

CONSTRUCTION MANAGEMENT AGREEMENT

Between

CITY AND COUNTY OF SAN FRANCISCO,

a Charter city and county,

as the City

and

GOODWILL SF URBAN DEVELOPMENT, LLC,

a Delaware limited liability company,

as Developer

Dated as of _____, 201__

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CONSTRUCTION MANAGEMENT AGREEMENT

CONSTRUCTION MANAGEMENT AGREEMENT (the “**Agreement**”), dated as of _____, 201____, between the CITY AND COUNTY OF SAN FRANCISCO, a Charter city and county (the “**City**”), and GOODWILL SF URBAN DEVELOPMENT, LLC, a Delaware limited liability company (“**Developer**”).

R E C I T A L S :

The City has acquired fee title to a portion of the real property located at 1500-1800 Mission Street, San Francisco, CA (Lot 2 and Lot 3, Block 3506) located at Van Ness Avenue and Mission Streets (the “**Development Site**”), as more particularly described on Exhibit A attached hereto, from Developer in accordance with that certain Conditional Land Disposition and Acquisition Agreement dated for reference purposes as of October ____, 2014 (the “**PSA**”).

The City desires to develop the Development Site into a 17-18 story administrative office building containing approximately 462,000 gross square feet upon the Development Site (the “**Office Project**”).

The City wishes to retain Developer to manage the construction of the Office Project, and Developer wishes to perform such construction management services, all on the terms and conditions hereinafter set forth.

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

1. Retention of Developer; Certain Definitions.

1.1 The City hereby retains Developer to perform the “**Developer Services**”, as more particularly described in Exhibit C, subject to and in accordance with the terms and conditions of this Agreement.

1.2 The City and Developer each understand that the other may be interested, directly or indirectly, in certain other existing and future development activities and undertakings not related to the Office Project or the Development Site. This Agreement and the assumption by the City and Developer of their respective duties hereunder shall not affect the rights of either Party to pursue such other existing and future activities and undertakings (whether or not competitive with the Office Project or the Development Site) and to receive profits or compensation therefrom.

1.3 All capitalized terms used herein shall have the meanings ascribed to them in Schedule 1 attached hereto.

1.4 This Agreement shall start on the date of execution and delivery by the Parties and unless sooner terminated as provided in this Agreement, shall terminate on the date of Final Completion of the Office Project, and full payment of the Development Services Fee and the Office Project Costs, except for those obligations that expressly survive the expiration or termination of this Agreement.

2. Authority of Developer; Approvals.

2.1 Limited Authority to Incur Expenditures or Execute Contracts. Developer, acting through its employees and Affiliates, hereby accepts its engagement to perform the Developer Services on the terms and

conditions herein contained, and shall have the authority to undertake the Developer Services in accordance with this Agreement. Developer shall have the right to enter into Pre-Approved Office Project Contracts and to pay the Approved Soft Costs without the City's prior consent. Developer shall not have the authority to:

(a) Except as approved by City or as set forth in the Office Project Contracts entered into in accordance with this Agreement (or with respect to Approved Soft Costs), incur expenditures on behalf of the City.

(b) Except for Pre-Approved Office Project Contracts and except as approved by the City pursuant to the terms of this Agreement, enter into Office Project Contracts.

(c) Except as approved by the City with an increase in the Project Budget, enter into any Project Contract that causes the cumulative Office Project Costs to exceed the Project Budget.

(d) Except as approved by the City, enter into any agreements with third parties delegating any of the Developer Services to such third parties, other than with its Affiliates and other internal employee arrangements.

2.2 Independent Contractor. For the purposes of this Section 2.2, "**Developer**" shall be deemed to include not only Developer, but also any agent or employee of Developer. Developer acknowledges and agrees that at all times, Developer or any agent or employee of Developer shall be deemed at all times to be an independent contractor and is, subject to the terms of this Agreement, wholly responsible for the manner in which it performs the services and work requested by the City under this Agreement. Developer, its agents, and employees will not represent or hold themselves out to be employees of the City at any time. Developer or any agent or employee of Developer shall not have employee status with the City, nor be entitled to participate in any plans, arrangements, or distributions by the City pertaining to or in connection with any retirement, health or other benefits that the City may offer its employees. Except as expressly provided herein to the contrary, Developer or any agent or employee of Developer is liable for the acts and omissions of itself, its employees and its agents. Developer shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to, FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to Developer's performing services and work, or any agent or employee of Developer providing same. Nothing in this Agreement shall be construed as creating an employment or agency relationship between the City and Developer or any agent or employee of Developer. Any terms in this Agreement referring to direction from the City shall be construed as providing for direction as to policy and the result of Developer's work only, and not as to the means by which such a result is obtained. The City does not retain the right to control the means or the method by which Developer performs work under this Agreement. Developer agrees to maintain and make available to the City, upon request and during regular business hours, accurate books and accounting records demonstrating Developer's compliance with this Section. Notwithstanding the foregoing, if a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Division determines that an employee of Developer or its agents is an employee of the City for purposes of collection of any employment taxes, then, provided that Developer has not already paid such employment taxes for such employee, the amounts payable under this Agreement for the Developer Services shall be reduced by amounts equal to both the employee and employer portions of the tax due (less amounts already paid by Developer and applied against this liability). The City shall then forward those amounts to the relevant taxing authority. A determination of employment status pursuant to the preceding paragraph shall be solely for the purposes of the particular tax in question, and for all other purposes of this Agreement, Developer shall not be considered an employee of the City.

2.3 Consents and Approvals. Notwithstanding anything stated to the contrary herein, all approvals, consents or other determinations required from the City hereunder shall be made by or through the City's Representative and any approval by the City's Representative shall constitute the approval by the City: provided (i) the City Representative cannot authorize any increase in the certification of funds set forth in Section 4.1 which must come, if at all, from the City's Controller, and (ii) any amendment to this Agreement must be approved by the City Representative following any necessary governmental approvals, which may include approval from the City's Board of Supervisors. All approvals, consents or other determinations required by the City's Representative must be in writing except to the extent deemed approved in accordance with the terms of this Agreement. Notwithstanding anything stated to the contrary in this Agreement and specifically excluding any Pre-Approved Office Project Contracts (for which consent or approval is not required), with respect to all approvals and/or consents required under this Agreement, if a Party fails to approve, disapprove or approve conditionally any approval or consent requested by the other Party in writing within seven (7) business days following receipt of a written request for approval or consent, so long as the applicable documents are complete (and if such documents are not complete, the recipient shall so notify the sender in writing within three (3) business days following receipt of the documents), then the requesting party may submit a second written notice to the other party requesting approval of the submittal within three (3) business days after the second notice. If the recipient fails to respond to the second notice within such three (3) business day period, then the submittal and documents shall be deemed approved unless the item has a cost of One Million Dollars (\$1,000,000) or more. A Party's failure to timely respond to the other Party's request for an approval, consent or determination of any matter shall constitute a failure by such Party to comply with a material term of this Agreement.

2.4 Project Budget. Throughout the term of this Agreement, Developer shall work with the City to refine and modify the design of the Office Project as needed to keep the Office Project within the approved Project Budget. The Parties agree to work together with the Architect and the General Contractor to keep the Project Cost at or below the Project Budget. From the start of construction until completion of the Office Project, Developer shall review and monitor the Construction Contractor's monthly construction cost report of expenditures on the Office Project during the previous month (the "Construction Cost Report"). The Construction Cost Report shall include an update to the Office Project Schedule, including critical path items. The parties agree to review the Project Budget, as compared to actual expenditures, throughout the development to ensure that the Project Cost does not exceed the Project Budget or to notify the City if an expense would cause the Project Cost to exceed the Project Budget. If Developer reasonably believes at any point that the Project Cost will likely exceed the Project Budget, Developer shall notify the City of such fact and the parties shall discuss alternatives to design, overall square footage, finishes, and other items that may be changed or eliminated from the Office Project so as to not exceed the Project Budget. Upon City's request, Developer shall provide to the City good faith detailed estimates of the cost of various proposed alternatives in order for City to initiate needed change orders to keep the Project Cost below the Project Budget.

3. Obligations of Developer.

3.1 Developer Services. During the term of this Agreement, Developer shall: (a) perform the Developer Services as necessary for the design, construction and completion of the Office Project, (b) on behalf of the City, enter into the Office Project Contracts, subject to the terms of this Agreement and (c) provide consultation and assistance to the City concerning all matters with respect to the development of the Office Project, including, without limitation, consultation and assistance to the City in respect of the Developer Services. Developer shall supply qualified personnel necessary to perform its responsibilities under this Agreement, and all such persons shall be employees of Developer or its Affiliates and shall not be, or be deemed to be, employees of the City. Developer shall employ such employees as shall be necessary or

appropriate to enable Developer at all times to oversee, coordinate and provide the Developer Services as required under this Agreement. All matters pertaining to the employment, training, conduct, supervision, compensation, promotion and discharge of such employees shall be the sole responsibility of Developer and Developer shall comply with all applicable laws and regulations having to do with worker's compensation, social security, unemployment insurance, hours of labor, wages, working conditions and safety and similar matters with respect to such employees. Should the City determine that Developer, or any agent or employee of Developer, is not performing the Developer Services in accordance with the requirements of this Agreement, the City shall provide Developer with written notice of such failure. Within five (5) business days of Developer's receipt of such notice, Developer shall take commercially reasonable efforts to remedy the deficiency. Notwithstanding the foregoing, if the City believes that an action of Developer, or any agent or employee of Developer, warrants immediate remedial action by Developer, the City shall contact Developer and provide Developer in writing with the reason for requesting such immediate action.

3.2 Office Project Contracts.

(a) Approval and Execution. Any and all development, design, construction and materials/equipment contracts necessary for the development and construction of the Office Project (collectively, "**Office Project Contracts**") and any and all change orders, changes to plans and specifications, amendments and modifications thereto, shall, except for Pre-Approved Office Project Contracts (which shall not require the approval of the City), require the prior approval of both the City and Developer, which approval shall not be unreasonably withheld or delayed. The term "Office Project Contracts" shall also include, the Architect Contract, the Construction Contract, and various materials and equipment contracts with the suppliers. For avoidance of doubt, those Office Project Contracts entered into by Developer prior to the date hereof, which are listed on Exhibit H attached hereto, are hereby ratified, confirmed and approved in all respects by the City. At the direction of the City, Developer shall directly enter into all Office Project Contracts that have been approved by the Parties pursuant to this Section 3.2(a). In the event this Agreement is terminated for any reason, Developer shall immediately assign, and the City immediately assume, the Office Project Contracts in accordance with Section 12.3.

(b) Provisions in Office Project Contracts. Developer shall use commercially reasonable efforts to include the applicable provisions set forth in Exhibit G (the "**Owner Contracting Requirements**") in all Office Project Contracts entered into after the date of this Agreement, subject to the exclusions for Pre-Approved Office Project Contracts costing \$50,000 or less and subject to such revisions or deletions as may be agreed to by the City in approving the Office Project Contracts. If any Project Contractor under a Project Contract that is not a Pre-Approved Project Contract hereafter refuses to include any of the Owner Contracting Requirements in its Project Contract, Developer shall consult with the City on how to proceed with the contract negotiations, including whether to seek Board of Supervisors approval of an exemption of such provision if necessary. Notwithstanding anything stated to the contrary in this Agreement, Developer's inability to get a Project Contractor to agree to any of the Owner Contracting Requirements shall not constitute a default by Developer under this Agreement. However, the City shall not be required to hereafter approve any Project Contract (that is not a Pre-Approved Project Contract) that does not include any of the Owner Contracting Requirements. At the direction of the City, Developer shall directly enter into all Office Project Contracts that have been approved by the Parties pursuant to this Section 3.2(b). In the event this Agreement is terminated for any reason, Developer shall immediately assign, and the City immediately assume, the Office Project Contracts that have been properly entered into by Developer as set forth in Section 12.3.

(c) Default by Project Contractor. Notwithstanding anything to the contrary contained in this Agreement, in no event and under no circumstances, shall Developer be liable for any breach or default by a Project Contractor, or for a Project Contractor's failure to comply with any of the provisions of the applicable Project Contract, including the Owner Contracting Requirements or applicable law (including any City law). Upon a default by a Project Contractor, and following consultation with the City and upon the City's request, Developer shall use commercially reasonable efforts to take specific remedial action against the defaulting Project Contractor, including termination of the applicable Project Contract and replacement of the applicable Project Contractor. All third party costs incurred by Developer in enforcing rights and remedies against an Office Project Contracts shall be included as a Reimbursable Expense approved by the City.

(d) Obligations and Liabilities. The Parties acknowledge that but for the City's requirement that Developer (and not the City) enter into the Office Project Contracts, Developer would not have entered into the Office Project Contracts. Therefore, notwithstanding anything to the contrary contained in this Agreement or in any of the Office Project Contracts, the City hereby covenants to (x) timely pay, or reimburse Developer to the extent Developer has paid, any and all fees, charges, costs, expenses and other amounts properly due and payable by Developer or the "owner" under the Office Project Contracts ("**Office Project Contract Costs**"), and (y) except to the extent a Claim arises from Developer's negligence or willful misconduct or Developer's default of this Agreement, the City shall indemnify, defend, protect and hold harmless Developer from and against any and all third party Claims, including, without limitation, Claims made by any Project Contractor, arising from or directly related to the Office Project Contracts (including Claims for consequential, remote, incidental or punitive damages or damages associated with lost profits or opportunities successfully made by such third party or Project Contractor).

(i) In connection with the foregoing indemnity, the City will defend such third party Claims at its expense with lawyers chosen by the City with Developer's consent, which will not be unreasonably withheld, conditioned or delayed for any lawyers other than the City's staff attorneys, provided (i) it will be reasonable for Developer to refuse to consent to any lawyer or law firm with Developer has or may have a conflict of interest under applicable principles of legal ethics, and (ii) Developer hereby consents to the City's use of the City's staff attorneys. The City will give written notice (the "**Notice of Defense**") to Developer within ten (10) days after the date such notice of a third party Claim is received by the City that acknowledges that the City will defend such Claim and that identifies the lawyer retained for the defense (if other than attorneys in the City Attorney's Office). The City may not settle any such third party Claim without the consent of Developer, which consent will not be unreasonably withheld, conditioned or delayed, provided that Developer shall not withhold its consent if the City has agreed to pay all settlement amounts owed by the City and Developer for such third party Claim and Developer and Developer Parties are fully released and forever discharged from the third party Claim by such third party.

(ii) Developer will be entitled to participate in the defense of such third party Claim, and the parties agree to work together in good faith in all matters relating to the third party Claim so as to minimize any potential liability. Developer will be entitled to retain its own lawyers in the defense of such third party Claim if the City fails to give a Notice of Defense as set forth above (following written notice and demand by Developer) or subsequently notifies Developer that it will no longer defend Developer in the action. If the City fails to provide the defense as required by this Section 3.2, or the parties dispute whether such defense is required, then Developer may hire its own attorneys and the matter shall be resolved by judicial action (with the prevailing party awarded attorneys fees and costs as set forth in Section 25). Developer shall also have the right to hire its own attorneys, at Developer's sole cost, at any time in connection with the third party Claim, notwithstanding the City's defense of such action.

(iii) Subject to the procedures set forth above and in accordance with the deadlines specified in the preceding provisions of this Section 3.2(d), any indemnified Claim will be satisfied by the City paying the amount due for such Claim to the third party claimant upon settlement or upon the conclusion of any litigation relating to the Claim. If the City breaches its obligations under this Section 3.2(d) and Developer incurs any loss resulting from the third party Claim that is covered by the City's indemnity, then the amount due from the City to Developer shall accrue interest at the statutory rate from the date of loss incurred by the Developer to the date of reimbursement from the City (but without duplication of any interest payable with respect to any judgment underlying such Claim).

3.3 Office Project Coordinator. Developer shall cooperate with the City in order to perform the Developer Services and shall use commercially reasonable efforts to help ensure compliance with applicable deadlines and to cause the expeditious and timely completion of the Office Project. Developer shall designate one of its employees with significant development experience who will be dedicated to the Office Project and who will serve as the primary contact with the City (the "**Office Project Coordinator**"). The Office Project Coordinator shall attend regularly scheduled preconstruction, construction and related meetings relating to the Office Project and report to the City regarding the same. In addition, Developer shall organize, prepare agendas and lead construction progress meetings for the City's internal personnel on a regular basis. Developer shall keep the City informed of all material matters relating to or affecting the Office Project. In such regard, the Office Project Coordinator shall communicate directly with the "City's Representative" on a regular basis, informing such person of all material events relating to the Office Project. In addition, Developer shall promptly and in a timely manner answer all inquiries the City may have with respect to the development of the Office Project.

3.4 Review of Applications for Payment.

(a) Developer shall review applications for payment from third parties for costs incurred in preparation of or pursuant to the Office Project.

(b) All applications for payment for Office Project Contract Costs shall be submitted, reviewed and approved or disapproved pursuant to the following schedule: *First*, by the 25th day of a calendar month, Developer and the City shall "pencil draw review" all applications for payment made by such date from each Project Contractor and/or construction manager, and Developer shall promptly thereafter submit any changes or corrections back to such Project Contractor and/or construction manager (the Parties acknowledging that Developer shall have the right during this "pencil draw review" to finally determine the amount due for payment); *Second*, by the 1st day of the following calendar month, such Project Contractor and/or construction manager shall submit revised applications for payment to Developer for Developer's review and approval (which approval shall be made in Developer's good faith judgment); *Third*, by the 10th day of such calendar month, Developer shall submit to the City for payment, such revised applications for payment together with any incurred Approved Soft Costs (each, an "Approved Draw Request"), together with backup documentation and lien releases as and when required; and *Fourth*, by the 25th day of such calendar month, the City shall fully pay, by check or wire transfer, such Approved Draw Request to Developer, regardless of whether the City disputes the same for any reason (subject to subsequent reconciliation if needed and subject to any subsequent dispute process that may be included in the applicable Office Project Contract). The above dates may be changed by agreement of the parties, each in their reasonable discretion (provided, the parties intend that the amount of time between each of the four steps shall remain as set forth above, subject to any change agreed to by the parties each in their sole discretion). The City's payment of the Approved Draw Request shall not be deemed an approval of the amounts set forth therein; rather, within

thirty (30) days following the City's payment of an Approved Draw Request, the City shall make any inquiry, condition, dispute or request relating to the appropriateness of a payment.

(c) The Parties agree that if the City reasonably disputes any application for payment or Approved Draw Request during the period that is thirty (30) days following payment of an Approved Draw Request, the Parties shall reasonably cooperate with each other to assess the validity of such dispute and the steps necessary to correct such dispute if valid (including causing the applicable Project Contractor, to make the necessary corrections and/or making adjustments to the next applicable application for payment); and if the Parties are unable to agree on the validity or resolution of such dispute, the Parties may submit the dispute to a neutral third party as set forth in the applicable Project Contract or as the Parties may otherwise agree to resolve such dispute. Upon resolution, any overpayment by the City shall be credited against the next invoice and any underpayment by the City shall be added as an amount due under the next invoice.

(d) Each Approved Draw Request furnished by Developer to the City under this Section 3.4, shall be in a form acceptable to the City Controller and the City Representative, and must include a sequential invoice number. Payment shall be made by the City to Developer at the address specified in Section 14 entitled "Notices," or in such alternate manner as the Parties have mutually agreed upon in writing.

3.5 Communications with the City: Regularly Scheduled Meetings. Developer shall make its personnel available at reasonable times for communications with the City and will keep the City advised of all matters affecting the Office Project within the scope of Developer's Services and will provide updates regarding the status of the Office Project on a monthly basis. In addition to "regularly scheduled" meetings, appropriate personnel of Developer shall attend other monthly meetings as reasonably requested by the City relating to the Office Project.

3.6 Audit and Inspection of Records. Developer agrees to maintain and make available to the City, during regular business hours, accurate books and accounting records relating to its Developer Services and the Office Project. Developer will permit the City to audit, examine and make excerpts and transcripts from such books and records, and to make audits of all invoices, materials, payrolls, records or personnel and other data related to all other matters covered by this Agreement, whether funded in whole or in part under this Agreement. Developer shall maintain such data and records in an accessible location and condition for a period of not fewer than three years after final payment under this Agreement or until after final audit has been resolved, whichever is later. The State of California or any federal agency having an interest in the subject matter of this Agreement shall have the same rights as conferred upon City by this Section. Developer shall include the same audit and inspection rights and record retention requirements in all Office Project Contracts.

3.7 Coordination with Project Contractors. The Office Project Schedule has been approved by Developer and the City. Developer shall use commercially reasonable efforts, in keeping with the performance standards set forth in Section 3.9, to cause the Project Contractors to comply with the Office Project Schedule and the Project Budget. Developer shall keep the City informed of any problems or issues as they arise. Developer shall attempt to enforce specific performance deadlines and penalties for noncompliance in connection with the Office Project Contracts. Notwithstanding anything stated to the contrary herein, Developer shall have no liability due to the failure of any of the Project Contractors to perform their respective obligations under the Office Project Contracts.

3.8 Procuring Office Project Development Approvals. Developer shall submit requests for regulatory and other approvals in a timely manner, and shall use commercially reasonable efforts to

coordinate with the City to obtain all required approvals that are necessary for the Office Project in accordance with the Office Project Schedule.

3.9 Standard of Performance. Developer covenants to the City that the Developer Services will be performed with the degree of skill and care that is required by current, good and sound professional procedures and practices, and in conformance with generally accepted professional standards prevailing at the time for construction managers. Without limiting the foregoing, Developer shall perform the Developer Services in a manner consistent with Developer's work on the adjacent residential project and Developer's other office projects. Developer understands and agrees that in entering into this Agreement, the City is relying on Developer's development experience and expertise and Developer's commitment to take such actions as needed to manage the Office Project construction consistent with other similar projects completed by Related California. Under this Agreement, Developer shall (x) consistent with industry standards for similar projects and Developer's Affiliate's work on the Residential Project, closely monitor and oversee, General Contractor's work throughout the construction of the Office Project, (y) promptly notify the City of any defaults, deficiencies or violations it becomes aware of and (z) enforce Developer's rights and remedies against the Project Contractors under the Office Project Contracts.

4. Obligations of the City.

4.1 Certification of Funds; Budget and Fiscal Provisions. The City has appropriated and authorized funds for the entire development of the Office Project in the amount of \$_____, which appropriation and authorization cover all amounts required to be paid by the City under this Agreement and has been certified by the City Controller. The City's payment obligation to Developer cannot at any time exceed this amount (i.e., \$_____) certified by City's Controller. No City representative is authorized to offer or promise, nor is the City required to honor, any offered or promised payments to Developer under this Agreement in excess of this certified maximum amount (i.e., \$_____) without the Controller having first certified the additional promised amount and the Parties having modified this Agreement in writing.

4.2 City Representatives. The City hereby designates John Updike (the "**City's Representative**"), to be its designated representative for purposes of contact between the City and Developer in connection with the construction of the Office Project, including, without limitation, the giving of notices, consents and approvals. The City may at any time, by notice given to Developer, remove the City's Representative and appoint another individual to act as the City's Representative. Except as set forth in this Agreement to the contrary, the City's Representative, shall have the authority to bind the City with respect to all matters for which the consent or approval of the City is required or permitted pursuant to this Agreement and all consents, approvals and waivers given by the City's Representative shall bind the City and may be relied upon by Developer.

4.3 City Cooperation. The City shall cooperate with Developer for the design and construction of the Office Project and shall promptly and in a timely manner (a) provide information regarding its requirements for the Office Project, (b) answer inquiries Developer may have with respect to such information, and (c) timely approve or disapprove (in accordance with the terms of this Agreement) any items and grant its approval for Developer to execute Office Project Contracts required for the development of the Office Project. Additional information or decisions requested by Developer of the City shall also be given by the City to Developer in a prompt and timely manner (in accordance with the terms of this Agreement).

4.4 City Payment of Office Project Costs. The City shall pay all Project Costs incurred pursuant to the Office Project Contracts on a timely basis in accordance with Section 3.4. The Parties contemplate that the City will be funding the Office Project Costs from its own funds and not from the proceeds of any third party financing. Developer shall have no obligation to advance or expend its own funds in connection with the Office Project (other than payment of Reimbursable Expenses, for which Developer will be reimbursed, and costs incurred by Developer and its Affiliates to perform the Developer Services (which excludes Office Project Contract Costs), for which Developer will be paid the Development Services Fee as set forth in this Agreement). Without limitation, on the foregoing, Developer shall have no obligation or liability under this Agreement for its failure to take any action involving the expenditure of funds if the City has failed to provide such funds as and when required under this Agreement.

4.5 Developer Submission of Applications. The City hereby appoints Developer as its agent to make such applications and obtain all required Office Project Development Approvals for the Office Project. The City agrees to cooperate with Developer in connection with all applications for Office Project Development Approvals, including execution of all applications, documents and agreements necessary or appropriate to be filed or entered into with all utility companies, public agencies and municipal and other governmental authorities having jurisdiction over the Office Project and the Development Site and to execute, acknowledge and deliver all documents and agreements reasonably requested or required to obtain such Office Project Development Approvals or to create utility and other easements necessary to furnish utilities.

4.6 City Keeping Developer Informed. The City shall keep Developer promptly informed of all material matters which come to the City's attention relating to or affecting the development, design or construction of the Office Project relevant to the Developer Services, including, without limitation, all agreements and discussions between the City and third parties relating to such matters, and the City shall promptly notify Developer of any developments necessitating or warranting a change in the Office Project Plan or the Plans and Specifications.

4.7 City Insurance.

(a) Builder's Risk. During construction of the Office Project, the City shall purchase and maintain, from a company or companies lawfully authorized to do business in the jurisdiction in which the Office Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the sum payable under the construction contract with the General Contractor for the construction of the Office Project, plus value of subsequent contract modifications and cost of materials supplied or installed by others, comprising total value for the entire Office Project at the Development Site on a replacement cost basis with a maximum per occurrence deductible determined by the City and which the City shall pay. Such property insurance shall be maintained until final payment has been made under the Office Project Contracts. This insurance shall include interests of the City, Developer, the General Contractor and all subcontractors and sub-subcontractors in the Office Project. The City shall be a named insured on this insurance. Property insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without limitation, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and from all other casualties that are covered by extended coverage and from other hazards as may be covered by for of "broad form" builders risk insurance then available and shall cover all soft costs of the Office Project (including, without limitation, the Development Services Fees and reasonable compensation for the Architect's services and expenses). Coverage for other perils shall not be required unless otherwise provided in the Contract Documents. Notwithstanding the foregoing to the

contrary, such property insurance may be maintained through a self-insurance program implemented by the City or the City may instead require that the General Contractor maintain such insurance.

(b) Liability Insurance. The City shall maintain commercial general liability insurance, in customary amounts, except for claims arising in connection with the construction of the Office Project, which shall be covered through insurance provided by the General Contractor or other Contractors or through a “wrap-up” insurance program covering the Office Project. Any liability insurance obtained hereunder by the City may be maintained through a self-insurance program implemented by the City. If the City maintains such general liability insurance with a third party insurance company, such commercial general liability insurance shall name Developer, Developer Parties, the Contractors, Consultants and Suppliers as additional insureds.

5. Exculpation; Indemnity.

5.1 Developer Indemnity. Developer shall indemnify, defend, protect and hold harmless the City Indemnitees from and against any and all third party Claims resulting from Developer’s gross negligence or willful misconduct relating to the Office Project.

5.2 City Indemnity. In addition to the indemnity set forth in Section 3.2(d), the City shall indemnify, defend, protect and hold harmless Developer from and against (x) personal injury or personal property damage Claims by third parties in connection with the Office Project (except to the extent caused by Developer or its Agents), and (y) any Claims resulting from the City’s gross negligence or willful misconduct relating to the Office Project.

5.3 City Exculpation. No board or commission of the City (and no officer, director, member, manager, employee or agent of the City) shall be personally liable for the performance of the City’s obligations under this Agreement.

5.4 Developer Exculpation. No direct or indirect partner, shareholder or member in or of Developer (and no officer, director, managing director, manager, employee or agent of such partner, shareholder or member) shall be personally liable for the performance of Developer’s obligations under this Agreement.

5.5 Limitations. No insurance policy covering either Party’s performance under this Agreement shall operate to limit such Party’s liability under this Agreement. Nor shall the amount of insurance coverage operate to limit the extent of such liability. Notwithstanding any other provision of this Agreement, in no event shall either Party be liable to the other, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits (except as expressly provided in Section 8.4), arising out of or in connection with this Agreement or the Developer Services performed in connection with this Agreement.

5.6 Liability for Use of Equipment. The City shall not be liable for any damage to persons or property as a result of the use, misuse or failure of any equipment used by Developer, or any of its subcontractors, or by any of their employees, even though such equipment is furnished, rented or loaned by the City.

5.7 Copyright Infringement. Developer shall indemnify, defend and hold the City harmless from and against all Claims for infringement of the patent rights, copyright, trade secret, trade name, trademark,

service mark, or any other proprietary right of any person or persons in consequence solely in connection with the use by the City of the Developer Services as it relates solely to the Project.

6. Compensation of Developer.

The City acknowledges that the compensation for Developer for the performance of the Developer Services is separate and distinct from the City's obligations to pay (or reimburse Developer) for any amounts payable under the Office Project Contracts. The provisions of this Section 6 pertain solely to the compensation of Developer for the Developer Services provided by Developer hereunder.

6.1 Development Services Fee. In consideration of Developer's performance of the Developer Services and its other obligations hereunder with respect to the Office Project, Developer shall receive, and the City shall pay to Developer, a development services fee (the "**Development Services Fee**") of TWENTY-SIX MILLION FIVE HUNDRED THOUSAND DOLLARS (\$26, 500,000). The Development Services Fee shall be payable in installments in accordance with the payment schedule attached hereto as Exhibit E. Developer shall provide invoices to the City for payment in accordance with the payment schedule attached hereto as Exhibit E. The City shall make payments due each month at the same time as an Approved Draw Request is required to be paid pursuant to Section 3.4, or an Approved Draw Request is not being paid within a given calendar month, then on the 25th day of such calendar month.

6.2 Reimbursable Expenses. In addition to the payment of the Development Services Fee, the City shall reimburse Developer for (i) all Approved Soft Costs incurred by Developer and (ii) such additional expenditures approved in advance by the City as a reimbursable expense (collectively, the "Reimbursable Expenses"). Payment of the Reimbursable Expenses by the City to Developer shall be made on a monthly basis, upon presentation of invoices and backup documentation, as set forth in Section 3.4 and, except for the foregoing, there shall be no other reimbursements of any expenses of Developer in the performance of its obligations and duties hereunder. There shall be no mark-up or fee payable to Developer on any such Reimbursable Expenses.

6.3 Invoice Format. Invoices furnished by Developer to the City under this Section 6, shall be in a form acceptable to the City Controller and the City Representative, shall include reasonable backup documentation, and must include a sequential invoice number. Payment shall be made by the City to Developer at the address specified in Section 14 entitled "Notices," or in such alternate manner as the Parties have mutually agreed upon in writing.

7. Termination by the City.

7.1 Termination for Convenience. The City may, at any time in its sole and absolute discretion, terminate this Agreement for convenience upon written notice to Developer, provided that, concurrently with the delivery of such termination notice, the City pays to Developer (x) the entire unpaid portion of the Development Services Fee, (y) all Office Project Contracts Costs paid and/or incurred by Developer as of the date of termination of this Agreement that were not previously reimbursed by the City, including any termination fees payable in connection with the termination of all Office Project Contracts unless the City assumes all obligations thereunder and Developer is released from its obligations thereunder, and (z) any Reimbursable Expenses that have accrued under this Agreement as of the date this Agreement is terminated.

8. Default; Remedies.

8.1 Developer Default. The following shall be deemed an “event of default” by Developer under this Agreement:

(i) Other than as expressly provided in clause (ii) below, Developer shall fail to comply with any provision, term, condition or covenant of this Agreement and shall not cure such failure within thirty (30) days after written notice thereof to Developer; provided that if such default cannot reasonably be cured within such thirty (30) day period and Developer shall have commenced to cure such default within such thirty (30) day period and thereafter diligently and expeditiously proceeds to cure the same, such thirty (30) day period shall be extended for so long as reasonably required to allow Developer in the exercise of due diligence to cure such default; or

(ii) Developer shall fail to provide its approval, disapproval or determination as to any matters requiring the same in accordance with the time periods set forth in Section 2.3.

8.2 City Default. The following shall be deemed an “event of default” by the City under this Agreement:

(i) Other than as expressly provided in clauses (ii) and (iii) below, the City shall fail to comply with any provision, term, condition or covenant of this Agreement and shall not cure such failure within thirty (30) days after written notice thereof to City; provided that if such default cannot reasonably be cured within such thirty (30) day period and City shall have commenced to cure such default within such thirty (30) day period and thereafter diligently and expeditiously proceeds to cure the same, such thirty (30) day period shall be extended for so long as reasonably required to allow the City in the exercise of due diligence to cure such default;

(ii) The City shall fail to pay Developer when due, the Development Services Fee, the Reimbursable Expenses, the Office Project Contract Costs or any other amounts the City is required to pay hereunder, and such failure shall continue for a period of ten (10) business days after written notice thereof to the City; or

(iii) The City shall fail to provide its approval, disapproval or determination as to any matters requiring the same in accordance with the time periods set forth in Section 2.3 above.

8.3 Non-Binding Mediation.

(a) Upon an alleged default, either party may request non-binding mediation by delivering a written request for mediation (“Mediation Request”) to the other party. The Mediation Request must include a summary of the issue in dispute and the position of the parties, together with any backup information or documentation it elects to provide. Within fifteen (15) days after receipt of the Mediation Request, the responding party may agree to meet and confer promptly with the requesting party to attempt to resolve the matter. In the absence of such agreement, or if the meet and confer does not resolve the matter promptly, the party who requested approval may submit the matter for mediation to JAMS in the City.

(b) The parties will cooperate with JAMS and with one another in selecting a mediator from a JAMS panel of neutrals and in scheduling the mediation proceedings as quickly as feasible. The parties agree to participate in the mediation in good faith. Neither party may commence or if commenced, continue, a civil action with respect to the matters submitted to mediation until after the completion of the

initial mediation session. The parties will each pay their own costs and expenses in connection with the mediation, and the party that requested mediation will pay all costs and fees of the mediator. Without limiting the foregoing, the provisions sections 1115 through 1128 of the California Evidence Code, inclusive, will apply in connection with any mediation.

(c) The provisions of sections 1152 and 1154 of the California Evidence Code will apply to all settlement communications and offers to compromise made during the mediation.

(d) Upon the failure of any agreed-upon mediation to resolve the default in question, the Parties may pursue such rights and remedies as are available under this Agreement – the Parties agreeing that the aforementioned mediation process is a non-binding process.

8.4 **City Remedies.** Upon the occurrence of an “event of default” by Developer (following the expiration of all notice and cure periods and any mediation under Section 8.3), as the City’s sole and exclusive remedy, the City shall have the right to (i) enforce specific performance of this Agreement or (ii) if specific performance is not available (or does not provide a commercially reasonable remedy to the City, as determined by a court), terminate this Agreement upon written notice to Developer, whereupon (x) Developer shall be entitled to retain all Development Services Fees previously paid by the City before the date of termination, (y) within thirty (30) days following the City’s election to terminate this Agreement, the City shall reimburse Developer for all Office Project Contracts Costs paid or incurred by Developer as of the date this Agreement is terminated and that were not previously reimbursed by the City, which shall include all termination fees payable in connection with the termination of all Office Project Contracts unless the City assumes all obligations thereunder, and (z) within thirty (30) days following the City’s election to terminate this Agreement, the City shall reimburse Developer for any Reimbursable Expenses that have accrued under this Agreement as of the date of termination (and, if not previously paid, Developer shall pay the amount due and owing to the appropriate third party upon receipt).

8.5 **Developer Remedies.** Upon the occurrence of an “event of default” by the City (following the expiration of all notice and cure periods and any mediation under Section 8.3), as Developer’s sole and exclusive remedy, Developer shall have the right to (i) enforce specific performance of this Agreement or (ii) if specific performance is not available (or does not provide a commercially reasonable remedy to Developer, as determined by a court), then terminate this Agreement upon written notice to the City, whereupon the City shall pay the Developer (x) the entire unpaid portion of the Development Services Fee, (y) all Office Project Contract Costs paid or incurred by Developer as of the date this Agreement is terminated and that were not previously reimbursed by the City, which shall include all termination fees payable in connection with the termination of all Office Project Contracts unless the City assumes all obligations thereunder, and (z) payment for any Reimbursable Expenses that have accrued under this Agreement as of the date this Agreement is terminated (and, if not previously paid, Developer shall pay the amount due and owing to the appropriate third party upon receipt).

8.6 **Payments Following Default.** Any payments due to Developer or the City under Section 8.4 or Section 8.5 shall be made within thirty (30) days following the date that amount due is determined, as determined by the applicable court (unless otherwise agreed to by the parties).

9. Office Project Signage.

Developer may maintain reasonable and customary signage at the Development Site specifying Developer’s role in the Office Project.

10. Insurance.

10.1 Developer Insurance. Developer shall procure and maintain, at its cost and expense, insurance relating to the Office Project set forth on Exhibit F attached hereto.

10.2 Developer Obligations to Submit Reports. Upon receipt of notice thereof, Developer shall promptly investigate and make a written report to any insurance company providing coverage to the City with respect to the Office Project, with a copy to the City, of all accidents, claims, or damage relating to the Office Project within the scope of the Developer Services, any damage or destruction to the Office Project and the estimated cost of repair thereof, and shall prepare such further reports required by any such insurance company in connection therewith.

10.3 Developer Obligation to Furnish Information. Developer shall furnish whatever information is reasonably requested by the City for the purpose of establishing the placement of insurance coverages required by the City and shall aid and cooperate in every reasonable way with respect to such insurance and any loss thereunder. All policies covering real or personal property which either Party obtains affecting the Office Project shall include a clause or endorsement denying the insurer any rights of subrogation against the other Party to the extent rights have been waived by the insured before the occurrence of injury or loss, if the same are obtainable. Developer and the City waive any rights of recovery against the other for injury or loss due to hazards covered by policies of insurance containing such a waiver of subrogation clause or endorsement to the extent of the injury or loss covered thereby.

11. Assignment.

11.1 The City Assignment. The City shall not be permitted to assign its rights under this Agreement without the prior written approval of Developer, which consent may be withheld or granted in Developer's sole discretion; provided, however, notwithstanding the foregoing, the City shall have the right to assign this Agreement to a nominee in connection with the COPs issuance, as set forth in the PSA.

11.2 Developer Assignment. The services to be performed by Developer under this Agreement are personal to Developer and Developer may not assign or transfer this Agreement or any rights or benefits under this Agreement to any person or entity without the prior written approval of the City, which consent may be granted or withheld in the City's sole discretion.

11.3 Obligations Binding on Permitted Assigns. All of the covenants, conditions and obligations contained in this Agreement shall be binding upon and inure to the benefit of the respective permitted successors and assigns of the City and Developer.

11.4 No Release of Liability. Notwithstanding any assignment by the City of its rights under this Agreement, in no event shall the City be released from any of its obligations or liabilities hereunder, and if requested by Developer, the City shall covenant in writing to be jointly and severally liable with its assignee for all of its obligations and liabilities hereunder. Notwithstanding any assignment by Developer of its rights under this Agreement, in no event shall Developer be released from any of its obligations or liabilities hereunder, and if requested by the City, Developer shall covenant in writing to be jointly and severally liable with its assignee for all of its obligations and liabilities hereunder.

12. Rights in Deliverables.

12.1 Ownership of Results. Any interest of Developer or its subcontractors, in the Deliverables, including any drawings, plans, specifications, blueprints, studies, reports, memoranda, computation sheets, computer files and media or other documents prepared by Developer or its subcontractors, shall become the property of and will be transmitted to the City upon the Final Completion of the Office Project or earlier termination of this Agreement. However, unless expressly prohibited elsewhere in this Agreement, Developer may retain and use copies for reference and as documentation of its experience and capabilities.

12.2 Works for Hire. If, in connection with Developer Services, Developer or the Project Contractors create Deliverables including, without limitation, artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, blueprints, source codes, or any other original works of authorship, whether in digital or any other format, such works of authorship shall be works for hire as defined under Title 17 of the United States Code, and all copyrights in such works shall be the property of the City effective upon the Final Completion of the Office Project or earlier termination of this Agreement. If any Deliverables created by Developer or the Project Contractors under this Agreement are ever determined not to be works for hire under U.S. law, Developer, effective upon the Final Completion of the Office Project or earlier termination of this Agreement, hereby assigns all Developer's copyrights to such Deliverables to the City, agrees to provide any material and execute any documents necessary to effectuate such assignment, and agrees to use commercially reasonable efforts to include a clause in every subcontract imposing the same duties upon subcontractor(s). With the City's prior written approval, Developer and the Project Contractors may retain and use copies of such works for reference and as documentation of their respective experience and capabilities.

12.3 Assignment of Office Project Contracts. Upon Final Completion of the Office Project or earlier termination of this Agreement and payment to Developer of all amounts to which it is entitled under this Agreement, Developer shall assign to the City all of Developer's right, title and interest in and to the Deliverables by an assignment of Intangible Property in form attached hereto as Exhibit J (the "**Assignment of Intangible Property**"). All of the Office Project Contracts shall permit assignment to the City, together with all warranties and guarantees, without the prior consent of the Project Contractor and without any payment to the Project Contractor.

13. Additional Requirements; Certain Requirements Incorporated by Reference

13.1 Laws Incorporated by Reference. The full text of the laws expressly listed in this Section 13, including enforcement and penalty provisions, are incorporated by reference into this Agreement. The full text of the San Francisco Municipal Code provisions expressly incorporated by reference in this Section 13 and elsewhere in the Agreement are available at www.sfgov.org under "Government."

13.2 Conflict of Interest. By executing this Agreement, Developer certifies that it does not know of any fact which constitutes a violation of Section 15.103 of the City's Charter; Article III, Chapter 2 of City's Campaign and Governmental Conduct Code; Title 9, Chapter 7 of the California Government Code (Section 87100 et seq.), or Title 1, Division 4, Chapter 1, Article 4 of the California Government Code (Section 1090 et seq.), and further agrees promptly to notify the City if it becomes aware of any such fact during the term of this Agreement.

13.3 Prohibition on Use of Public Funds for Political Activity. In performing the Developer Services, Developer shall comply with San Francisco Administrative Code Chapter 12G, which prohibits

funds appropriated by the City for this Agreement from being expended to participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure. Developer is subject to the enforcement and penalty provisions in Chapter 12G.

13.4 Nondisclosure of Private, Proprietary or Confidential Information.

(a) If this Agreement requires the City to disclose “Private Information” to Developer within the meaning of San Francisco Administrative Code Chapter 12M, Developer shall use such information only in accordance with the restrictions stated in Chapter 12M and in this Agreement and only as necessary in performing the Developer Services. Developer is subject to the enforcement and penalty provisions in Chapter 12M.

(b) In the performance of Developer Services, Developer may have access to the City's proprietary or confidential information, the disclosure of which to third parties may damage the City. If the City discloses proprietary or confidential information to Developer, then, to the extent Developer is advised in writing that such information is proprietary or confidential, such information must be held by Developer in confidence and used only in performing this Agreement, subject to Developer’s right to disclose such information as may be required by Court order or applicable law. Developer shall exercise the same standard of care to protect such information as a reasonably prudent person would use to protect its own proprietary or confidential information.

13.5 Nondiscrimination Requirements.

(a) Non Discrimination in Contracts. Developer shall comply with the provisions of Chapters 12B and 12C of the San Francisco Administrative Code. Developer is subject to the enforcement and penalty provisions in Chapters 12B and 12C to the extent applicable to Developer.

(b) Nondiscrimination in the Provision of Employee Benefits. San Francisco Administrative Code 12B.2. Developer does not as of the date of this Agreement, and will not during the term of this Agreement, in any of its operations in San Francisco, on real property owned by San Francisco, or where work is being performed for the City elsewhere in the United States, discriminate in the provision of employee benefits between employees with domestic partners and employees with spouses and/or between the domestic partners and spouses of such employees, subject to the conditions set forth in San Francisco Administrative Code Section 12B.2.

13.6 Minimum Compensation Ordinance. Developer shall pay covered employees no less than the minimum compensation required by San Francisco Administrative Code Chapter 12P. Developer is subject to the enforcement and penalty provisions in Chapter 12P. By signing and executing this Agreement, Developer certifies that it is in compliance with Chapter 12P.

13.7 Health Care Accountability Ordinance. Developer shall comply with San Francisco Administrative Code Chapter 12Q as applicable to Developer’s work under this Agreement. To the extent applicable, (i) Developer shall choose and perform one of the Health Care Accountability options set forth in San Francisco Administrative Code Chapter 12Q.3 and (ii) Developer is subject to the enforcement and penalty provisions in Chapter 12Q.

13.8 First Source Hiring Program. Developer must comply with the First Source Hiring Program, Chapter 83 of the San Francisco Administrative Code, that apply this Agreement, and Developer is subject to the enforcement and penalty provisions of Chapter 83.

13.9 Alcohol and Drug-Free Workplace. The City reserves the right to deny access to, or require Developer to remove from, the City facilities personnel of any Developer or subcontractor who the City has reasonable grounds to believe has engaged in alcohol abuse or illegal drug activity which in any way impairs the City's ability to maintain safe work facilities or to protect the health and well-being of the City employees and the general public. The City shall have the right of final approval for the entry or re-entry of any such person previously denied access to, or removed from, the City facilities. Illegal drug activity means possessing, furnishing, selling, offering, purchasing, using or being under the influence of illegal drugs or other controlled substances for which the individual lacks a valid prescription. Alcohol abuse means possessing, furnishing, selling, offering, or using alcoholic beverages, or being under the influence of alcohol.

13.10 Limitations on Contributions. By executing this Agreement, Developer acknowledges that it is familiar with section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, or for a grant, loan or loan guarantee, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or the board of a state agency on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. The prohibition on contributions applies to each prospective Party to the contract; each member of Developer's board of directors; Developer's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Developer; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Developer. Developer must inform each such person of the limitation on contributions imposed by Section 1.126 and provide the names of the persons required to be informed to the City.

13.11 Consideration of Criminal History in Hiring and Employment Decisions.

(a) Developer agrees to comply fully with and be bound by the provisions of Chapter 12T, "City Contractor/Subcontractor Consideration of Criminal History in Hiring and Employment Decisions," of the San Francisco Administrative Code ("**Chapter 12T**"), including the remedies provided, and implementing regulations, as may be amended from time to time. The provisions of Chapter 12T are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of the Chapter 12T is available on the web at <http://sfgov.org/olse/fco>. A partial listing of some of Developer's obligations under Chapter 12T is set forth in this Section. Developer is required to comply with all of the applicable provisions of 12T, irrespective of the listing of obligations in this Section. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12T.

(b) The requirements of Chapter 12T shall only apply to Developer's operations to the extent those operations are in furtherance of the performance of this Agreement, shall apply only to applicants and employees of Developer who would be or are performing work in furtherance of this Agreement, and shall apply when the physical location of the employment or prospective employment by Developer of an individual is wholly or substantially within the City of San Francisco. Chapter 12T shall not apply when the application in a particular context would conflict with federal or state law or with a requirement of a government agency implementing federal or state law.

13.12 Tropical Hardwood and Virgin Redwood Ban. Pursuant to San Francisco Environment Code Section 804(b), the City urges Developer not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product.

13.13 Preservative Treated Wood Products. Developer shall comply with the applicable provisions of San Francisco Environment Code Chapter 13, which requires that contractors purchasing preservative-treated wood products on behalf of the City, shall only purchase such products from the list of alternatives adopted by the Department of the Environment pursuant to Section 1302 of Chapter 13, unless otherwise granted an exemption by the terms of that Chapter.

13.14 Compliance with Laws. Developer shall use commercially reasonable efforts to cause each Project Contractor, to remain fully informed of and comply with the applicable provisions of the Charter, ordinances and regulations of the City and other local agencies having jurisdiction over their work, and all federal and state laws and regulations in any manner affecting the Office Project Contracts, the performance of the work thereunder, or those persons engaged therein. Developer shall require compliance with, and shall use good faith efforts to ensure all construction and materials provided under the Office Project Contracts shall be in full accordance with, the applicable provisions of the latest laws and requirements, as the same may be amended, updated or supplemented from time to time, of the Code specified in the Office Project Contracts, Americans with Disability Act Accessibility Guidelines, CAL-OSHA, the State Division of Industrial Safety of the Department of Industrial Relations, the Division of the State Architect – Access Compliance, the Public Utilities Commission of the State of California, the State Fire Marshal, the National Fire Protection Association, the San Francisco Department of Public Health, state and federal laws and regulations, and of other bodies or officials having jurisdiction or authority over same, and they shall be observed and complied with by Developer and any and all persons, firms and corporations employed by or under it. The City and its agents may at any time, following written notice to Developer, enter upon any part of the work to ascertain whether such laws, ordinances, regulations or orders are being complied with, provided that the City shall have no obligation to do so under this Agreement and no responsibility for such compliance. To the extent applicable to Developer, Developer shall comply with all laws including the applicable provisions of the Charter, ordinances and regulations of the City and local agencies having jurisdiction over it.

14. Notices.

14.1 Any notice required or permitted to be given hereunder and any approval by the parties shall be in writing and shall be (as elected by the Party giving such notice or granting such approval): (i) personally delivered, (ii) delivered by recognized overnight courier, (iii) transmitted by postage prepaid certified mail, return receipt requested, or, (iv) by facsimile or electronic mail with a hard copy sent by one of the other methods described in clauses (i) – (iii) of this Section. Except as otherwise specified herein, all notices and other communications shall be deemed to have been duly given on the earlier to occur of: (i) the date of receipt if delivered personally; (ii) on the next business day if sent by overnight courier; (iii) five (5) days after the date of posting if transmitted by mail; or (iv) the date of transmission with confirmed answerback if transmitted by facsimile or electronic mail. Either Party may change its address for purposes hereof by notice given to the other Party. Notwithstanding the foregoing to the contrary, any notice of default must be sent by registered mail.

14.2 Notices, requests and approvals hereunder shall be directed as follows:

the City: Real Estate Division
The City and County of San Francisco
25 Van Ness Avenue, Suite 400
San Francisco, California 94102
Attn: Director of Property
Re: **Goodwill Office Building**
Facsimile No.: (415) 552-9216

with copy to: Charles Sullivan
Deputy the City Attorney
Office of the City Attorney
The City Hall, Room 234
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4682
Re: **Goodwill Office Building**
Facsimile No.: (415) 554-4755

Developer: Goodwill SF Urban Development, LLC
18201 Von Karman Ave., Suite 900
Irvine, CA 92612
Attn: Bill Witte and Frank Cardone
Facsimile No.: ()

with a copies to: Greenberg Traurig LLP
3161 Michelson Drive, Suite 1000
Irvine, California 92612
Attention: L. Bruce Fischer, Esq.
Telephone No.: (949) 732-6670
Fax No.: (949) 732-6501

and

Matthew Witte
100 Bayview Circle
Newport Beach, California 92660
Email address: mwwitte360@gmail.com

15. Compliance with Americans with Disabilities Act.

Developer shall provide the Developer Services in a manner that complies with the Americans with Disabilities Act (ADA), including but not limited to Title II's program access requirements, and all other applicable federal, state and local disability rights legislation.

16. Modification of this Agreement.

This Agreement may not be modified, nor may compliance with any of its terms be waived, except as expressly provided herein. Any modification or waiver must be in writing. “Notices” regarding change in personnel or place, and except by written instrument executed and approved in the same manner as this Agreement.

17. Applicable Law.

This Agreement shall be governed by and construed in accordance with the laws of the State of California without giving effect to the principles of conflicts of laws. Venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be in San Francisco.

18. Severability.

If any term or provision of this Agreement or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

19. Counterparts.

This Agreement may be executed in one or more counterparts, and each of such counterparts shall, for all purposes, be deemed to be an original, but all of such counterparts shall constitute one and the same instrument. The parties agree that their respective signatures transmitted by facsimile or PDF electronic mail shall be deemed binding for all purposes.

20. Benefits and Obligations.

The covenants and agreements herein contained shall (subject to Section 11 hereof) inure to the benefit of, and be binding upon, the parties hereto and their respective heirs, administrators, legal representatives and permitted successors and assigns. No provisions of this Agreement shall inure to the benefit of, or be enforceable by, any creditors, contractors or other third parties.

21. Integration.

This Agreement represents the entire and integrated agreement between the City and Developer and supersedes all prior negotiations, representations or agreements, either written or oral with respect to the subject matter hereof. This Agreement may be amended only by written instrument signed by the City and Developer.

22. Further Assurances.

The City and Developer agree to execute and deliver such further instruments as may be necessary or desirable to effect this Agreement and the covenants and obligations of the parties hereto.

23. Headings.

The headings in this Agreement are solely for convenience of reference and shall not affect its interpretation.

24. Survival.

Notwithstanding anything stated to the contrary in this Agreement, none of the covenants, conditions or indemnities of the Developer or the City under this Agreement shall (a) survive the termination of this Agreement, except in connection with an action by such Party for termination of this Agreement and damages based on the alleged breach of such covenant, condition or indemnity, or (b) survive Final Completion, except that (i) the provisions of Sections 3.6, 12, 13 and 18 shall survive the termination of this Agreement, or Final Completion, as applicable, for a period of one year after either such event occurs, (ii) the provisions of Sections 3.2(b)(y), 5.1 and 5.2 shall survive the termination of this Agreement, or Final Completion, as applicable, for a period of three (3) years after either such event occurs, or, such longer time as is necessary to resolve any issue for which indemnification is asserted under such sections provided a demand is made by the party asserting such indemnification obligations within such three (3) year period, and (iii) the provisions of Sections 5.3, 5.4, 17, 18 and 25 shall survive the termination of this Agreement, or Final Completion, as applicable, without limitation.

25. Attorneys' Fees.

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

26. No Waiver.

No failure or delay of either Party in the exercise of any right under this Agreement shall be deemed to be a waiver of such right. No waiver by either Party of any condition under this Agreement for its benefit or any breach under this Agreement shall constitute a waiver of any other or further right or subsequent breach.

27. Ownership of Work Product.

Whether provided by the City or Developer or their respective agents, all of the data, notes, estimates, computations, sketches, photographs, presentations, reports, renderings, computer programs and all other materials relating to the Office Project and the Developer Services (collectively, the “**Works**”) are and shall remain, together with all copyright privileges, the property of the City whether or not the Office Project for which they are made is executed. To the extent Developer has any copyright in the Works, Developer hereby assigns any such copyright to the City. Developer may retain copies, including reproducible copies and intermediate drafts, of the same for information and reference only.

28. Sunshine Ordinance

Developer understands and agrees that under the City’s Sunshine Ordinance (San Francisco Administrative Code, Chapter 67) and the State Public Records Law (Gov. Code section 6250 et seq.), this Agreement and any and all records, information, and materials submitted to the City hereunder are public records subject to public disclosure. Developer hereby acknowledges that the City may disclose any records, information and materials submitted to the City in connection with this Agreement.

29. City's Remedies for False Claims and Other Violations.

Under San Francisco Administrative Code section 6.22(M), any developer, contractor, subcontractor or consultant who violates any provision of Local Hire and Prevailing Wages for Construction (San Francisco Administrative Code sections 6.22 through 6.45), who submits false claims, or who violates against any governmental entity a civil or criminal law relevant to its ability to perform under or comply with the terms and conditions of its agreement, may be declared an irresponsible bidder and debarred according to the procedures set forth in San Francisco Administrative Code section 6.80, et seq. Additionally, any developer, contractor, subcontractor or consultant who submits a false claim may be subject to monetary penalties, investigation, and prosecution as set forth in Administrative Code section 6.80, et seq.

30. MacBride Principles -Northern Ireland.

The provisions of San Francisco Administrative Code §12F are incorporated herein by this reference and made part of this Agreement. By signing this Agreement, Developer confirms that Developer has read and understands that the City urges companies doing business in Northern Ireland to resolve employment inequities and to abide by the MacBride Principles, and urges San Francisco companies to do business with corporations that abide by the MacBride Principles.

[SIGNATURES ARE ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties have executed and delivered this Agreement as of the day and year written above.

CITY

CITY AND COUNTY OF SAN FRANCISCO,
a Charter city and county

By: _____
Name: John Updike
Title: Director of Property

APPROVED AS TO FORM:

DENNIS J. HERRERA, CITY ATTORNEY

By: _____
Name: Charles Sullivan,
Deputy the City Attorney

DEVELOPER

GOODWILL SF URBAN DEVELOPMENT, LLC,
a Delaware limited liability company

BY: **THE NICHOLAS COMPANY, INC.,**
a Delaware corporation, its non-member manager

By: _____
Name: William A. Witte
Title: President

EXHIBITS AND SCHEDULES ATTACHED HERETO

Exhibit A	Legal Description
Exhibit B	Project Budget
Exhibit C	Scope of Developer Services
Exhibit D	Office Project Schedule
Exhibit E	Development Services Fee Payment Schedule
Exhibit F	Developer's Insurance Requirements
Exhibit G	Owner Contractor Requirements
Exhibit H	List of Approved Office Project Contracts
Exhibit I	Local Hire, First Source and LBE Requirements
Exhibit J	Form of Assignment of Intangibles
Schedule 1	Definitions

EXHIBIT A

LEGAL DESCRIPTION

EXHIBIT B

OFFICE PROJECT BUDGET

EXHIBIT C

SCOPE OF DEVELOPER SERVICES

I. DESCRIPTION OF GENERAL SERVICES

A. **General Services.** Unless otherwise provided, the Developer Services identified below and in the Agreement shall extend to the design and construction of the Office Project. Developer shall oversee and monitor all aspects of the design and construction of the Office Project.

1. Administration and Coordination

- (i) In conjunction with the City, prepare for the City's approval the Office Project Plan. Developer shall update or modify the Office Project Plan from time to time upon the request of the City and otherwise when Developer deems necessary, and all such revisions to the Office Project Plan shall be subject to the City's approval.
- (ii) Establish and implement procedures for coordination of all aspects of the Office Project between the City, Developer, and Project Contractors.
- (iii) Negotiate contracts and agreements for all contracted services, including site development, architectural, construction, engineering, testing and consulting services, and provide written recommendations to the City to approve contracts or agreements.
- (iv) Coordinate the services and activities of the General Contractor, Architect, and the other Project Contractors, to facilitate cooperative efforts in the development and implementation of the Office Project Plan.
- (v) Negotiate any documents, instruments or agreements or amendments thereto necessary or appropriate for the implementation of the Office Project and services related thereto, to the extent such documents, instruments or agreements, or amendments thereto, are consistent with the Office Project Plan. Except as otherwise provided in this Agreement, all material documents, instruments, agreements or amendments are subject to the reasonable approval of the City.

2. Management Control Procedures

- (i) Coordinate the performance of all budgeting, billing and payment application review/assimilation functions as necessary or appropriate for and in connection with the coordination of the design and construction activities being conducted pursuant to the Office Project Plan. Such functions shall include, without limitation, the preparation and submittal to the City of a monthly single, comprehensive application for payment in form and substance satisfactory to the City, representing the work completed through the end of the prior calendar month for which payment is requested. The form of application for payment shall include and

incorporate, without limitation, the General Contractor's pay application for any period in which the General Contractor has submitted such application for payment for work performed. The form of application for payment shall also include (i) a statement of Development Services Fee for such month, (ii) a statement of Developer's Reimbursable Expenses for such month, (iii) invoices establishing all other payables for such month, and (iv) such lien releases and other documentation as may be required for payment in accordance with the terms of the agreements with the Architect, General Contractor and other Office Project team members.

- (ii) Establish and implement administration and reporting procedures for the Office Project, including finance, budget and cost controls, as well as supervision of accounting.
- (iii) Coordinate the development and implementation of a procedure/system of Office Project cost control and track actual and projected costs.
- (iv) Oversee the activities of the Project Contractors regarding their performance in accordance with their respective agreements. Upon receipt of knowledge thereof, notify the City of all material deviations and coordinate the implementation of the necessary procedures to rectify the same.
- (v) Recommend to the City and implement the engagement of one or more Contractors to provide construction phase services.
- (vi) Coordinate the scheduling of meetings on a regular basis, or more frequently as the City may reasonably elect, among the City, the Architect, the General Contractor and such other parties as the City may deem necessary or appropriate concerning the Office Project.
- (vii) Consistent with industry standards for similar projects, monitor, manage and oversee the General Contractor's work throughout construction of the Office Project.
- (viii) Review and monitor the General Contractor's monthly construction cost report of expenditures for the Office Project on a monthly basis.
- (ix) Review the Project Budget, as compared to actual expenditures, throughout the construction of the Office Project and advise the City if Developer reasonably believes that the total Office Project Costs are likely to exceed the amounts set forth in the Project Budget and, if such is the case, Developer shall use commercially reasonable efforts to provide the City with proposed alternatives in order to keep the total costs below those set forth in the Project Budget.

3. **Timing and Scheduling**

- (i) Coordinate the development and updating of appropriate Office Project schedules, including a critical path analysis.

- (ii) Oversee the coordination of the individual timing schedules of all Office Project participants so as to conform to the overall Office Project Schedule and manage any necessary adjustments.
- (iii) Monitor the Office Project participants in order to confirm that their individual work capacities and performances continually conform to the overall Office Project Schedule.
- (iv) Endeavor to identify appropriate opportunities for “fast-tracking” the overall Office Project Schedule, evaluate the costs and benefits of such strategies and provide the City with Developer’s recommendations. Endeavor to identify schedule impacts and prepare recovery strategies and budget of costs relating thereto.

4. **Negotiations**

- (i) Negotiate contracts and agreements for all contracted services, including, but not limited to, site development, architectural, construction, engineering, testing and consulting services, where appropriate using the attorneys and Project Contractors recommended by Developer and approved by the City.
- (ii) Upon the City’s request and as may from time to time become necessary, represent the City in resolving conflicts or disputes with, and enforcing the City’s rights against, third parties providing services for the construction of the Office Project.

5. **Reporting**

- (i) Conduct Office Project meetings; review and comment on reports delivered by others.
- (ii) Keep the City informed of all material internal and external Office Project related matters by initiating and distributing relevant information. The level and detail of such information will be mutually reviewed as the Office Project progresses.
- (iii) Use good faith diligent efforts to inform the City of all upcoming meetings in a timely manner.

EXHIBIT D

OFFICE PROJECT SCHEDULE

EXHIBIT E

DEVELOPMENT SERVICES FEE PAYMENT SCHEDULE

1. \$7,250,000.00 of the Development Services Fee will be paid to Developer concurrently with the earlier of (x) execution of this Agreement and (y) the transfer of the Development Site to the City pursuant to the PSA;
2. \$12,000,000.00 of the Development Services Fee will be paid in equal monthly installments of \$_____ during the construction period of the Office Project, commencing on _____ and ending on _____ [Note: to be filled in by the parties upon execution of this Agreement].
3. \$7,250,000 of the Development Services Fee, together with any unpaid portion of the Development Services Fee payable under Paragraph 2 above, will be paid upon Substantial Completion of the Office Project.

EXHIBIT F

INSURANCE REQUIREMENTS

Developer shall obtain insurance in such amounts, coverages and forms as outlined below in this EXHIBIT F. Within five (5) days after the execution of this Agreement, Developer will provide to the City certificates of insurance evidencing full compliance with these insurance requirements and, in the case of all liability insurance required hereunder, naming the City Indemnitees as additional insureds. Such certificates shall be kept current throughout the entire period of performance, and shall provide at least thirty (30) days advance notice to the City if the coverage is to be cancelled, non-renewed or otherwise altered.

Insurance required herein shall be maintained during the entire course of the Agreement.

Pursuant to the foregoing, insurance shall be provided by Developer in the following amounts and coverages

COVERAGES	MINIMUM COVERAGE AMOUNTS
General Liability	\$1M per occurrence \$2M General Aggregate per project, per location
Workers' Compensation	By statute
Employers' Liability	\$1M per occurrence \$1M per employee \$1M policy aggregate disease
Business Auto Liability	\$1M per occurrence
Professional Liability Insurance	\$1M per occurrence

All of the foregoing insurance shall be maintained with insurance companies admitted to do business in the State of California and having an A.M. Best's rating of "A/VIII" or better. General Liability Insurance and Business Auto Liability shall name the City and County of San Francisco, its officers, agents and employees, as additional insured thereunder.

EXHIBIT G

OWNER CONTRACTING REQUIREMENTS

1. **Non Discrimination in the City Contracts and Benefits Ordinance**

(a) **Covenant Not to Discriminate**

In the performance of this Agreement, Project Contractor agrees not to discriminate against any employee of, any City employee working with Project Contractor, or applicant for employment with Project Contractor, 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.

(b) **Subcontracts**

Project Contractor shall include in all contracts and subcontracts relating to the Property a nondiscrimination clause applicable to such subcontractor in substantially the form of subsection (a) above. In addition, Project Contractor shall incorporate by reference in all subcontracts the provisions of sections 12B.2(a), 12B.2(c)-(k) and 12C.3 of the San Francisco Administrative Code and shall require all subcontractors to comply with such provisions. Project Contractor's failure to comply with the obligations in this subsection shall constitute a material breach of this Agreement.

(c) **Non-Discrimination in Benefits**

Project Contractor does not as of the date of this Agreement and will not during the term of this Agreement, in any of its operations in San Francisco, on real property owned by the City, or where the work is being performed for the City or elsewhere within the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in section 12B.2(b) of the San Francisco Administrative Code.

(d) **CMD Form**

As a condition to this Agreement, Project Contractor shall execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (Form CMD-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Contracts Monitoring Division (the "CMD"). Project Contractor hereby represents that before execution of the Agreement: (a) Project Contractor executed and submitted to the CMD Form CMD-12B-101 with supporting documentation, and (b) the CMD approved such form.

2. **Tropical Hardwood and Virgin Redwood Ban**

(a) Except as expressly permitted by the application of sections 802(b) and 803(b) of the San Francisco Environment Code, neither Project Contractor nor any of its contractors shall provide any items to

the City in the construction of the Office Project or otherwise in the performance of this Agreement which are tropical hardwood, tropical hardwood wood products, virgin redwood, or virgin redwood wood products.

(b) The City and County of San Francisco 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 products.

(c) In the event Project Contractor fails to comply in good faith with any of the provisions of Chapter 8 of the San Francisco Environment Code, Project Contractor shall be liable for liquidated damages for each violation in an amount equal to Project Contractor's net profit on the contract, or five percent (5%) of the total amount of the contract dollars, whichever is greatest. Project Contractor acknowledges and agrees that the liquidated damages assessed shall be payable to the City and County of San Francisco upon demand and may be set off against any monies due to Project Contractor from any contract with the City and County of San Francisco.

3. Labor Requirements for Construction

(a) Applicable Labor Laws and Agreements. Compensation and working conditions for labor performed or services rendered (excluding professional design services) under the Office Project Contracts shall be in accordance with the San Francisco Charter, and applicable sections of the San Francisco Administrative Code, including section 6.22(E). The requirements of this Section 3 (collectively, the "Labor Requirements") shall be included in all Office Project Contracts (as applicable), and subcontracts relating to the work, as applicable, unless otherwise agreed to by the City. The Office Project Contracts shall expressly acknowledge the City's right to monitor and enforce the Labor Requirements in all respects and at all times, and to the withhold payments when permitted under the provisions of the Labor Requirements.

(b) Prevailing Wages. The Office Project Contracts shall require payment of the latest Wage Rates for Private Employment on Public Contracts in the City and County of San Francisco, as determined by the San Francisco Board of Supervisors, as same may be changed during the term of this Agreement. Each Project Contractor shall provide, and shall deliver to the City every month during any construction period, certified payroll reports with respect to all persons performing labor in the provision of the work. Copies of the latest prevailing wage rates are on file at the Department of Public Works, the City and County of San Francisco, Bureau Manager, Bureau of Engineering, 30 Van Ness Avenue, 5th Floor, San Francisco, CA, 94103.

(c) Penalties. The Construction Contract shall provide for payment to the City back wages due plus fifty dollars (\$50.00), for: (i) each laborer, workman, or mechanic employed in the provision of the work, for each calendar day or portion thereof during which such laborer, workman, or mechanic is not paid the highest general prevailing rate of wage for the work performed; or (ii) each laborer, mechanic or artisan employed in the provision of the work, for each calendar day or portion thereof during which such laborer, mechanic or artisan is compelled or permitted to work for a longer period than five days (Monday-Friday) per calendar week of eight hours each, and not compensated in accordance with the prevailing overtime standard and rate.

(d) Local Hire, First Source and LBE Requirements. The Construction Contract shall require compliance, as applicable, with the Local Hire, First Source and LBE requirements set forth in Exhibit I, unless otherwise agreed to by the City.

4. Rights and Remedies During Construction

(a) General. The provisions of the Project Contract shall not limit the duties, obligations, rights and remedies otherwise imposed or available by law or in equity. No action or failure to act shall in any way abridge the rights and obligations of the parties to the Project Contract, or condone a breach thereunder, unless expressly agreed to by the parties in writing. All remedies provided in the Project Contract shall be taken and construed as cumulative; that is, in addition to each and every other remedy herein provided, the City shall have any and all equitable and legal remedies that it would in any case have.

(b) No Waiver. No waiver of any breach of any provision of the Project Contract shall be held to be a waiver of any other or subsequent breach. The only waiver by the City shall be a waiver in writing that explicitly states the item or right being waived.

(c) City's Remedies for False Claims and Other Violations. Under San Francisco Administrative Code section 6.22(M), a Project Contractor that fails to comply with the terms of the Project Contract, who violates any provision of Local Hire and Prevailing Wages for Construction (San Francisco Administrative Code sections 6.22 through 6.45), submits false claims, or violates against any governmental entity a civil or criminal law relevant to its ability to perform under or comply with the terms and conditions of the Project Contract, may be declared an irresponsible bidder and debarred according to the procedures set forth in San Francisco Administrative Code section 6.80, et seq. Additionally, a Project Contractor that submits a false claim may be subject to monetary penalties, investigation, and prosecution as set forth in Administrative Code section 6.80, et seq.

(d) Interpretation. The Project Contract shall be interpreted in accordance with the laws of the State of California and the provisions of the City's Charter and Administrative Code.

5. Sunshine Ordinance

Project Contractor understands and agrees that under the City's Sunshine Ordinance (San Francisco Administrative Code, Chapter 67) and the State Public Records Law (Gov. Code section 6250 et seq.), this Agreement and any and all records, information, and materials submitted to the City hereunder are public records subject to public disclosure. Project Contractor hereby acknowledges that the City may disclose any records, information and materials submitted to the City in connection with this Agreement.

6. MacBride Principles - Northern Ireland

The City and County of San Francisco 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 and County of San Francisco also urges San Francisco companies to do business with corporations that abide by the MacBride Principles. Project Contractor acknowledges that it has read and understands the above statement of the City and County of San Francisco concerning doing business in Northern Ireland.

7. Attorneys' Fees

In the event that either Party hereto fails to perform any of its obligations under this Agreement or in the event a dispute arises concerning the meaning or interpretation of any provision of this Agreement, the defaulting Party or the non-prevailing Party in such dispute, as the case may be, shall pay the prevailing Party reasonable attorneys' and experts' fees and costs, and all court costs and other costs of action incurred by the prevailing Party in connection with the prosecution or defense of such action and enforcing or establishing its rights hereunder (whether or not such action is prosecuted to a judgment). For purposes of this Agreement, reasonable attorneys' fees of the City's Office of the City Attorney 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 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. The term "attorneys' fees" shall also include, without limitation, all such fees incurred with respect to appeals, mediations, arbitrations, and bankruptcy proceedings, and whether or not any action is brought with respect to the matter for which such fees were incurred. The term "costs" shall mean the costs and expenses of counsel to the parties, which may include printing, duplicating and other expenses, air freight charges, hiring of experts, and fees billed for law clerks, paralegals, and others not admitted to the bar but performing services under the supervision of an attorney.

8. Conflicts of Interest

Through its execution of this Agreement, Project Contractor acknowledges that it is familiar with the provisions of section 15.103 of the San Francisco 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 Government Code of the State of California, and certifies that it does not know of any facts which would constitute a violation of said provisions, and agrees that if Project Contractor becomes aware of any such fact during the term of this Agreement, Project Contractor shall immediately notify the City.

9. Notification of Limitations on Contributions

Through its execution of this Agreement, Project Contractor acknowledges that it is familiar with section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the selling or leasing of any land or building to or from the City whenever such transaction would require approval by a the City elective officer, the board on which that the City elective officer serves, or a board on which an appointee of that individual serves, from making any campaign contribution to (a) the City elective officer, (b) a candidate for the office held by such individual, or (c) a committee controlled by such individual or candidate, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. Project Contractor acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$50,000 or more. Project Contractor further acknowledges that the prohibition on contributions applies to each Project Contractor; each member of Project Contractor's board of directors, Project Contractor's chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Project Contractor ; any subcontractor listed in the contract; and any committee that is sponsored or controlled by Project Contractor . Additionally, Project Contractor acknowledges that Project Contractor must inform each of the persons described in the preceding sentence of the prohibitions contained in section 1.126. Project Contractor further agrees to provide to the City the name of each person, entity or committee described above.

10. Compliance with Laws

Project Contractor shall remain fully informed of and comply with the applicable provisions of the Charter, ordinances and regulations of the City and other local agencies having jurisdiction over the work, and all federal and state laws and regulations in any manner affecting the contract documents, the performance of the work, or those persons engaged therein. Project Contractor shall require compliance with the applicable provisions of the latest laws and requirements, as the same may be amended, updated or supplemented from time to time, of the Code specified in the contract documents, Americans with Disability Act Accessibility Guidelines, CAL-OSHA, the State Division of Industrial Safety of the Department of Industrial Relations, the Division of the State Architect – Access Compliance, the Public Utilities Commission of the State of California, the State Fire Marshal, the National Fire Protection Association, the San Francisco Department of

Public Health, state and federal laws and regulations, and of other bodies or officials having jurisdiction or authority over same, and they shall be observed and complied with by Project Contractor and any and all persons, firms and corporations employed by or under it. The City and its agents may at any time, following written notice to Project Contractor, enter upon any part of the work to ascertain whether such laws, ordinances, regulations or orders are being complied with, provided that the City shall have no obligation to do so under this Agreement and no responsibility for such compliance. Architect and General Contractor shall comply with the applicable provisions of San Francisco Administrative Code Chapter 6 that are incorporated into the Architect Contract and the Construction Contract, respectively.

11. First Source Hiring Program

Project Contractor must comply with the First Source Hiring Program, Chapter 83 of the San Francisco Administrative Code, and Project Contractor is subject to the enforcement and penalty provisions in Chapter 83.

12. Preservative-Treated Wood Containing Arsenic

Project Contractor may not purchase preservative-treated wood products containing arsenic in the performance of this Lease unless an exemption from the requirements of Environment Code Chapter 13 is obtained from the Department of Environment under Section 1304 of the Environment Code. The term "preservative-treated wood containing arsenic" shall mean wood treated with a preservative that contains arsenic, elemental arsenic, or an arsenic copper combination, including, but not limited to, chromated copper arsenate preservative, ammoniac copper zinc arsenate preservative, or ammoniacal copper arsenate preservative. Project Contractor may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared and adopted by the Department of Environment. This provision does not preclude Project Contractor from purchasing preservative-treated wood containing arsenic for saltwater immersion. The term "saltwater immersion" shall mean a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

13. Resource Efficient City Buildings and Pilot Projects

Project Contractor acknowledges that the City and County of San Francisco has enacted San Francisco Environment Code Sections 700 to 713 relating to green building requirements for the design, construction, and operation of City buildings. Project Contractor hereby agrees that it shall comply with all applicable provisions of such code sections.

14. Liability for Use of Equipment

The City shall not be liable for any damage to persons or property as a result of the use, misuse or failure of any equipment used by Project Contractor, or any of its subcontractors, or by any of their employees, even though such equipment is furnished, rented or loaned by the City.

15. Copyright Infringement

Project Contractor shall indemnify, defend and hold the City harmless from and against all claims for infringement of the patent rights, copyright, trade secret, trade name, trademark, service mark, or any other proprietary right of any person or persons in consequence of the use by the City of the materials or work provided by Project Contractor.

EXHIBIT H

LIST OF APPROVED DEVELOPMENT AND CONSTRUCTION CONTRACTS

EXHIBIT I

LOCAL HIRE, FIRST SOURCE AND LOCAL BUSINESS ENTERPRISE PROGRAM REQUIREMENTS

1. Local Hiring Requirement.

1.1. General Provisions.

- 1.1.1. Developer shall comply with all applicable requirements of the San Francisco Local Hiring Policy for Construction ("Policy") as set forth in section 6.22(G) of the San Francisco Administrative Code. The provisions of the Policy are incorporated by references into this Agreement. Developer agrees that Developer has had a full and fair opportunity to review and understand the terms of the Policy.
- 1.1.2. Developer shall require the General contractor and all contractors or subcontractors performing construction work on behalf of the Developer as part of the Office Project to comply with all applicable requirements of the Policy.
- 1.1.3. Developer agrees that the Office of Economic and Workforce Development ("OEWD") will have the authority to enforce all terms of the Policy. Further information on the Policy and its implementation may be found at the OEWD website at: www.workforcedevelopmentsf.org.

1.2. Local Hire Requirements. Developer shall comply with the following:

- 1.2.1. Local Hire by Construction Trade: Mandatory participation level in terms of Project Work Hours within each trade to be performed by Local Residents is 30%, with a goal of no less than 15% of Project Work Hours within each trade to be performed by Disadvantaged Workers.
- 1.2.2. Local Apprentices: At least 50% of the Project Work Hours performed by apprentices within each construction trade shall be performed by local residents, with a goal of no less than 25% of Project Work Hours performed by apprentices within each trade to be performed by Economically Disadvantaged Workers.
- 1.2.3. Construction Contracts: Developer, shall include the terms of this Policy in the contract with the General Contractor and in every construction contract and subcontract entered in to for construction of the Office Project. Developer shall notify OEWD immediately upon execution of all construction contracts.
- 1.2.4. Preconstruction Meeting: Prior to commencement of construction, General Contractor and all construction subcontractors shall attend a preconstruction meeting convened OEWD staff. Representatives from General Contractor and all construction subcontractors who attend the pre-construction meeting must have hiring authority.
- 1.2.5. Forms and Payroll Submittal: General Contractor and all construction subcontractors shall utilize the City's web based payroll system to submit all of OEWD's required Local Hiring Forms and Certified Payroll Reports. The General

Contractor shall submit Local Hiring Forms prior to commencement of construction and within 15 calendar days from award of contract. The General Contractor must submit payroll information on all subcontractors who will perform construction work on the Office Project regardless of tier and contract amount. The General Contractor and all construction subcontractors shall submit Certified Payroll Reports on a weekly basis.

- 1.2.6. Recordkeeping: General Contractor and all construction subcontractors shall keep, or cause to be kept, for a period of four years from the date of completion of project work, payroll and basic records, including time cards, tax forms, and superintendent and foreman daily logs, for all workers within each trade performing work on the Office Project. Such records shall include the name, address and social security number of each worker who worked on the covered project, his or her classification, a general description of the work each worker performed each day, the apprentice or journey-level status of each worker, daily and weekly number of hours worked, the self-identified race, gender, and ethnicity of each worker, whether or not the worker was a local resident, and the referral source or method through which the contractor or subcontractor hired or retained that worker for work on the project. General Contractor and all construction subcontractors may verify that a worker is a local resident by following OEWD's domicile policy. All records described in this subsection shall at all times be open to inspection and examination by OEWD.
- 1.2.7. Monitoring. From time to time and in its sole discretion, OEWD may monitor and investigate compliance of General Contractor and all construction subcontractors working on the Office Project. Contractor shall allow representatives of OEWD, in the performance of their duties, to engage in random inspections of the Site. Contractor and all Subcontractors shall also allow representatives of OEWD to have access to employees of General Contractor and all construction subcontractors and the records required to be maintained under the Policy.
- 1.2.8. Noncompliance and Penalties. Failure of General Contractor and/or its construction subcontractors to comply with the requirements of the Policy may subject General Contractor to the consequences of noncompliance specified in Section 6.22(G)(7)(f) of the Administrative Code, including but not limited to the penalties prescribed in Section 6.22(G)(7)(f)(ii). In the event the General Contractor fails to adhere to the penalties administered by OEWD, the Developer will be responsible for penalties for noncompliance. The assessment of penalties for noncompliance shall not preclude the City from exercising any other rights or remedies to which it is entitled. Refer to Administrative Code Section 6.22(G)(7)(f)(iv) for a description of the recourse procedure applicable to penalty assessments under the Policy.

2. First Source Requirements

2.1. General Provisions and Definitions.

- 2.1.1. Developer shall participate in the Workforce System program managed by the Office of Economic and Workforce Development ("OEWD") as established by the City pursuant to Chapter 83 of the San Francisco Administrative Code ("First Source Hiring Policy"). The provisions of the First Source Hiring Policy are incorporated by references into this Agreement. Developer agrees that Developer has had a full and fair opportunity to review and understand the terms of the First Source Hiring Policy.

2.1.2. Developer shall require the Architect and all contractors or subcontractors performing professional services in excess of \$50,000 on behalf of the Developer as part of the Office Project to comply with all applicable requirements of the First Source Hiring Policy.

2.2. Developer agrees that OEWD will have the authority to enforce all terms of the First Source Hiring Policy. Further information on the First Source Hiring Policy and its implementation may be found at the OEWD website at: www.workforcedevelopmentsf.org.

2.3. Definitions. For purposes of this section, the following terms shall be defined as follows:

2.3.1. "Entry Level Position" means 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.

2.3.2. "Workforce System" means the First Source Hiring Administrator established by the City and managed by OEWD.

2.3.3. "Referral" means 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.

2.3.4. **OEWD Workforce System Participation Requirements.** Architect and all professional services contractors and subcontractors shall notify OEWD's Business Team of every available Entry Level Position for work performed by the Architect and all professional services contractors and subcontractors in the City and provide OEWD 10 business days to recruit and refer qualified candidates prior to advertising such position to the general public. Architect and all professional services contractors and subcontractors 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 Architect and all professional services contractors and subcontractors no later than 10 business days after date of interview or hire. Architect and all professional services contractors and subcontractors will also provide feedback on reasons as to why referrals were not hired. Architect and all professional services contractors and subcontractors 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 Architect and all professional services contractors and subcontractors. Failure to comply with the terms of the First Source Hiring Policy may result in penalties as defined in Chapter 83 of the Administrative Code.

3. Local Business Enterprise Program Requirements

3.1. Purpose. Developer agrees to partner with the Contract Monitoring Division ("CMD") to provide Local Business Enterprises ("LBE") with meaningful opportunities to participate in the construction of the Office Project.

3.2. LBE Participation Goal. Developer agrees to make good faith efforts to award at least 20 percent of the cost of all professional services and 15 percent of construction contracts awarded by Developer as part of the Office Project to LBE businesses certified by CMD pursuant to Chapter 14B of the Administrative Code.

3.3. Reporting. Beginning as of the PSA Ratification Date and every six months thereafter, Developer shall report in writing to the Director of Real Estate with a copy to the Director of CMD a summary of Developer's attainment of the LBE Participation Goal.

EXHIBIT J

**ASSIGNMENT OF CONTRACTS, WARRANTIES AND GUARANTIES AND OTHER
INTANGIBLE PROPERTY**

THIS ASSIGNMENT is made and entered into as of this _____ day of _____, 20_____, (the “**Effective Date**”) by and between _____, a _____ (“Assignor”), and the CITY AND COUNTY OF SAN FRANCISCO, a Charter city and county (“Assignee”).

FOR GOOD AND VALUABLE CONSIDERATION, the receipt of which is hereby acknowledged, effective as of the Effective Date, Assignor hereby assigns and transfers to Assignee, and Assignee assumes, all of Assignor's rights, obligations, claims, title, and interest in and under:

A. all warranties and guaranties made by or received from any third party with respect to any building, building component, structure, system, fixture, machinery, equipment, or material situated on, contained in any building or other improvement situated on, or comprising a part of any building or other improvement situated on, any part of that certain real property described in Exhibit A attached hereto (the “Office Parcel”) including, without limitation, those warranties and guaranties listed in Schedule 1 attached hereto (collectively, "Warranties");

B. any intangible personal property now or hereafter owned by Assignor and used in the ownership, use or operation of the Office Parcel, including the Assumed Contracts listed in Schedule 1.

ASSIGNOR AND ASSIGNEE FURTHER HEREBY AGREE AND COVENANT AS FOLLOWS:

1. In the event of any litigation between Assignor and Assignee arising out of this Assignment, the losing party shall pay the prevailing party's costs and expenses of such litigation, including, without limitation, attorneys' fees.

3. This Assignment shall be binding on and inure to the benefit of the parties hereto, their heirs, executors, administrators, successors in interest and assigns.

4. This Assignment shall be governed by and construed in accordance with the laws of the State of California.

5. This Assignment may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have executed this Assignment as of the date first written above.

ASSIGNOR:

a _____

By: _____

[NAME]

Its: _____

ASSIGNEE:

CITY AND COUNTY OF SAN
FRANCISCO, a Charter city and county

By: _____

[NAME]

Its: _____

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

By: _____

[DEPUTY'S NAME]

Deputy City Attorney

SCHEDULE 1

DEFINED TERMS

As used in this Agreement (unless otherwise specifically provided), the following terms shall mean the following:

“**Agreement**” shall have the meaning set forth in the initial paragraph hereof, including all attached Exhibits or Appendices.

“**Affiliate**” means, with respect to a Person, any other Person(s) that, directly or indirectly through one or more intermediaries, Controls, is Controlled by or is under common Control with the first person.

“**Approved Draw**” shall have the meaning set forth in Section 3.4

“**Approved Soft Costs**” means those costs more particularly delineated on Schedule 1.A. attached hereto. [*need to see this*]

“**Architect**” means SOM, a New York limited liability partnership or such architect who is selected to serve as the principal architect for the Office Project.

“**Assignment of Intangible Property**” shall have the meaning set forth in Section 12.

“**City**” shall mean the City and County of San Francisco, a municipal corporation, acting by and through its Real Estate Division.

“**City Indemnitees**” shall mean the City and its boards and commissions and all of their officers, directors, members, managers, employees, affiliates, agents, successors and assigns.

“**City’s Representative**” shall have the meaning set forth in Section 4.2.

“**Claims**” means all losses, damages, charges, liabilities, claims, costs, expenses (including reasonable attorneys’ fees and expenses) and suits or other asserted causes of action of any nature whatsoever, but specifically excluding special, indirect, consequential, remote, incidental or punitive damages or damages associated with lost profits or opportunities.

“**CMD**” means the Contract Monitoring Division of the City.

“**Control**” and “**Controlled by**” means the ability, directly or indirectly, whether through the ownership of voting securities, by contract, or otherwise (including by being a general partner, managing member, officer or director of the Person in question), to both (a) direct or cause the direction of the management and policies of a Person, and (b) conduct the day-to-day business operations of a Person.

“**Construction Contract**” means the _____.

“**COPs**” means the certificates of participation issued by the City on or before the effective date of this Agreement to pay all Office Project Costs.

“**Deliverables**” means Developer's work product resulting from the Developer Services that are provided by Developer to the City during the course of Developer's performance of the Agreement, including

without limitation, the Office Project Contracts and all work product arising out of the Office Project Contracts and all work product otherwise described in Section 3 of this Agreement.

“**Developer**” shall have the meaning set forth in the initial paragraph of this Agreement.

“**Developer Parties**” shall mean Developer and its Affiliates and their respective direct and indirect partners, shareholders, directors, officers, members, managers, employees, agents, successors and assigns.

“**Developer Services**” means administrative, coordinative and supervisory services in connection with the planning and construction management for the Development Site as more particularly set forth in this Agreement and on Exhibit C attached hereto and made a part hereof and any other project management services reasonably incidental thereto or reasonably inferable therefrom.

“**Development Services Fee**” shall have the meaning set forth in Section 6.1.

“**Development Site**” shall have the meaning set forth in the recitals hereof.

“**Final Completion**” means the completion of the Office Project as evidenced by the issuance of a certificate of occupancy or equivalent for the Office Project.

“**General Contractor**” means Swinerton or such replacement general contractor selected by the City and Developer to construct the Office Project in accordance with this Agreement.

“**Office Project**” shall have the meaning set forth in the recitals hereto.

“**Project Budget**” means the budget for the Office Project attached here to as Exhibit B, prepared by Developer and approved by the City, as the same may be amended by the City from time to time.

“**Office Project Contracts**” shall have the meaning set forth in Section 3.2(a).

“**Office Project Contract Costs**” shall have the meaning set forth in Section 3.2(b).

“**Project Coordinator**” shall have the meaning set forth in Section 3.3.

“**Office Project Costs**” shall mean the sum of (a) \$_____ [the purchase price and other amounts paid by City in connection with the City’s acquisition of the Development Site (including carrying costs while Developer holds title to the Development Site) is to be inserted], plus (b) all other costs and expenses incurred (in addition to those covered by clause (a) above) in connection with the design, development and construction of the Office Project, which is anticipated to be approximately \$_____.

“**Office Project Development Approvals**” means all approvals, permits, variances, licenses, certificates of occupancy, easements, assessments, required or desirable in connection with the development and construction of the Office Project and as contemplated in the Office Project Plan.

“**Office Project Plan**” means a development plan for the Office Project prepared by Developer under this Agreement, including the Project Budget and Office Project Schedule, as the same may be amended by the City from time to time.

“**Office Project Schedule**” means the anticipated schedule for the Office Project attached hereto as Exhibit D, as the same may be amended by the City from time to time.

“Owner Contracting Requirements” shall have the meaning set forth in Section 3.2(g) as listed in Exhibit G.

"Party" and "Parties" mean the City and Developer either collectively or individually.

“Person” means a natural person, corporation, partnership, limited liability company, trust, joint venture, unincorporated association, governmental authority or other entity.

“Plans and Specifications” means the plans and specifications prepared by the Architect and adopted by the City, as the same may be amended by Developer with the approval of the City from time to time pursuant to this Agreement.

“Pre-Approved Office Project Contract” shall mean any Office Project Contract which satisfies the following requirements: (x) the amount of such Office Project Contract is less than \$250,000, (y) such Office Project Contract does not increase the Project Budget, and (z) which includes the applicable provisions set forth in Exhibit G attached hereto (provided, if such Office Project Contract is \$50,000 or less, then only paragraphs 1, 2, 3 (for construction contracts), 5, 6, 8, 9 and 12 of Exhibit G shall apply).

“Project Contractors” means all architects, engineers, consultants, contractors, subcontractors and suppliers retained by Developer for the Office Project in accordance with this Agreement, including the General Contractor and the Architect.

“Reimbursable Expenses” shall have the meaning set forth in Section 6.2.

“Substantial Completion” means the issuance of a temporary certificate of occupancy or equivalent for the Office Project.