UTILIZATION PLAN
Exhibit F
Workforce Agreement

Project Sponsor, Contractor, Consultant, Subcontractor or Subconsultant to file a request for judicial relief.

If a Project Sponsor, Contractor, Consultant, Subcontractor or Subconsultant is found to be in willful breach of the obligations set forth in this Attachment C, assess against the noncompliant Project Sponsor, Contractor, Consultant, Subcontractor or Subconsultant liquidated damages not to exceed \$10,000 or 5% of the Contract, whichever is less, for each such willful breach. In determining the amount of any liquidated damages to be assessed within the limits described above, the arbitrator or court of competent jurisdiction shall consider the financial capacity of the Project Sponsor, Contractor, Consultant, Subcontractor or Subconsultant. For purposes of this paragraph, "willful breach" means a knowing and intentional breach.

For all other violations of this Attachment C, the sole remedy for violation shall be specific performance, without the limits with respect thereto in Section 9.4.3-9.4.5 of the Development Agreement.

15. Duration of this Agreement. This Attachment C shall terminate (i) as to each Workforce Building where work has commenced under the Development Agreement, upon completion of initial construction, including initial tenant improvements, of the Workforce Building, and (ii) for any Workforce Building that has not commenced before the termination of the Development Agreement, upon the termination of the Development Agreement. Upon such termination, this Attachment C shall be of no further force and effect.

16. Notice. All notices to be given under this Attachment C shall be in writing and sent by: certified mail, return receipt requested, in which case notice shall be deemed delivered three (3) business days after deposit, postage prepaid in the United States Mail, a nationally recognized overnight courier, in which case notice shall be deemed delivered one (1) business day after deposit with that courier, or hand delivery, in which case notice shall be deemed delivered on the date received, all as follows:

If to CMD: _____

Attn: _____

If to Project Sponsor: _____

Attn: _____

If to Contractor: _____

Attn: _____

ATTACHMENT C
LOCAL BUSINESS ENTERPRISE UTILIZATION PLAN
Exhibit F
Workforce Agreement

If to Consultant:

Attn: _____

Any party may change its address for notice purposes by giving the other parties notice of its new address as provided herein. A "business day" is any day other than a Saturday, Sunday or a day in which banks in San Francisco, California are authorized to close.

EXHIBIT G

Transportation Program

All initially capitalized terms shall have the meaning given in the Definitions section of this Agreement, unless separately defined in this Exhibit.

1. Improvements.

Developer shall construct the street and sidewalk improvements (the "**Improvements**") described in this Section 1 below. The Parties agree to cooperate with one another to complete the Improvements as and when contemplated by this Exhibit, and to take all other actions or proceedings reasonably necessary or appropriate to ensure that the reviews, Subsequent Approvals, and inspections required to complete such Improvements are provided without undue delay and in accordance with this Agreement, provided that nothing in this Exhibit obligates City to spend any sums of money or to incur any costs other than administrative costs incurred in the ordinary course of business, in connection therewith.

Developer shall complete the Improvements described below and depicted on Schedule 1 hereto, each as may be further described in and consistent with the Design for Development, as provided in the respective Building Conditional Use authorization, prior to issuance of a Certificate of Occupancy for each respective Building identified below:

Building	Improvements
Building H-1	<p>Widen the adjacent Fifth Street sidewalk, between Natoma and Howard Streets, from 10 feet to 18 feet (with a 60-foot long, approximately 8-foot deep inset for three commercial loading spaces).</p> <p>Widen Mary Street sidewalk adjacent to Mary Court West, from 5 feet to 10 feet, and install associated streetscape improvements to all sidewalks adjacent to Mary Court West.</p> <p>Convert Mary Street between Minna and Howard Streets to a shared public way.</p> <p>Construct and install the privately owned publicly accessible approximately 1,600-square-foot pedestrian improvement area adjacent to Building H-1 along Mary Street.</p> <p>Construct and install streetscape and other improvements on</p>

Building	Improvements
	<p>the adjacent Natoma, Fifth, Howard and Mary Street frontages.</p> <p>Install street trees within a 300-foot long portion of the south Howard Street sidewalk extending west from Fifth Street.¹</p> <p>Sidewalk improvements on Howard Street adjacent to the off-site parcel at 198 Fifth Street.¹</p>
Building M-2	<p>Convert Mary Street between Mission and Minna Streets to a pedestrian-only alley, the "North Mary Pedestrian Alley", which would thereafter be closed to vehicular and bicycle traffic, and install associated streetscape improvements.</p> <p>Construct and install the privately owned publicly accessible approximately 1,600-square-foot pedestrian improvement area adjacent to Building M-2 along North Mary Alley.</p> <p>Construct and install streetscape and other improvements on the adjacent Mission Street frontage, and streetscape and other improvements to the Mary Street and Minna Street sidewalk adjacent to Mary Court East constructed with Building M-2.</p>
Building N-1	<p>Widen the western Fifth Street sidewalk between Natoma and Minna Streets from 10 feet to 18 feet (with an 60-foot long, approximately 8-foot deep inset for three commercial loading spaces).</p> <p>Construct and install streetscape and other improvements on the adjacent Fifth and Minna Street building frontages.</p>
Building M-1 (Chronicle Building)	<p>Widen the western Fifth Street sidewalk between Minna and Mission Streets from 10 feet to 18 feet (with an 60-foot long, approximately 8-foot deep inset for three commercial loading spaces).</p> <p>Construct and install streetscape and other improvements on the adjacent Fifth, Mission and Minna Street frontages.</p>
Examiner Building	<p>Construct and install streetscape improvements on adjacent Minna Street frontage.</p>

¹ Obligations to construct or install Improvements off of, and not adjacent to, the Project Site are expressly conditioned upon obtaining access rights from affected property owner(s). If Developer is not able to secure such rights, then Developer and the City shall meet and confer to identify alternative improvements of equal value for Developer to complete instead.

2. Transit Fee and TSP Contribution.

Developer shall pay a Transit Impact Development Fee ("**Transit Fee**") for use and allocation as described in the Community Benefits Schedule, Exhibit D to the Agreement. Upon receipt, the SFMTA shall have the right to expend the Transit Fee in its sole discretion in accordance with customary SFMTA practice.

Developer shall pay to SFMTA the portion of the 5M Community Benefit Fee at the time and in the manner described in the Community Benefits Schedule, Exhibit D to the Agreement (the "**TSP Contribution**"). The TSP Contribution shall be used by SFMTA to contribute to SFMTA's costs to construct and install pedestrian safety improvements, including but not limited to sidewalks, cross-walks, signal timing and left/right turn pockets, as further described below in this Section 2 (the "**TSP Improvements**"). SFMTA shall be responsible for all additional costs associated with the design, permitting, construction, installation, maintenance and operation of the TSP Improvements beyond the amount of the TSP Contribution. SFMTA's use of the TSP Contributions and the timing of its construction of the TSP Improvements shall be prioritized in the following order:

2.1 Mission Street Mid Block Crossing. Mid-block signalized crosswalk extending north across Mission Street between the North Mary Pedestrian Alley and the San Francisco Mint building, which is estimated to be \$400,000.

2.2 SoMa Street Streetscape, Pedestrian Safety and Related Improvements. SFMTA shall use the remaining TSP Contributions for the purpose of designing and constructing streetscape, pedestrian safety, pedestrian realm and related improvements within the impact area identified on Schedule 2 hereto. Priority will be given to improvements that address pedestrian and bicycle safety improvements on corridors adjacent to the Project Site, particularly those that are a part of Vision Zero SF (i.e., the high injury corridor analysis conducted by SFDPH in collaboration with SFMTA on behalf of the City's Vision Zero Task Force).

Without limiting the foregoing, SFMTA will contribute an amount from the TSP Contribution, not to exceed \$85,000, for a study that reviews bicycle and pedestrian safety and network connectivity priorities for the 5th Street corridor between Market and Harrison Streets and the Howard Street corridor between 4th and 7th Streets. This study will prioritize consistency with Vision Zero SF, the SFMTA's Bicycle Strategy, and the community priorities incorporated into Planning Department's Central Corridor study, each as may be revised as and when funding becomes available. SFMTA shall lead the scoping, planning and engineering matters for the study with the intent of delivering recommendations that are defined sufficiently to submit to the Planning Department for environmental review, as necessary, under CEQA. Nothing in this section is intended to limit SFMTA's right to provide additional funding, programs or to conduct additional studies related to the above matters.

3. Fifth Street East Sidewalk and Related Improvements.

As further described in and in accordance with the requirements of the MMRP, Exhibit J to the Agreement, Developer shall fund the design and construction of the following improvements:

- 3.1 Sidewalk extension of the east sidewalk on Fifth Street between Minna and Mission Streets by 10 to 15 feet;
- 3.2 Restriping and widening of the east crosswalk at the intersection of Fifth/Mission Streets to 25 feet;
- 3.3 Traffic and pedestrian signal upgrades at the intersection of Fifth/Mission Streets;
- 3.4 Restriping of the Minna Street travel lanes between Fifth Street and the Project's garage entrances; and
- 3.5 New and more visible "Minna Street Garage Entrance" and Garage Full" signs at the Fifth and Mission Garage.

4. TDM Plan.

Developer shall implement the Transportation Demand Management ("TDM") Plan consistent with the TDM menu prepared by Fehr and Peers ("**TDM Menu**" attached hereto as Schedule 3), which identifies proposed TDM measures ("**TDM Measures**") for reducing estimated one-way vehicle trips, and establishes numeric goals for each Building associated therewith.

Developer shall undertake the following with respect to monitoring and reporting of compliance with the proposed TDM measures. Developer shall, in consultation with qualified transportation engineers, design a bi-annual survey of residents' and employees' travel behavior as set forth below, conduct the survey and submit a written report ("**TDM Report**") on the status of implementing all TDM Measures, at no cost to the City. The TDM Report will contain the results of the bi-annual survey, and also assess whether the Project is meeting its vehicle-trip reduction target 14 percent², as measured against the PM peak projection (set forth in the revised project assessment prepared by LCW Consulting dated April 27, 2015) of 465 trips ("**TDM Goal**"). The TDM Report shall include information on the contribution of each Building described in the TDM Menu in reducing vehicle trips and meeting the aggregate TDM Goal, based on that Building's trip reduction target described in the TDM Menu, and its implementation of TDM measures as described on the TDM Menu. The determination of whether the TDM Goal is being achieved prior to completion of all Buildings covered by the TDM Menu shall be measured in the aggregate for all Buildings that have received certificates of occupancy and are at least 75% occupied. The first survey will be conducted within one (1) year following the certificate of occupancy of the first Building. Additional surveys will be conducted every two years thereafter. The information and analysis regarding achievement of the TDM Goal may be part of the annual review procedure under Section 8.2 of the Agreement, or it may

² This percentage includes a combination of Code-required and additional trip reduction measures, as set forth in the Note to the TDM Menu.

be performed on a separate schedule based upon the timing of the availability information consistent with this Exhibit G.

Each TDM Report will either provide evidence that the Project has (or completed and occupied a portion thereof) achieved the TDM Goal, or if not achieved, provide an explanation of why the TDM Goal has not been reached. If a TDM Report indicates that the Project has not reached the TDM Goal, then the Developer and SFMTA shall meet and confer to determine a reasonably achievable program of additional measures for attaining the TDM Goal.

If SFMTA and the Developer are unable to reach agreement on a program of additional measures for attaining the TDM goal within 90 days of the completion of a TDM Report or such longer period as may be agreed to by both parties, Developer will pay SFMTA \$50,000 (Fifty Thousand Dollars), in fiscal year 2015 dollars, adjusted by the Consumer Price Index) within 60 days following the end of the 90-day meet and confer period. These funds will be used by SFMTA solely for transportation demand management or transportation improvements related to the Project traffic impact area as determined by SFMTA. The format of the survey and TDM Report will be developed in consultation with the SFMTA.

The TDM Plan implementation and Developer's related obligations under this Section 4 shall begin for each Building upon issuance of the temporary certificate of occupancy for the Building and remain in effect for a period of 10 years thereafter.

5. Board Authorization and Appropriation. By approving this Agreement, including this Exhibit, the Board of Supervisors authorizes the Controller and City Department to accept the funds paid by Developer as set forth in this Exhibit, to maintain separate, interest-bearing accounts or subaccounts as contemplated in this Exhibit, or otherwise provide for separate accounting of funds paid by Developer and their use, and to appropriate the funds, including interest and earnings, for the purposes described in this Exhibit for the term of the Agreement. Any interest earned on the deposited funds, accounts or subaccounts created under the terms of this Exhibit shall remain in the designated account or subaccount for use consistent with the identified purpose and shall not be transferred to the City's General Fund for other purposes. Any accounts for receipt and use of the TSP Contribution funds described above shall terminate upon the payment by Developer and expenditure by City of the respective TSP Contribution funds.

Notwithstanding the foregoing, nothing herein shall prevent or limit the absolute discretion of the City to conduct environmental review in connection with any future proposal for the TSP Improvements, to make any modifications or select feasible alternatives to such future proposals as may be deemed necessary to conform to any applicable Laws, including without limitation, CEQA, balance benefits against unavoidable significant impacts before taking final action, or determine not to proceed with such future proposals and to obtain any applicable permits or other authorization for the TSP Improvements.

SCHEDULE 1 - IMPROVEMENTS MAP

TO BE CONSTRUCTED BY THE PROJECT¹

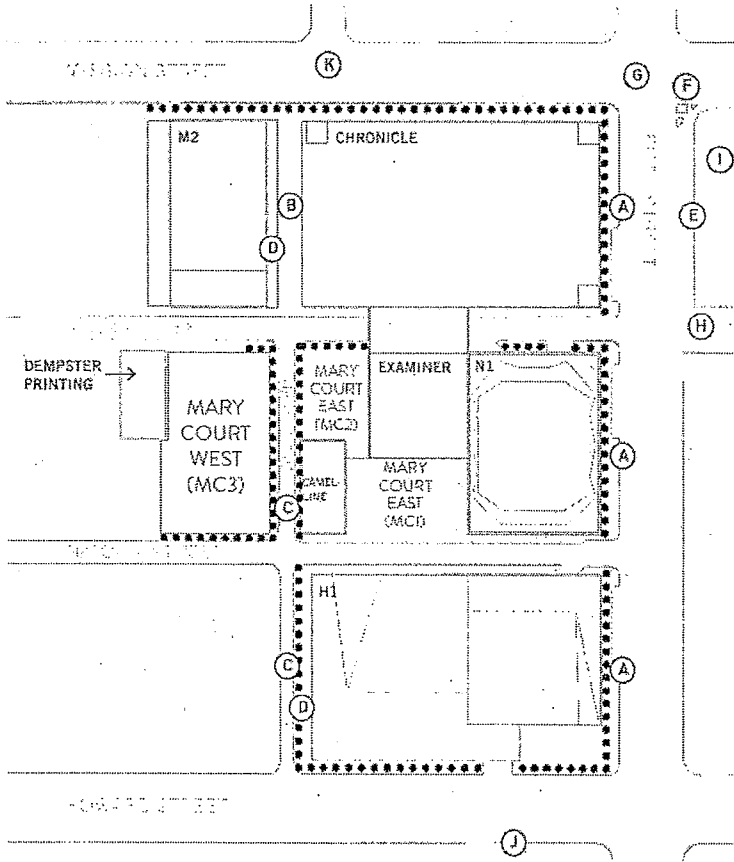
- ◆◆◆ Building related streetscape improvements (including street trees)
- (A) West sidewalk widening between Mission and Howard Streets (from 10 feet to 12 feet, with 8-foot inset for loading)
- (B) Conversion to North Mary Pedestrian Only Alley
- (C) Conversion to Shared Public Way (including West sidewalk widening of Mary Street between Mission and Minna, from 5 feet to 10 feet)
- (D) Privately owned pedestrian improvement

TO BE FUNDED BY THE PROJECT, DESIGNED/ CONSTRUCTED BY SFMTA¹

- (E) East sidewalk widening between Mission and Minna Streets (from 10 feet to 15 feet)
- (F) Crosswalk widening/restriping to 25 feet (East Mission/Fifth Street intersection)
- (G) Traffic/pedestrian signal upgrades at Fifth/Mission Street intersection
- (H) Restriping of the Minna Street travel lanes between Fifth Street and the Fifth/Mission Garage entrances to provide for additional vehicle queuing on Minna Street
- (I) New/more visible "MINNA STREET GARAGE ENTRANCE" and "GARAGE FULL" signs for the Fifth/Mission Garage
- (J) Off site streetscape improvements (including street trees)
- (K) Mission Street mid block signalized crosswalk

¹All depicted improvements are more particular, described in the Transportation Program

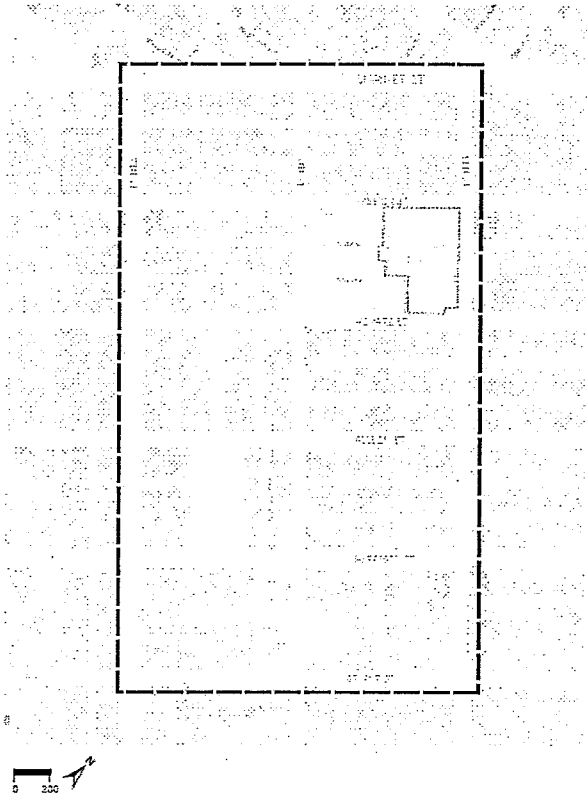
5M PROJECT SAN FRANCISCO



SCHEDULE 2 - TSP CONTRIBUTION IMPACT AREA MAP

DRAFT -- 07/07/15

Map depicts potential location of TSP Contribution expenditures as discussed in Transportation Program, Section 2.



SM PROJECT SAN FRANCISCO

Schedule 3 -- TDM Menu

Category	#	Strategy Name	Developer or Property Management Role	Expected Reduction to Full Trip	Order of Magnitude Cost	Included in Total?	Included in Project Description?	Assumptions
Parking	1	Parking Management - Pricing and Regulation	Pricing parking to encourage employees to consider alternatives to driving, promote regular turnover and discourage visitors from driving.	8.0%	Medium	Yes	No	Assumes parking prices at market rate, applies to employees & visitors alike only. Disregarded as revenue to reflect urban centers of San Francisco.
	2	Unbonded Parking	Subtracts cost of residents' unit from cost of parking spaces. Requires residents' tenants and condo developers to pay extra for a reserved parking space.	1.7%	-	Yes	Yes	Assumes unbonded parking pricing at market rate, applies to residents' units. Effect discounted to reflect parking inclusion in SF Guidelines.
	3	Real-time info on parking availability	Provides real-time parking real-time garage occupancy in order to reduce traffic circling while searching for a space.	Project Agency for Tenants	Medium	No	No	
Trip Reduction from Parking Strategies				9.7%				
Bicycle and Pedestrian	4	Bike Share Availability	Location within 1,000 walking feet of a bike share station OR dedicated space for a future bike share station.	0.1%	None to Low	No	Yes	
	5	Bicycle Parking/Bike Room, Secure Bike Parking	Provides secure space for bicycles to store their bikes.	Project Agency for Tenants	-	Yes	Yes	
	6	Showers and Lockers	Provides showers and lockers for bicycle commuters.	Project Agency for Tenants	-	Yes	Yes	
	7	Bike Repair Station or Bike Repair Kiosk	Provides a bike repair shop or facility within the development.	Project Agency for Tenants	Medium	No	No	
Trip Reduction from Bike/Ped Amenities				0.1%				
Carshare	8	Dedicated Carshare Membership	Provides residents with subsidized carshare membership. Underwriting of cost, as part of COA/NOA does encourage employers to subsidize carshare for employees.	1.1%	Medium	No	No	Assumes one year of subsidized carshare membership, which leads to an increased adoption rate for residential use only.
	9	Carshare Parking	Provides dedicated parking spaces for carsharing vehicles.	0.9%	-	Yes	Yes	Assumes 8 spaces are dedicated for carsharing as included in the project description. Effect is partially discounted to reflect fact that measure is included in code.
Trip Reduction from Carshare				2%				
TDM Program & Other Amenities	10	TDM Coordinator	Designate individual for each property manager / building to coordinate and market all programs and facilities on site for	1.0%	Medium	Yes	No	
	11	Transit Subsidy (Office)	Include requirement to ease for employer/tenants to provide a tax-deductible transit subsidy to employees.	0.8%	Low to Med/L	No	No	Not included in guidelines by virtue of "optional transit" participation, allowing employees to use up to \$120/month towards any qualified transit pass or Commute Voucher. Assumes 75% of employees are reimbursed \$50/month.
	12	Rideshare Program or Rideshare Carpool Parking	Provide preferential spaces and/or promotional parking rates for individuals who carshare to work at the project site.	1.4%	Low	No	No	
	13	Web-based Navigation	Encourage use of Web-navigation app and/or 24-hour "navigation" service. Explore solutions to offer site-specific navigation services.	Project Agency for Tenants	Low	No	No	
	14	Real-time Information for mode/mix / transit choice	Provide "real-time" style displays showing associated arrival times of transit routes, potentially showing traffic conditions and alerts.	Project Agency for Tenants	Medium	No	No	
	15	Daycare, Daycare Breakage Services	Provide on-site or day care facility or childcare breakage service.	Project Agency for Tenants	Medium	Yes	No	
	16	Multi-modal Wayfinding Signage	Provides signage directing pedestrians and cyclists to relevant transit stops, building entrances and facilities, as well as to popular destinations.	Project Agency for Tenants	Low	No	Yes	
	17	Provide Facilities Day-care Services	Provides consolidated drop-off/pick-up area and/or arrangements with storage centers.	Project Agency for Tenants	Low	No	Yes	
Trip Reduction from TDM Program & Other Amenities				6%				
Trip Reduction from Full TDM Plan:				14%				

Note: The strategies developed through various measures included in the SF Guidelines predict current costs and thus do not reflect a net zero emissions based on Code compliance. Code-based measures are included because they are a part of what would be implemented to reduce project greenhouse gas share. The City has recently indicated that projects that are made April 1st, 2015 or later due to Code-required measures be compared by 20% to account for potential variation in effectiveness of these measures. The 14% above includes Code-required measures but the value was not a three out separately to show what the estimate is committing to before and beyond Code.

TDM Menu - Chronicle/Examiner

Category	ID	Strategy Name	Developer or Property Management Role	Expected Reduction to Auto Trips	Order of Magnitude Cost	Required in Code	Included in Project Requirements	Assumptions
Parking	1	Parking Management - Pricing and Regulation	Pricing parking to encourage employees to consider alternatives to driving, promote regular turnover and discourage visitors from driving.	0.5%	Medium	Yes	No	Assumes parking prices are in a market rate, applies to employee & visitor trips only. Compensated somewhat to reflect urban context of San Francisco.
	5	Real-time info on parking availability	Provide displays showing real-time garage occupancy to create to reduce traffic circling while searching for a space.	Project Amenity for Tenants	Medium	No	No	
Trip Reduction from Parking Strategies				0.5%				
Bicycle and Pedestrian	4	Bike Share Availability	Location within 1,500 walking feet of a bike share station/0.5 car space for a future bike share station.	0.2%	Very Low	No	Yes	
	3	Bicycle Parking/Bike Rack/Secure Bike Parking	Provide secure space for cyclists to store their bikes.	Project Amenity for Tenants	-	Yes	Yes	
	6	Showers and Lockers	Provide showers and lockers for bicycle commuters.	Project Amenity for Tenants	-	Yes	Yes	
	7	Bike Repair Station or Bike Repair Services	Provide a bike repair shop or facility within the development.	Project Amenity for Tenants	Medium	No	No	
Trip Reduction from Bikes/Ped Amenities				0.1%				
Carshare	8	Subsidized Carshare Membership	Encourage employees to subsidize carshare for employees.	0.5%	Medium	No	No	Assumes one year of subsidized carshare membership, which leads to an increased adoption rate for residential and office trips.
	9	Carshare Parking	Provide dedicated parking spaces for carsharing vehicles.	0.5%	-	Yes	Yes	Assumes 2 spaces are dedicated for carsharing as included in the project description. Effect is partially negated to reflect fact that measure is included in code.
Trip Reduction from Carshare				1%				
TDM Program & Other Amenities	10	TDM Coordinator	Designate individual for each property manager/ building to coordinate and market all programs and facilities in this list.	1.0%	Medium	Yes	No	
	11	Transit Subsidy (Offices)	Include requirement in lease for employer/ tenants to provide a tax-deductible transit subsidy to employees.	3.2%	Low to Medium	No	No	Transit subsidy is generally in form of "commuter check" participation, allowing employees to use up to \$120/month toward any qualified transit pass or Clipper Card value. Assumes 75% of employees are reimbursed employees.
	20	Preferential Carpool Parking	Provide preferential spaces and/or promotional parking rates for residents who carpool to work at the project site.	2.2%	Low	No	No	
	13	Web-based ride-matching	Encourage use of ride-matching apps and/or BIL.org ride-matching service. Explore solutions to offers site-specific ride-matching services.	Project Amenity for Tenants	Low	No	No	
	14	Real-time information for motorists/ transit users	Provide "transit screen" style displays showing estimated arrival times of transit routes, potentially showing traffic conditions and alerts.	Project Amenity for Tenants	Medium	No	No	
	15	On-Site Daycare/Daycare Brokerage Services	Provide on-site childcare facility or childcare brokerage service.	Project Amenity for Tenants	Medium	Yes	No	
	16	Multimodal Wayfinding Signage	Provide signage directing pedestrians and cyclists to relevant transit stops, building entrances and facilities, as well as to popular destinations.	Project Amenity for Tenants	Low	No	Yes	
	17	Provide/Facilitate Delivery Services	Provide coordination pick-up/drop-off schedule or arrangements with package carriers.	Project Amenity for Tenants	Low	No	Yes	
Trip Reduction from TDM Program & Other Amenities				8%				
Trip Reduction from Full TDM Plan:				17%				

Note: The amount of development reduction is based on 1990 mode share and is based on the mode share of the project site. The mode share of the project site is based on the mode share of the project site. The mode share of the project site is based on the mode share of the project site. The mode share of the project site is based on the mode share of the project site.

TDM Menu - M2

Category	#	Strategy Name	Developer or Property Management Role	Expected Reduction to Auto Trips	Order of Magnitude Cost	Required in Code?	Included in Project Description?	Assumptions
Parking	1	Parking Management - Pricing and Regulations	Pricing parking to encourage patrons to consider alternatives to driving and promote regular turnover	4.5%	Medium	Yes	No	Assumes parking prices at market rate, applies to employee & visitor trips only. Discounted somewhat to reflect urban context of San Francisco.
	2	Unbundled Parking	Separate cost of residential unit from cost of parking space. Require residential tenants and condo purchasers to pay extra for a reserved parking space.	3.0%	-	Yes	Yes	Assumes the unbundling of parking as market rate applies to residential trips. Effect dampened to reflect partial inclusion in SF Guidelines.
	3	Real-time Info on parking availability	Provide displays showing real-time garage occupancy in order to reduce traffic circling while searching for a space.	Project Amenity for Tenants	Medium	No	No	
Trip Reduction from Parking Strategies				7%				
Bicycle and Pedestrian	4	Bike Share Availability	Location within 1/8th walking feet of a bike share station OR dedicate space for a future bike share station.	0.1%	Very Low	No	Yes	
	5	Bicycle Parking/Bike Hoop/Secure Bike Parking	Provide secure space for cyclists to store their bikes.	Project Amenity for Tenants	-	Yes	Yes	
	7	Bike Repair Station or Bike Repair Services	Provide a bike repair shop or facility within the development.	Project Amenity for Tenants	Medium	No	No	
Trip Reduction from Bike/Ped Amenities				0.1%				
Carpool	8	Subsidized Carshare Membership	Provide residents with subsidized carshare membership under terms of lease / as part of COA/HOA dues. Encourage employers to subsidize carshare for employees.	0.7%	Medium	No	No	Assumes one year of subsidized carshare membership, which leads to an increased adoption rate for residents and office trips.
	9	Carshare Parking	Provide dedicated parking spaces for carsharing vehicles.	0.3%	-	Yes	Yes	Assumes 8 spaces are dedicated for carsharing as included in the project description. Effect is partially dampened to reflect fact that measure is included in code.
Trip Reduction from Carshare				1%				
TDM Program & Other Amenities	10	TDM Coordinators	Designate individual for property manager / building to coordinate and market all programs and facilities in this list.	1.0%	Medium	Yes	No	
	14	Real-time Information for motorists / transit riders	Provide "transit screen" style displays showing estimated arrival times of transit routes, potentially showing traffic conditions and alerts.	Project Amenity for Tenants	Medium	No	No	
	16	Multimodal Wayfinding Signage	Provide signage directing pedestrians and cyclists to relevant transit stops, building entrances and facilities, as well as to popular destinations.	Project Amenity for Tenants	Low	No	Yes	
	17	Provide/Facilitate Delivery Services	Provide convenient pick-up/drop-off schedule or arrangements with package carriers.	Project Amenity for Tenants	Low	No	Yes	
Trip Reduction from TDM Program & Other Amenities				1%				
Trip Reduction from Full TDM Plan:				9%				

Note: The area and volume covered have data on these measures. The City of San Francisco has provided a list of measures that do not include more data on these measures based on Code requirements. Discounted measures are included because they are a part of what would be implemented to reduce project auto mode share. The City has priority, no later than 12 months after the project's completion date to Code-mandated measures to be estimated by 50% to account for potential variation in effectiveness of these measures. The 5% above includes these measures because they are a part of what the project is committing to implement beyond Code.

TDM Menu - N1

Category	#	Strategy Name	Developer or Property Management Note	Estimated Reduction to Auto Trips	Overall Impacts Cost	Required in Code?	Individual Project Development	Assumptions
Parking	1	Parking Management - Pricing and Regulation	Pricing parking to encourage patrons to consider alternatives to driving and promote regular turnover	1.2%	Medium	Yes	No	Assumes parking prices at market rates, applies to employee & visitor trips only. Compensated somewhat to reflect urban context of San Francisco.
	2	Unbundled Parking	Separate cost of residential unit from cost of parking spaces. Require residential tenants and condo purchasers to pay extra for a reserved parking space.	5.2%	-	Yes	Yes	Assumes monthly parking pricing at market rates, applies to residential trips. Effect compensated to reflect partial inclusion in SF Guidelines.
Trip Reduction from Parking Strategies				6%				
Bicycle and Pedestrian	4	Bike Share Availability	Location within 1/4 mile walking feet of a bike share station OR dedicated space for a future bike share station.	0.1%	Very Low	No	Yes	
	5	Bicycle Parking/Bike Repair/Secure Bike Parking	Provide secure space for cyclists to store their bikes.	Project Amenity for Tenants	-	Yes	Yes	
	7	Bike Repair Station or Bike Repair Services	Provide a bike repair shop facility within the development.	Project Amenity for Tenants	Medium	No	No	
Trip Reduction from Bike/Ped Amenities				0.1%				
Carshare	8	Subsidized Carshare Membership	Provide residents with subsidized carshare membership under terms of lease / as part of COA/HCA fees. Encourage employers to subsidize carshare for employees.	1.2%	Medium	No	No	Assumes one year of subsidized carshare membership which leads to an increased adoption rate for residential and office trips.
	9	Carshare Parking	Provide dedicated parking spaces for carsharing vehicles.	0.5%	-	Yes	Yes	Assumes 5 spaces are dedicated for carsharing as included in the project description. Effect is partially compensated to reflect fact that measure is included in code.
Trip Reduction from Carshare				2%				
TDM Program & Other Amenities	10	TDM Coordinator	Designate individual for each property manager / building to coordinate and market all programs and facilities in this list.	1.2%	Medium	Yes	No	
	13	Information for motorists / transit stops	Provide "transit screen" style displays showing estimated arrival times of transit routes, potentially showing traffic conditions and alerts.	Project Amenity for Tenants	Medium	No	No	
	16	Multimodal Wayfinding Signage	Provide signage directing pedestrians and cyclists to relevant transit stops, building entrances and facilities, as well as to popular destinations.	Project Amenity for Tenants	Low	No	Yes	
	17	Provide/Facilitate Delivery Services	Provide centralized pick-up/drop-off services or arrangements with package carriers.	Project Amenity for Tenants	Low	No	Yes	
Trip Reduction from TDM Program & Other Amenities				1%				
Trip Reduction from Full TDM Plan:				9%				

Note: The amount of auto mode travel demand that is reduced in the SF Code is calculated on a unit-by-unit basis to do not assume mode-specific adjustments based on Code impacts. Code-based measures are included because they are a part of what would be implemented to reduce project auto mode travel. The City has recently updated the reference that any mode-specific measures be compensated by 10% to account for potential variation in effectiveness of these measures. The 5% above reduces Code-based measures but the 10% is not necessary to show what the reduction would be above and beyond Code.

TDM Menu - H1

Category	#	Strategy Name	Developer or Property Management Role	Expected Reduction in Auto Trips	Order of Significance Cost	Included in Credit	Included in Project Description	Assumptions
Parking	1	Parking Management - Pricing and Regulation	Pricing parking to encourage employees to consider alternatives to driving, promote regular turnover and discourage visitors from driving.	8.3%	Medium	Yes	No	Assumes parking priced at market rate, applies to employee B/M/Cartrips only. Discounted somewhat to reflect urban context of San Francisco.
	3	Real-time info on parking availability	Browser displays showing real-time garage occupancy in order to reduce traffic circling while searching for a space.	Project Amenity for Tenants	Medium	No	No	
Trip Reduction from Parking Strategies				8%				
Bicycle and Pedestrian	4	Bike Share Availability	Location within 1,500 walking feet of a bike share station OR carshare space for a future bike share station.	0.1%	None to Low	No	Yes	
	5	Bicycle Parking/Bike Room/Secure Bike Parking	Provide secure space for cyclists to store their bikes.	Project Amenity for Tenants	-	Yes	Yes	
	6	Showers and Lockers	Provide showers and lockers for bicycle commuters.	Project Amenity for Tenants	-	Yes	Yes	
	7	Bike Repair Station or Bike Repair Services	Provide a bike repair shop or facility within the development.	Project Amenity for Tenants	Medium	No	No	
Trip Reduction from Bike/Ped Amenities				0.1%				
Carshare	8	Subsidized Carshare Membership	Provide residents with subsidized carshare membership under terms of lease / as part of COA/HOA rules. Encourage employers to subsidize carshare for employees.	0.8%	Medium	No	No	Assumes one year of subsidized carshare membership, which leads to an increased adoption rate for residents, and office trips.
	9	Carshare Parking	Provide dedicated parking spaces for carsharing vehicles.	0.8%	-	Yes	Yes	Assumes 8 spaces are dedicated for carsharing as included in the project description. Effect is partially dampened to reflect fact that measure is included in cost.
Trip Reduction from Carshare				1%				
TDM Program & Other Amenities	10	TDM Coordinator	Designate individual for each property manager / building to coordinate and market all programs and facilities in this list.	1.0%	Medium	Yes	No	
	11	Transit Subsidy (Office)	Include requirement in lease for employer/tenants to provide a tax-qualified transit subsidy to employees.	8.0%	Low to Medium	No	No	Transit subsidy is generally in form of "commuter check" participation, allowing employees to use up to \$150/month toward any qualified transit pass or Clipper Card value. Assumes 75% of employees are eligible and \$65/month.
	12	Employee Program - Preferential Carpool Parking	Provide preferential spaces and/or promotional parking rates for Sub/Jan who carpool to work at the project site.	2.5%	Low	No	No	
	13	Web-based Ride-matching	Encourage use of ride-matching apps and/or SLL.org ride-matching service. Explore solutions to offer site-specific ride-matching services.	Project Amenity for Tenants	Low	No	No	
	14	Real-time Information for Motorists / Transit Drivers	Provide "transit screen" style displays showing estimated arrival times of transit routes, potentially showing traffic conditions and alerts.	Project Amenity for Tenants	Medium	No	No	
	15	Day-care/Daycare Encouragement Services	Provide on-site childcare facility or childcare brokerage service.	Project Amenity for Tenants	Medium	Yes	No	
	16	Multimodal Wayfinding Signage	Provide signage directing pedestrians and cyclists to relevant transit stops, building entrances and facilities, as well as to popular destinations.	Project Amenity for Tenants	Low	No	Yes	
17	Package/Facility Delivery Services	Provide consolidated pick-up/drop-off schedule or arrangements with package carriers.	Project Amenity for Tenants	Low	No	Yes		
Trip Reduction from TDM Program & Other Amenities				9%				
Trip Reduction from Full TDM Plan:				18%				

Note: The auto ride a driver does not have a car, as noted in the 5th column, the possible credit cost and the 6th column assume a 30% reduction in cost of a car. The 7th column is the expected reduction in auto trips. The 8th column is the order of significance cost. The 9th column is the inclusion in the credit. The 10th column is the inclusion in the project description. The 11th column is the assumptions. The 12th column is the expected reduction in auto trips. The 13th column is the order of significance cost. The 14th column is the inclusion in the credit. The 15th column is the inclusion in the project description. The 16th column is the assumptions. The 17th column is the expected reduction in auto trips.

TDM MEASURE APPLICABILITY BY USE

	Measure	Office	Residential	Restaurant	Retail
1.	Parking Pricing & Regulation	X		X	X
2.	Unbundled Parking		X		
3.	Real-Time Parking Info	X		X	X
4.	Bike Share Availability	X	X	X	X
5.	Bicycle Parking	X	X	X	X
6.	Showers & Lockers	X			
7.	Bike Repair Station or Services	X	X		X
8.	Subsidized Carshare	X	X		
9.	Carshare Parking	X	X	X	X
10.	TDM Coordinator	X	X	X	X
11.	Transit Subsidy (Office)	X			
12.	Rideshare Program + Preferential Carpool Parking	X			
13.	Web-based ridematching	X			
14.	Real-time information for motorists / transit riders	X	X	X	X
15.	On-Site Daycare/Daycare Brokerage Services	X	X		
16.	Multimodal Wayfinding Signage	X	X	X	X
17.	Provide/Facilitate Delivery Services	X	X		

Source: Fehr & Peers, 2015

Exhibit H
Arts Program

Developer shall make contributions and undertake activities to support facilities and programs for the arts and culture as set forth below.¹ -The Arts Capital Funds, Arts Programming Funds and Non-Profit Arts Facilities Funds shall be paid on or before the dates specified in Exhibit D for the uses described in this Exhibit.

A. Dempster Building Transfer.

Developer shall contribute the Dempster Building as and when provided in this Agreement, to the Community Arts and Stabilization Trust (“CAST”) or to another ~~nonprofit~~non-profit organization, as set forth in Section 7.8 to this Agreement, to be used for a mix of organizations that provide programs and services to benefit the community, with a focus on underserved communities in the vicinity of the Project Site, and emphasizing non-profit community-based arts and culture-focused organizations, as well as other community-serving uses such as youth programming and workforce development.

B. Public Art Fee.

Developer shall make Public Art Fee contributions in accordance with Section 5.4.2.1 of this Agreement. -As provided therein, (i) sixty percent (60%) of the ~~of the~~ Public Art Fee shall be allocated to and used for capital expenditure (“Arts Capital Funds”), and (ii) forty percent (40%) shall be used for public art and cultural programming (“Arts Programming Funds”), all as described in Section 7.8 of this Agreement.- In addition to the Public Art Fee contributions, Developer shall contribute Six Hundred Thousand Dollars (\$600,000) for the Non-Profit Arts Facilities Fund, as described below. -The Public Art Fee and Non-Profit Arts Facilities Fund contributions shall be paid to the City Treasurer, to be distributed to the San Francisco Arts

¹ Any capitalized term used in this Exhibit that is not defined herein shall have the meaning given to such term in this Agreement.

Commission (“Arts Commission”) at the time and allocated as provided in Exhibit D to this Agreement for the uses set forth below.

1. Arts Capital Funds. -The Arts Capital Funds shall be distributed by the Arts Commission to CAST or to another ~~nonprofit~~non-profit organization, as set forth in Section 7.8 to this Agreement, to be used for the payment of capital costs, including, without limitation, the costs of interior and exterior design, engineering, and construction, relating to the redevelopment of the Dempster Building for the uses set forth in Section A above.

2. Arts Programming Funds.- The Arts Programming Funds shall be distributed by the Arts Commission for use on the Project Site in accordance with its standard procedures and Planning Code Section 429 and Administrative Code Section 10-100-29 (the “Public Artwork Trust Fund”), as the same are modified by this Exhibit H.- For purposes of this Section 2, references to the Arts Commission shall be to the Arts Commission acting by and through its Director of Cultural Affairs.

a. ~~Arts Program Development, Oversight and Curation Funds.~~ Ten percent (10%) of the Arts Programming Funds shall be distributed by the Arts Commission to CAST or such other non-profit entity designated pursuant to Section 7.8 that is operating the Dempster Building. Such funds shall be paid in the amount and at the time specified in Exhibit D and distributed annually in equal installments over an approximately five-year period. Such funds shall be used to oversee, coordinate and curate public art and cultural programming in the publicly accessible open spaces within the Project Site, working in collaboration with the grantees of Arts Programming Funds pursuant to Section b. below and the Director of Cultural Affairs.

b. ~~Arts Program Competitive Grant Funds.~~ Ninety percent (90%) of the ~~The~~ Arts Programming Funds shall be distributed by the San Francisco Arts Commission to San Francisco-based non-profit arts entities and artists through a competitive grant process. Such funds shall be paid in the amount and at the time specified in Exhibit D and distributed annually in equal installments over an approximately five-year period. Such funds shall be used for

public art and cultural programming in the publicly accessible open spaces within the Project Site. -Qualifying fund uses include:- (i) physical structures, exhibits or artwork, as long as the purpose is to represent the cultural history of the community and/or serve as an interactive art installation that engages the community; (ii) arts events, cultural events and performances that are open and accessible to the public (with a focus on events that serve the immediate neighborhood) and that include options for free and/or reduced price admission; and (iii) participatory, place-keeping and social practice projects or other public programs that use social engagement as a medium. -~~Consideration~~Funding consideration priority will be given to arts organizations with a demonstrated track record of leveraging funds with matching grants or other sources and/or creating partnerships with local, individual artists and community-based organizations who have a long-established presence in the South of Market (“SoMa”) area, are deeply rooted within the neighborhood, and reflect and/or support high-risk and/or historically underserved populations.

3. Non-Profit Arts Facilities Funds.- The Non-Profit Arts Facilities Funds shall be paid at the time specified in Exhibit D and distributed by the Arts Commission through a competitive process ~~either as a lump sum or in installments over a period of up to five year periods~~years to a non-profit entity or non-profit entities for the purpose of: (i) assisting San Francisco-based non-profit entities providing arts and cultural programs with financial planning, space planning, funding sources and other technical advice associated with locating, securing and improving appropriate space for arts and cultural spaces-activities; or (ii) providing direct assistance on such facilities-related issues. Consideration will be given to organizations with a demonstrated track record of ~~either advising non-profits arts and cultural institutions in the SoMa area on facilities-related issues, including working with high risk and/or disadvantaged populations, or providing direct services on facilities-related issues in the SoMa area.~~

4. Accounting.- Developer shall have no right to challenge the appropriateness of or the amount of any expenditure, so long as it is used in good faith in accordance with the provisions of this Arts Program. -The Public Art Fee and Non-Profit Arts Facilities Funds may be commingled with other funds of the City for purposes of investment and safekeeping, but the

City shall maintain records as part of the City's City's accounting system to account for all the expenditures for a period of four (4) years following the date of the expenditure, and make such records available to Developer upon request.

The failure of any recipient to use funds as required by this Exhibit H shall not be a City or Developer breach of the Agreement. -The City shall have no obligation to make any payment or provide any funds except for what it has received from the Developer as set forth in this Exhibit H, and Developer shall have no obligation to make any payment or provide any funds except as set forth in this Exhibit- H.

5. Board Authorization.- By approving the Agreement, the Board of Supervisors authorizes the City to accept and expend the Public Art Fee and Non-Profit Arts Facilities Funds paid by the Developer as set forth in this Exhibit H. -The Board of Supervisors also agrees that any interest earned on any Public Art Fee and Non-Profit Arts Facilities Funds held by the City shall remain in designated accounts for arts purposes consistent with this Exhibit H and shall not be transferred to the City's City's general fund.

Exhibit I
List of Approvals

Planning Commission

1. Certification of the Final Environmental Impact Report (Motion No. _____, adopted _____, 2015).
2. Adoption of CEQA Findings (including a Statement of Overriding Considerations), and a Mitigation Monitoring and Reporting Program (Motion No. _____, adopted _____, 2015).
3. Approval of the Fifth and Mission Design for Development document (Resolution No. _____, adopted _____, 2015).
4. Approval of Conditional Use Authorizations for compliance with the 5M SUD and Design for Development for buildings and related improvements within the Project Site (Motion Nos. _____, _____, _____, _____, and _____, adopted _____, 2015).
5. Approval of allocation of net new shadow on Boedekker Park (Motion No. _____, adopted _____, 2015).
6. Approval of office space allocation under Sections 321 and 322 of the Planning Code (Motion Nos. _____ and _____, adopted _____, 2015).
7. Adoption of General Plan consistency and Section 101.1 priority policy findings (Motion No. _____, adopted _____, 2015).
8. Adoption of General Plan Referral for tentative subdivision map (Motion No. _____, adopted _____, 2015).

Recreation and Parks Commission and Planning Commission

9. Approval of raising the absolute cumulative shadow limits for Boeddeker Park pursuant to Planning Code Section 295 (joint action with Planning Commission) (Resolution No. _____, adopted _____, 2015).

Department of Public Works

10. Approval of tentative subdivision map (Order No. _____, dated _____, 2015).

Arts Commission

11. Consent to Development Agreement's Arts Program (for use of fees for capital improvements and programming) (Resolution No. _____, dated _____, 2015).

San Francisco Municipal Transportation Agency

12. Consent to Development Agreement's Transportation Program (Resolution No. _____, dated _____, 2015).

Board of Supervisors

13. Affirm Certification of the Final Environmental Impact Report (Motion No. _____, adopted _____, 2015).
14. Approval of General Plan Map, and Planning Code and Zoning Map amendments (Ordinance Nos. _____, and _____, adopted _____, 2015).
15. Approval of Development Agreement (Ordinance No. _____, adopted _____, 2015).

Exhibit K

Form of Assignment and Assumption Agreement

RECORDING REQUESTED BY
CLERK OF THE BOARD OF SUPERVISORS
OF THE CITY AND COUNTY OF SAN FRANCISCO
(Exempt from Recording Fees
Pursuant to Government Code
Section 27383)

AND WHEN RECORDED MAIL TO:

[Angela Calvillo]
Clerk of the Board of Supervisors
City Hall, Room 244
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

**ASSIGNMENT AND ASSUMPTION AGREEMENT
RELATIVE TO DEVELOPMENT AGREEMENT FOR 5M**

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (hereinafter, the "Assignment") is entered into this _____ day of _____, 20____, by and between _____, a _____ ("Assignor") and _____, a _____ ("Assignee").

RECITALS

A. [5M, LLC], a _____ and the City and County of San Francisco, a political subdivision and municipal corporation of the State of California (the "City"), entered into that certain Development Agreement (the "**Development Agreement**") dated as of _____, 2015 for reference purposes, with respect to certain real property owned by Assignor, as such property is more particularly described in the Development Agreement (the "**Project Site**"). The Development Agreement was recorded in the Official Records of the City and County of San Francisco on _____ as Document No. _____.

[add recital to document any previous transfer of the Transferred Property, with recording information]

B. The Development Agreement provides that Developer (Assignor) has the right to: (i) Transfer all or a portion of the Project Site, (ii) assign all of its rights, title, interest and obligations under the Development Agreement to a Transferee with respect to the portions of the Project Site transferred to the Transferee, and (iii) upon the recordation of an approved Assignment and Assumption Agreement, to be released from any prospective liability or obligation under the Development Agreement related to the Transferred Property as set forth in Section 12.3 of the Development Agreement.

C. Assignor intends to convey certain real property as more particularly identified and described on Exhibit A attached hereto (hereafter the "**Transferred Property** ") to Assignee. The Transferred Property is subject to the Development Agreement.

D. Assignor desires to assign and Assignee desires to assume Assignor's right, title, interest, burdens and obligations under the Development Agreement with respect to and as related to the Transferred Property, as more particularly described below.

ASSIGNMENT AND ASSUMPTION

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor and Assignee hereby agree as follows:

1. Defined Terms. Initially capitalized terms used herein and not otherwise defined shall have the meaning ascribed to them in the Development Agreement.

2. Assignment of Development Agreement. Assignor hereby assigns to Assignee, effective as of Assignor's conveyance of the Transferred Property to Assignee, all of the rights, title, interest, burdens and obligations of Assignor under the Development Agreement with respect to the Transferred Property, including any Community Benefits that are tied to Buildings on the Transferred Property [OPTION: , excluding the obligation to complete the off-site improvements for the Dempster Building as set forth in Section 12.1 of the Development Agreement, which obligation is retained by Assignor]. Assignor retains all the rights, title, interest, burdens and obligations under the Development Agreement with respect to all other portions of the Project Site owned by Assignor.

3. Assumption of Development Agreement. Assignee hereby assumes, effective as of Assignor's conveyance of the Transferred Property to Assignee, all of the rights, title, interest, burdens and obligations of Assignor under the Development Agreement with respect to the Transferred Property, including its associated Community Benefits, and agrees to observe and fully perform all the duties and obligations of Assignor under the Development Agreement with respect to the Transferred Property, and to be subject to all the terms and conditions thereof with respect to the Transferred Property. The parties intend that, upon the execution of this Assignment and conveyance of the Transferred Property to Assignee, Assignee shall become the "Developer" under the Development Agreement with respect to the Transferred Property.

4. Reaffirmation of Indemnifications. Assignee hereby consents to and expressly reaffirms any and all indemnifications of the City set forth in the Development Agreement, including without limitation Section 4.7 of the Development Agreement.

5. Assignee's Covenants. Assignee hereby covenants and agrees that: (a) Assignee shall not challenge the enforceability of any provision or requirement of the Development Agreement; (b) Assignee shall not sue the City in connection with any and all disputes between Assignor and Assignee arising from this Assignment or the Development Agreement, including any failure to complete all or any part of the Project by any party; and (c) Assignee shall indemnify the City and its officers, agents and employees from, and if requested, shall defend them against any and all Losses resulting directly or indirectly from any dispute between Assignor and Assignee arising from this Assignment or the Development Agreement.

6. Binding on Successors. All of the covenants, terms and conditions set forth herein shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, successors and assigns.

7. Notices. The notice address for Assignee under Section 14.11 of the Development Agreement shall be:

Attn: _____

With copy to:

Attn: _____

8. Counterparts. This Assignment may be executed in as many counterparts as may be deemed necessary and convenient, and by the different parties hereto on separate counterparts, each of which, when so executed, shall be deemed an original, but all such counterparts shall constitute one and the same instrument.

9. Governing Law. This Assignment and the legal relations of the parties hereto shall be governed by and construed and enforced in accordance with the laws of the State of California, without regard to its principles of conflicts of law.

IN WITNESS HEREOF, the parties hereto have executed this Assignment as of the day and year first above written.

ASSIGNOR:

[insert signature block]

ASSIGNEE:

[insert signature block]

EXHIBIT L

Notice of Completion of Building and Community Benefits

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

[5M LLC]
[address]_____

Attn: _____

(Space above this line reserved for Recorder's
use only)

THIS NOTICE OF COMPLETION OF BUILDING AND COMMUNITY BENEFITS (this "Notice") dated for reference purposes only as of this ____ day of _____, 20__, is made by and between the CITY AND COUNTY OF SAN FRANCISCO, a political subdivision and municipal corporation of the State of California (the "City"), acting by and through its Planning Department, and [5M, LLC, a _____ limited liability corporation] ("Developer") [*substitute party, if needed*].

1. The City and Developer entered into that certain Development Agreement dated as of _____, and recorded in the Official Records of the City And County of San Francisco on _____, as Document Number _____ (Book No. ____, Reel No. _____) (the "Development Agreement"). Capitalized terms used in this Notice that are not defined shall have meaning given to such terms in the Development Agreement.

2. Under Section 7.1 of the Development Agreement, when one or more Buildings have been completed and all of the Community Benefits tied to those specific Buildings have also been completed, the City agreed, upon Developer's request, to execute and record a notice of completion as it relates to the applicable Building.

3. The City confirms that the Building known as _____, located on the property described in the attached Exhibit A (the "Affected Property"), together with all of the Community Benefits tied to that Building, have been completed in accordance with the Development Agreement. All parties with an interest in the Affected Property have the right to rely on this Notice.

CITY:

Approved as to form:

CITY AND COUNTY OF SAN FRANCISCO,
municipal corporation

[DENNIS J. HERRERA], City Attorney

By: _____
Director of Planning

By: _____
Deputy City Attorney

Exhibit A

[attach legal description of Affected Property]