

Exhibit E2

Local Business Enterprise (LBE) Utilization Program.

The development plan for Mission Rock under the Transaction Documents provides for the development of a new mixed-use neighborhood composed of commercial/office, retail, garage, market rate and affordable residential uses and major new and expanded parks. This Workforce Development Plan sets forth the activities Developer and Vertical Developer shall undertake, and require their Contractors, Consultants, Subcontractors, Subconsultants, and Commercial Tenants, as applicable, to undertake, to support local business enterprises in both the construction and operations phases of the Project, as set forth in this Exhibit E2.¹

The Port and Developer shall enter into the DDA which will provide for the development of the Project in a series of Phases. In connection with the DDA, the Port and the Developer will enter into a Master Lease providing Developer the right to construct Horizontal Improvements within the Project. Developer will enter into contracts with Contractors and Consultants to construct all Horizontal Improvements allowed under the Master Lease.

Developer will submit Phase Submittals to the Port pursuant to the Transaction Documents. Following each Phase Approval, the Port will authorize the Chief Harbor Engineer to issue Port permits necessary for Developer to begin to construct Horizontal Improvements in accordance with the DDA and the Master Lease. Upon exercise of an Option in accordance with the DDA, the Port will convey each Development Parcel through Parcel Leases to a Vertical Developer. A Vertical Developer will enter into contracts with Contractors and Consultants to construct the Vertical Improvements, including residential and commercial improvements, in accordance with the Parcel Lease and Vertical DDA. Upon completion of the Vertical Improvements, the applicable Parcel Lease, between the Port and the Vertical Developer, shall govern the operation and use of the Vertical Improvements.

The foregoing summary is provided for convenience and for informational purposes only. In case of any conflict, the provisions of the DDA and each Vertical DDA shall control.

¹ Any capitalized term used in this Exhibit E2, including its Attachments, that is not defined herein, or in such Attachments, or in the referenced Administrative Code Sections, shall have the meaning given to such term in the DDA.

LBE Utilization Plan.

Developer, with respect to Horizontal Improvements, shall, and the Vertical Developer, with respect to each Vertical Improvement, shall comply and require their respective Contractors and Consultants to comply with the Local Business Enterprise Utilization Plan (the “LBE Utilization Plan”) set forth in Attachment E2 hereto. The Port shall cause (i) Developer, pursuant to the DDA and Master Lease, to comply with the Plan by including such requirements as a material term in the DDA and Master Lease applicable to all phases of Horizontal Improvements and (ii) each Vertical Developer to comply with the Plan by including such requirements as a material term in the VDDA and Parcel Lease applicable to each Vertical Improvement. The Port and Developer will seek to, whenever practicable, engage contracting teams to reflect the diversity of the City and include participation of both businesses and residents from the City’s most disadvantaged communities including, but not limited to the Bayview/Hunters Point, Chinatown, Mission, South of Market, Tenderloin, Visitacion Valley and Western Addition neighborhoods.

Compliance with the construction requirements of the LBE Utilization Plan for Horizontal Improvements shall be determined on a Phase by Phase basis. Compliance will be measured by dividing the cost of all Contracts for a Phase of Horizontal Improvement awarded to LBE Prime Contractors, Subcontractors, Prime Consultants or Subconsultants divided by the total cost of all Contracts awarded to Prime Contractors, Subcontractors, Prime Consultants or Subconsultants for such Phase of Horizontal Improvement. If Developer exceeds the goals set forth in the LBE Utilization Plan with respect to an individual Horizontal Improvement, Developer may, at its option, allocate such excess, subject to terms outlined below, towards the compliance of another Horizontal Improvement within the Project Site, subject to the requirements of Attachment E2. Notwithstanding anything to the contrary, Developer may, at its election, require that compliance be determined on a Project-wide basis by giving notice to CMD and the Port of such election during the submission of the penultimate Phase Submittal.

Compliance with the construction requirements of the LBE Utilization Plan for Vertical Improvements shall be determined on an individual Vertical Improvement basis. Compliance will be measured by dividing the cost of all Contracts for a Vertical Improvement awarded to LBE Prime Contractors, Subcontractors, Prime Consultants or Subconsultants divided by the total cost of all Contracts awarded to Prime Contractors, Subcontractors, Prime Consultants or Subconsultants for such Vertical Improvement. If a Vertical Improvement exceeds goals set forth in the LBE Utilization Plan, the Vertical Developer of such Construction Work may, at its option, allocate such excess towards the compliance of another Vertical Improvement within the Project Site or transfer such excess to another Vertical Developer within the Project Site, subject to the requirements of Attachment E2. Notwithstanding anything to the contrary, Developer may, at its election, require that compliance be determined on a Phase-wide basis by giving notice to CMD and the Port of such election, pursuant to Attachment E2, during the submission of a Phase Submittal.

The Developer, Vertical Developer(s) and CMD seek to reduce barriers to LBE participation, cost, and time. As such, the Developer and Vertical Developer(s) shall work in

good faith with CMD to design and implement for each Horizontal and Vertical Improvement insurance programs which provides to LBE participating subcontractors access to the required coverage through either the owner, Owner-Controlled Insurance Policy (OCIP), general contractor, Contractor-Controlled Insurance Policy (CCIP), or such other insurance program as may become reasonably commercially available.

CMD shall notify Contractors, Consultants, Subcontractors and Subconsultants, as applicable, in writing, with a copy to the Port and Developer or Vertical Developer, as applicable, of any alleged breach on the part of that entity of its obligations under San Francisco Administrative Code Chapter 14B (“Chapter 14B”) or its LBE Utilization Plan, as applicable, and provide such entity an opportunity to cure its failure before seeking an assessment of liquidated damages. CMD’s sole remedies against a Contractor, Consultant, Subcontractor and Subconsultant shall be as set forth in the applicable LBE Utilization Plan, including the enforcement process. Upon CMD’s request, Port, Developer or Vertical Developer, as applicable, shall reasonably cooperate with CMD in any such enforcement action against any Contractors, Consultants, Subcontractors and Subconsultants, provided that in no event shall Port, Developer or Vertical Developer, as applicable, be liable for any breach by a Contractor, Consultant, Subcontractor or Subconsultant.

If the Port, Developer or Vertical Developer, as applicable, fulfills its obligations as set forth in this Exhibit B2, it shall not be held responsible for the failure of a Contractor, Consultant, Subcontractor and Subconsultant or any other person or party to comply with the requirements of San Francisco Administrative Code Chapter 14B (“Chapter 14B”) or this Exhibit B2. If Developer or Vertical Developer, as applicable, fails to fulfill its obligations under this Section B, the applicable provisions of Chapter 82 shall apply, though the Port and Developer, as applicable, shall have the right to invoke the process set forth in Article 10 of the DDA.

This Exhibit E2 complies with the requirements of Chapter 14B, including Sections 14B.20.

Attachment E2

Local Business Enterprise Utilization Plan

1. Purpose and Scope. This Local Business Enterprise Utilization Plan (this “LBE Utilization Plan”) governs the Local Business Enterprise obligations of the Workforce Improvement or the Construction Work pursuant to San Francisco Administrative Code Section 14B.20 and satisfies the obligations of Developer, Vertical Developer and their Contractors and Consultants for a LBE Utilization Plan as set forth herein. In the event of any conflict between San Francisco Administrative Code Chapter 14B (“Chapter 14B”) and this attachment, this LBE Utilization Plan shall govern.

2. Roles of Parties. In connection with the design and construction phases of each Construction Work (as defined below) and the operations of each Workforce Improvement, the Project will provide community benefits designed to foster employment opportunities for disadvantaged individuals by offering contracting and consulting opportunities to local business enterprises (“LBEs”). Developer and Vertical shall participate in a local business enterprise program, and the City’s Contract Monitoring Division (“CMD”) will serve the roles as set forth below.

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

- a. "CMD" shall mean the Contract Monitoring Division of the City Administrator's Office.
- b. "Commercially Useful Function" shall mean that the business is directly responsible for providing the materials, equipment, supplies or services to Developer, Vertical Developer, Contractor or professional services firm retained to work on a Construction Work or Workforce Improvement, as the case may be (each, a “Contracting Party”) as required by the solicitation or request for quotes, bids or proposals. Businesses that engage in the business of providing brokerage, referral or temporary employment services shall not be deemed to perform a "commercially useful function" unless the brokerage, referral or temporary employment services are those required and sought by Developer or Vertical Developer or a Contractor or professional services firm. When Developer or Vertical Developer or a Contractor or professional services firm requires and seeks products from an LBE supplier or distributor, no more than sixty percent of the cost of the product shall be credited towards LBE participation goals. If the listed supplier or distributor does not regularly stock or is a specially manufactured item(s), the required product, no more than five percent of the cost of the product shall be credited towards LBE participation goals.
- c. "Consultant" shall mean a person or company that has entered into a professional services contract for monetary consideration with Developer or Vertical Developer to provide advice or services to Developer directly related to the architectural or landscape design, physical planning, and/or civil, structural or

environmental engineering of a Construction Work or Workforce Improvement.

- d. "Construction Work" shall mean: (i) in the case of Horizontal Improvements, construction of all Horizontal Improvements required or permitted to be made to the Project Site during a Phase and to be carried out by Developer under the DDA subject to Chapter 14B; or (ii) in the case of Vertical Improvements, a Vertical Improvement and all tenant improvements therein, except for the construction of any tenant improvements within a leased premises comprised of less than 15,000 square feet in floor area, to be constructed by a Vertical Developer on a Development Parcel pursuant to an applicable Vertical DDA and Parcel Lease.
- e. "Contract(s)" shall mean an agreement, whether a direct contract or subcontract, for Consultant or Contractor services for all or a portion of a Construction Work or Workforce Improvement.
- f. "Contractor" shall mean a person or entity that enters into a direct Contract with Developer or Vertical Developer to build or construct all or a portion of a Construction Work or operate a Workforce Improvement.
- g. "DDA" means the Disposition and Development Agreement between Developer and the City and County of San Francisco, acting by and through the San Francisco Port Commission.
- h. "Developer" has the meaning set forth in the DDA, including any successor during the term of this LBE Utilization Plan.
- i. "Development Parcel" has the meaning set forth in the DDA.
- j. "Excess Credit" shall mean the total cost of all Contracts for a Construction Work awarded to LBE Prime Contractors, Subcontractors, Prime Consultants or Subconsultants that are Small and Micro-LBEs that exceeds the goals set forth in Section 4.
- k. "Horizontal Improvement" has the meaning set forth in the DDA.
- l. "Good Faith Efforts" shall mean procedural steps taken by Developer, Vertical Developer, Contractor or Consultant with respect to the attainment of the LBE participation goals, as set forth in Section 6 below.
- m. "Local Business Enterprise" or "LBE" means a business that is certified as an LBE under Chapter 14B.3.
- n. "LBE Liaison" shall mean Developer's and Vertical Developer's primary point

of contact with CMD regarding the obligations of this LBE Utilization Plan. Each prime Contractor(s) shall likewise have a LBE Liaison.

- o. "Parcel Lease" has the meaning set forth in the DDA.
- p. "Phase" has the meaning set forth in the DDA.
- q. "Port" has the meaning set forth in the DDA.
- r. "Project" has the meaning set forth in the DDA.
- s. "Project Site" has the meaning set forth in the DDA.
- t. "Subconsultant" shall mean a person or entity that has a direct Contract with a Consultant to perform a portion of the work under a Contract for a Construction Work or Workforce Improvement.
- u. "Subcontractor" shall mean a person or entity that has a direct Contract with a Contractor to perform a portion of the work under a Contract for a Construction Work or Workforce Improvement.
- v. "Vertical DDA" has the meaning set forth in the DDA.
- w. "Vertical Developer" has the meaning set forth in the DDA.
- x. "Workforce Improvement" shall mean all completed Vertical Improvements, but excluding within: (a) any commercial premises occupying less than 15,000 square feet in floor area, and (b) any residential units therein, subject to Chapter 14B.

4. LBE Participation Goal. Developer and Vertical Developer agree to participate in this LBE Utilization Plan and CMD agrees to work with Developer and Vertical Developer in this effort, as set forth in this LBE Utilization Plan. As long as this LBE Utilization Plan remains in full force and effect, Developer, with respect to the construction of Horizontal Improvements, and Vertical Developer, with respect to the construction of Vertical Improvements, shall make good faith efforts as defined below to achieve an overall LBE participation goal of 20% of the total cost of all Contracts for a Construction Work awarded to LBE Prime Contractors, Subcontractors, Prime Consultants or Subconsultants that are Small and Micro-LBEs, as set forth in Administrative Code Section 14B.8(A) and a participation goal of 10% during the pre-construction phase of the Project.

5. Developer/Vertical Developer Obligations. Developer, with respect to the construction of Horizontal Improvements, and Vertical Developer, with respect to the construction of Vertical Improvements, shall comply with the requirements of this Exhibit E2 as follows: Upon entering into a Contract with a Contractor or Consultant, Developer or Vertical Developer, as applicable, will include each such Contract a provision requiring the Contractor or Consultant to comply with the terms of this Exhibit E2, and setting forth the applicable percentage goal for

such Contract, and provide a signed copy thereof to CMD and the Port within 10 business days of execution. Such Contract shall specify the notice information for the Contractor or Consultant to receive notice pursuant to Section 16. Developer and each Vertical Developer shall identify a "LBE Liaison" as its main point of contact for outreach/compliance concerns and shall be available to meet with CMD staff on a regular basis or as necessary regarding the implementation of this Exhibit E2. If Developer, with respect to Horizontal Improvements, or a Vertical Developer, with respect to construction of the Vertical Improvements, fulfills its obligations as set forth in this Section 5 and otherwise cooperates in good faith at CMD's request with respect to any meet and confer process or enforcement action against a non-compliant Contractor, Consultant, Subcontractor or Subconsultant, then Developer or Vertical Developer, as applicable, shall not be held responsible for the failure of a Contractor, Consultant, Subcontractor or Subconsultant or any other person or party to comply with the requirements of this Exhibit E2.

6. Good Faith Efforts. City acknowledges and agrees that Developer, Vertical Developer, Contractor, Subcontractor, Consultant and Subconsultant shall have the sole discretion to qualify, hire or not hire LBEs. If a Contractor or Consultant does not meet the LBE hiring goal set forth above in Section 5, it will nonetheless be deemed to satisfy the good faith effort obligation of this Section 6 and thereby satisfy the requirements and obligations of this Exhibit E2 if the Contractor, Consultants and their Subcontractors and Subconsultants, as applicable, perform the good faith efforts set forth in this Section 6 as follows:

- a. Advance Notice. Notify CMD and the Port in writing of all upcoming solicitations of proposals for work under a Contract at 15 business days before issuing such solicitations to allow opportunity for CMD to identify and outreach to any LBEs that it reasonably deems may be qualified for the Contract scope of work.
- b. Contract Size. Where practicable, Developer, Vertical Developer, Contractor, Consultant, Subcontractor or Subconsultant will divide the work in order to encourage maximum LBE participation or, encourage joint venturing. The Contracting Party will identify specific items of each Contract that may be performed by Subcontractors.
- c. Advertise. Developer, Vertical Developer, Contractor, Consultant, Subcontractor or Subconsultant will advertise for at least 30 days prior to the opening of bids or proposals, for professional services and contracting opportunities in media focused on small businesses including the Bid and Contract Opportunities website through the City's Office of Contract Administration (<http://mission.sfgov.org/OCABidPublication>) and other local and trade publications, and allowing subcontractors to attend outreach events, pre-bid meetings, and inviting LBEs to submit bids to Developer or Vertical Developer or their respective Prime Contractor or Consultant, as applicable. As practicable, convene pre-bid or pre-solicitation meetings no less than 15 days prior to the opening of bids and proposals to all for LBEs to ask questions about the selection process and technical specifications/requirements. Developer or Vertical

Developer may request CMD's permission to award a contract without advertising if the work consists of specialty services or otherwise does not provide opportunities for LBE participation.

- d. **CMD Invitation.** If a pre-bid meeting or other similar meeting is held with proposed Contractors, Subcontractors, Consultants or Subconsultants, invite CMD to the meeting to allow CMD to explain proper LBE utilization.
- e. **Public Solicitation.** Developer or Vertical Developer or their respective Prime Contractor(s) and/or Consultants, as applicable, will work with CMD to follow up on initial solicitations of interest by contacting LBEs to determine with certainty whether they are interested in performing specific items in a project.
- f. **Outreach and Other Assistance.** Developer or Vertical Developer or their respective Prime Contractor (s) and/or Consultants, as applicable, will a) provide LBEs with plans, specifications and requirements for all or part of the project; b) notify LBE trade associations that disseminate bid and contract information and provide technical assistance to LBEs. The designated LBE Liaison(s) shall be or work with a LBE Consultant with experience in and responsibility for making recommendations on how to maximize engagement of local small businesses from disadvantaged communities including, but not limited to the Bayview/Hunters Point, Chinatown, Mission, South of Market, Tenderloin, Visitacion Valley and Western Addition neighborhoods, and will work with CMD to conduct outreach to LBEs for all consulting/contracting opportunities in the applicable trades and services in order to encourage them to participate on the project.
- g. **Contacts.** Make contacts with LBEs, associations or development centers, or any agencies, which disseminate bid and contract information to LBEs and document any other efforts undertaken to encourage participation by LBEs.
- h. **Good Faith/Nondiscrimination.** Make good faith efforts to enter into Contracts with LBEs and give good faith consideration to bids and proposals submitted by LBEs. Use nondiscriminatory selection criteria (for the purpose of clarity, exercise of subjective aesthetic taste in selection decisions for architect and other design professionals shall not be deemed discriminatory and the exercise of its commercially reasonable judgment in all hiring decisions shall not be deemed discriminatory).
- i. **Incorporation into contract provisions.** Developer or Vertical Developer shall include in its Contracts provisions that require prospective Contractors and Consultants that will be utilizing Subcontractors or Subconsultants to follow the above good faith efforts to subcontract to LBEs, including overall LBE participation goal and any LBE percentage that may be required under such Contract.
- j. **Monitoring.** Allow CMD Contract Compliance unit to monitor

Consultant/Contractor selection processes and, when necessary give suggestions as to how best to maximize LBEs ability to complete and win procurement opportunities.

- k. **Insurance and Bonding.** Recognizing that lines of credit, insurance and bonding are problems common to local businesses, staff will be available to explain the applicable insurance and bonding requirements, answer questions about them, and, if possible, suggest governmental or third party avenues of assistance. Contractor, Subcontractor, Consultant and Subconsultant will work with the Developer, Vertical Developer and CMD in good faith to design and implement for each Horizontal and Vertical Improvement insurance programs which provides to LBE participating subcontractors access to the required coverage through either the owner, Owner-Controlled Insurance Policy (OCIP), general contractor, Contractor-Controlled Insurance Policy (CCIP), or such other insurance program as may become reasonably commercially available.
- l. **Maintain Records and Cooperation.** Maintain records of LBEs that are awarded Contracts, not discriminate against any LBEs, and, if requested, meet and confer with CMD as reasonably required in addition to the meet and confer sessions described in Section 9 below to identify a strategy to meet the LBE goal;
- m. **Quarterly Reports.** During design and construction, the LBE Liaison(s) shall prepare a quarterly report of LBE participation goal attainment and submit to CMD as required by Section 9 herein; and
- n. **Meet and Confer.** Attend the meet and confer process described in Section 9.

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

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

- a. During the fifteen (15) business day notification period for upcoming Contracts required by Section 6.b, CMD will work with Developer or its prime Contractor and/or Consultant as applicable to send such notification to qualified LBEs to alert them to upcoming Contracts.
- b. Provide assistance to Contractors, Subcontractors, Consultants and Subconsultants on good faith outreach to LBEs.

- c. Review quarterly reports of LBE participation goals; when necessary give suggestions as to how best to maximize LBEs ability to compete and win procurement opportunities.
- d. Perform other tasks as reasonably required to assist Developer or Vertical Developer or their Contractors, Subcontractors, Consultants and Subconsultants in meeting LBE participation goals and/or satisfying good faith efforts requirements.

9. Meet and Confer Process. Commencing with the first Contract that is executed for a Construction Work, and every six (6) months thereafter, or more frequently if requested by either CMD, Developer or a Contractor or Consultant each Contractor and Consultant and the CMD shall engage in an informal meet and confer to assess compliance of such Contractor and Consultants and its Subcontractors and Subconsultants as applicable with this Exhibit E2. When deficiencies are noted, meet and confer with CMD to ascertain and execute plans to increase LBE participation.

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

11. Collective Bargaining Agreements. Nothing in this Exhibit E2 shall be interpreted to prohibit the continuation of existing workforce training agreements or to interfere with consent decrees, collective bargaining agreements, project labor agreement, project stabilization agreement, existing employment contract or other labor agreement or labor contract ("Collective Bargaining Agreements"). In the event of a conflict between this Exhibit E2 and a Collective Bargaining Agreement, the terms of the Collective Bargaining Agreement shall supersede this Exhibit E2.

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

- a. Name/Type of Contract(s) let (e.g. Civil Engineering contract, Environmental Consulting, etc.)
- b. Name of prime Contractors (including identifying which are LBEs and non-LBEs)
- c. Name of Subcontractors (including identifying which are LBEs and non-LBEs)
- d. Scope of work performed by LBEs (e.g. under an Architect, an LBE could be

- procured to provide renderings)
- e. Dollar amounts associated with both LBE and non-LBE Contractors at both prime and Subcontractor levels.
 - f. Total LBE participation is defined as a percentage of total Contract dollars.

13. Basis of Compliance:

- a. With regard to Horizontal Improvements, CMD shall determine compliance with this Agreement on a Phase-wide basis and measure compliance by dividing the cost of all Contracts for a Construction Work awarded to LBE Prime Contractors, Subcontractors, Prime Consultants or Subconsultants divided by the total cost of all Contracts awarded to Prime Contractors, Subcontractors, Prime Consultants or Subconsultants for such Construction Work. Notwithstanding anything to the contrary, Developer may, at its election, require that compliance be determined on a Project-wide basis by giving notice to CMD and the Port of such election not later than the submission of the penultimate Phase Submittal. After such election, compliance shall be measured upon the completion of the Project. In each case, once compliance is established, any Excess Credit shall be confirmed by CMD and shall be available for Developer, provided Developer remains a Giants Affiliate, as defined in the DDA, to offset shortfalls elsewhere on the Project Site, provided, however that Excess Credits may only be transferred to Horizontal Improvements that complied with the procedures set forth in Section 6 and at completion are short of attaining the participation levels set forth in Section 4.
- b. With regard to Vertical Improvements, CMD shall determine compliance with this Agreement on an individual Vertical Improvement basis and measure compliance by dividing the cost of all Contracts for a Construction Work awarded to LBE Prime Contractors, Subcontractors, Prime Consultants or Subconsultants divided by the total cost of all Contracts awarded to Prime Contractors, Subcontractors, Prime Consultants or Subconsultants for such Vertical Improvement. Notwithstanding anything to the contrary, Developer may, at its election, require that compliance be determined on a Phase-wide basis, as Developer plans to develop each Vertical Improvement in such Phase, by giving notice to CMD and the Port of such election during the submission of a Phase Submittal. After such election, compliance shall be measured upon the completion of the Phase, as applicable. In each case, once compliance is established, any Excess Credits shall be confirmed by CMD and shall be available to the Vertical Developer of the Vertical Improvement that generated such Excess Credits to transfer to another Vertical Developer, provided that such Vertical Developer is a Giants Affiliate, as defined in the DDA, to offset shortfalls in the same trade on Vertical Improvements elsewhere on the Project Site, provided, however that Excess Credits may only be transferred to Vertical Improvements that complied with the procedures set forth in Section 6 and at completion are still short of attaining the participation levels set forth in Section 4.

14. Workforce Improvement Operations. Each Vertical Developer will use good faith efforts to hire LBEs for ongoing service contracts within Workforce Improvements and advertise such contracting opportunities with CMD except to the extent impractical or infeasible. If a master association is responsible for the operation and maintenance of publicly owned improvements within the Project Site, CMD shall refer LBEs to such association for consideration with regard to contracting opportunities for such improvements. Such association will consider in good faith such LBE referrals, but hiring decisions shall be entirely at the discretion of such association.

15. Monitoring and Enforcement. CMD shall both monitor and enforce the standards and requirements, including the good faith efforts, of this Program. CMD Compliance Officers shall schedule meetings with the LBE Liaison(s) through the term of this Program to promote consistent communication and practice.

16. Written Notice of Deficiencies. If based on complaint, failure to report, or other cause, the CMD has reason to question the good faith efforts of a Developer, Vertical Developer, Contractor, Subcontractor, Consultant or Subconsultant, then CMD shall provide written notice to Developer or Vertical Developer, as applicable, each affected prime Contractor or Consultant and, if applicable, also to its Subcontractor or Subconsultant. The prime Contractor or Consultant and, if applicable, the Subcontractor or Subconsultant, shall have a reasonable period, based on the facts and circumstances of each case, to demonstrate to the reasonable satisfaction of the CMD that it has exercised good faith to satisfy its obligations under this Exhibit E2. When deficiencies are noted CMD staff will work with the appropriate LBE Liaison(s) to remedy such deficiencies.

17. Remedies. Notwithstanding anything to the contrary in the DDA, the following process and remedies shall apply with respect to any alleged violation of this Exhibit E2:

Mediation and conciliation shall be the administrative procedure of first resort for any and all compliance disputes arising under this Exhibit E2. The Director of CMD shall have power to oversee and to conduct the mediation and conciliation.

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

If a Developer, Vertical Developer, Contractor, Consultant, Subcontractor or Subconsultant is found to be in willful breach of the obligations set forth in this Exhibit E2, assess against the noncompliant Developer, Vertical Developer, Contractor, Consultant, Subcontractor or Subconsultant liquidated damages not to exceed \$25,000 or 5% of the Contract, whichever is less, for each such willful breach. In determining the amount of any liquidated damages to be assessed within the limits

described above, the arbitrator or court of competent jurisdiction shall consider the financial capacity of Developer, Vertical Developer, Contractor, Consultant, Subcontractor or Subconsultant. For purposes of this paragraph, “willful breach” means a knowing and intentional breach. For all other violations of this Exhibit E2, the sole remedy for violation shall be specific performance.

18. Duration of this Agreement. This Exhibit E2 shall terminate (i) at the expiration of the Development Agreement, as defined in the DDA, and; (ii) for any Construction Work that has commenced before the termination of the Development Agreement, but is not yet complete upon the termination of the Development Agreement, upon the completion of such Construction Work. Upon such termination, this Exhibit E2 shall be of no further force and effect.

19. Notice. All notices to be given under this Exhibit E2 shall be in writing and sent by: certified mail, return receipt requested, in which case notice shall be deemed delivered three (3) business days after deposit, postage prepaid in the United States Mail, a nationally recognized overnight courier, in which case notice shall be deemed delivered one (1) business day after deposit with that courier, or hand delivery, in which case notice shall be deemed delivered on the date received, all as follows:

If to CMD: _____

Attn: _____

If to the Port: _____

Attn: _____

If to Developer: _____

Attn: _____

If to Vertical Developer: _____

Attn: _____

If to Contractor: _____

Attn: _____

If to Consultant: _____

Attn: _____

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