

## **APPENDIX F**

### **PRELIMINARY TERM SHEET**

All initially-capitalized, undefined terms or abbreviations used in this Appendix that are not otherwise defined in this Appendix will have the meanings given to them in Article 1 (*Definitions*) of the Agreement.

**PRELIMINARY TERM SHEET  
SFMTA POTRERO YARD MODERNIZATION PROJECT**

( \_\_\_\_\_, 2022)

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**PRELIMINARY TERM SHEET  
SFMTA POTRERO YARD MODERNIZATION PROJECT**

This Preliminary Term Sheet ("Term Sheet") sets forth the basic terms and conditions of a design-build-finance-operate-maintain agreement ("Project Agreement") for delivery of the SFMTA Potrero Yard Modernization Project ("Project"), to be entered, if at all, by the City and County of San Francisco ("City"), a municipal corporation acting by and through the San Francisco Municipal Transportation Agency ("SFMTA") and a special purpose entity ("Principal Project Company"), to be formed by Potrero Neighborhood Collective LLC, a limited liability company organized under the laws of the State of Delaware ("Lead Developer"). With respect to the matters addressed in the Term Sheet, Lead Developer and City each acknowledge and agree that the facts set forth below are true and accurate.

**RECITALS**

- A. City, under the jurisdiction of the SFMTA, owns the real property commonly known as 2500 Mariposa Street in San Francisco, California, which is a 4.4-acre site comprised of Assessor's Block No. 3971-001, bounded by Bryant Streets, 17th Street, Hampshire Street, and Mariposa Street ("Project Site").
- B. The Project consists of a facility to be constructed at the Project Site and is comprised of a transit operations component ("Bus Yard Component"), a mixed-income housing and commercial component ("Housing and Commercial Component"), and the common infrastructure shared by the two components ("Common Infrastructure"); all three components are, collectively, the "Facility"; the Bus Yard Component and Common Infrastructure are, collectively, the "Infrastructure Facility."
- C. On April 9, 2021, City issued a request for proposals to design, build, finance, and maintain the Infrastructure Facility and design, build, finance, operate and maintain the Housing and Commercial Component at the Project Site ("RFP"). With respect to the Infrastructure Facility, the Project would be City's first social infrastructure public-private partnership ("P3") availability payments project.
- D. On December 30, 2021, Lead Developer submitted a proposal to City in response to the RFP ("Original Proposal") offering to perform predevelopment services and negotiate the form of the Project Agreement, the Housing and Commercial Component Agreement with respect to the Housing and Commercial Component (the "HCC Agreement") and other transaction documents (collectively, "Transaction Documents") to develop and deliver the Project.
- E. On July 20, 2022, Lead Developer submitted, in response to an Addendum to the RFP, its revised response to the RFP, updating, revising and resubmitting the Original Proposal, which revised response was clarified through the request for clarifications process set forth in the RFP. The Original Proposal and the revised response to the RFP, as clarified, are collectively referred to as the "Proposal".
- F. On September 12, 2022, City determined Lead Developer's Proposal offered the best value to City for the Project.
- G. City and Lead Developer entered a predevelopment agreement ("Predevelopment Agreement") dated as of November 2, 2022, pursuant to which Lead Developer will perform predevelopment activities for the Project, including completion of Early Works and development and negotiation of the Project Agreement and other Transaction Documents necessary to deliver the Project; the period from the effective date of the Predevelopment Agreement through the date of full execution of the Project Agreement ("Commercial Close") is referred to as the "PDA Term."
- H. The Parties acknowledge that (i) this Term Sheet is non-binding and intended only to set forth general principles for good-faith negotiation of the Project Agreement and other Transaction Documents during the PDA Term; and (ii) the Project Agreement and other Transaction Documents will be subject to review and approval by the Parties, their respective legal counsel, the SFMTA Board of Directors, and as applicable, by the San Francisco Board of Supervisors.

**SECTION 1. GENERAL TERMS**

<p>1.1. Definitions</p>	<p>All initially capitalized terms used but not defined in this Term Sheet shall have the meanings given to them in the Predevelopment Agreement.</p> <p>Other terms typically capitalized and defined in precedent contracts for comparable social infrastructure P3 availability-payment projects (“P3 Precedent”) are spelled in lowercase and have the meanings commonly given to these terms in the P3 Precedent. These terms will be defined in the Project Agreement and their meanings will be consistent, as reasonably possible, with the P3 Precedent.</p>
<p>1.2. Parties</p>	<p>City and Principal Project Company, collectively, are herein referred to as the “Parties.”</p> <p>The Principal Project Company must be capitalized and sufficiently financed, as reflected in the approved base case financial model, as reasonably determined by Project lenders and as reasonably satisfactory to City, to comply with all of Principal Project Company’s obligations under the Project Agreement and Transaction Documents.</p>
<p>1.3. PPC-Related Entities</p>	<p>“PPC-Related Entities” means:</p> <ul style="list-style-type: none"> <li>(a) Principal Project Company;</li> <li>(b) Principal Project Company’s equity members, including Lead Developer;</li> <li>(c) “Contractors,” which means any person or entity with whom Principal Project Company has entered into any contract to perform any part of the Work or provide any materials, equipment, or supplies for the Project on behalf of Principal Project Company, and any other person or entity with whom any Contractor has further subcontracted any part of the Work, at all tiers;</li> <li>(d) any other persons or entities performing any of the Work;</li> <li>(e) any other persons or entities for whom Principal Project Company may be legally or contractually responsible,</li> <li>(f) the employees, agents, officers, directors, representatives, consultants, successors and assigns of any of the foregoing;</li> <li>(g) Any non-City party to the HCC Agreement, including all subcontractors, subconsultants and suppliers of any tier and their respective employees, personnel, officers, directors, agents, representatives, successors and assigns.</li> </ul> <p>The Principal Project Company under the Project Agreement may be different than the Principal Project Company under the HCC Agreement.</p>
<p>1.4. Contract Documents</p>	<p>The “Contract Documents” mean the Project Agreement and all its exhibits, including the Technical Requirements (as may be modified during the PDA Term in a manner consistent with comparable social infrastructure P3 availability-payment projects).</p> <p>The Contract Documents are intended to be complementary and to be read together as a complete agreement. The rules to reconcile conflict, ambiguity, or consistency within the Contract Documents will be set forth in the Project Agreement.</p>
<p>1.5. Reference Documents</p>	<p>Reference Documents are for information only, and are not mandatory or binding on Principal Project Company.</p>
<p>1.6. Project Objectives</p>	<p>The Project will replace the SFMTA’s obsolete two-story maintenance building and bus yard with a single, integrated facility consisting of the BYC, HCC, and Common</p>

	<p>Infrastructure. The City seeks to deliver the Project and achieve the following primary objectives:</p> <ul style="list-style-type: none"> <li>(a) Construct the replacement bus maintenance and storage transit facility (i.e., the BYC) by November 30, 2027. The BYC must be equipped to serve the projected future capacity and needs of the SFMTA’s new electric bus fleet (trolley and battery-electric).</li> <li>(b) Develop a mixed-use residential and commercial development (i.e., the HCC) jointly with the BYC at the Project Site. The HCC must have an initial base target of 50% affordable housing units, with a maximum affordability percentage up to 100%.</li> <li>(c) Improve the architectural and urban design character of the Project Site by designing the Facility to be an exemplary new building that enlivens the surrounding neighborhood and adds to its sense of place.</li> <li>(d) Deliver the entire Project on time and on budget and provide long-term facility maintenance services to ensure the Project remains an efficient, high-quality Facility. Specifically, to deliver the Infrastructure Facility within the Fixed Budget Limit (FBL) as contemplated by the PDA</li> </ul> <p>The Project reflects the SFMTA’s firm commitment to its mission: to connect San Francisco through a safe, equitable, and sustainable transportation system. The Project also demonstrates the City’s commitment to zero-emission public transit, to delivering modern amenities for SFMTA employees, and to contributing a new building with improved site connectivity and urban design to the Mission and Potrero neighborhoods.</p> <p>As a core facility for the SFMTA’s citywide transit operations, the Project represents an operationally critical public infrastructure project for the City.</p>
<p>1.7. Scope of Work</p>	<p>Principal Project Company will be responsible for performance of the following work activities relating to the Infrastructure Facility (collectively, the “Work”):</p> <p><u>Financing.</u> Obtaining financing for the Infrastructure Facility in accordance with the City-approved Finance Plan that Lead Developer completed during the PDA Term.</p> <p><u>D&amp;C Work.</u> Completion of the D&amp;C Work, including:</p> <ul style="list-style-type: none"> <li>(a) design and construction of the Infrastructure Facility on a full turn-key basis, including: <ul style="list-style-type: none"> <li>(i) the Bus Yard Component meeting the requirements set forth in the Technical Requirements; and</li> <li>(ii) the Common Infrastructure, for which the scope allocation between the Parties is set forth the Technical Requirements (See Division 1 (Cost and Scope Allocation Requirements) of the Technical Requirements).</li> </ul> </li> <li>(b) full turn-key installation of, at minimum, the following items for the Facility: <ul style="list-style-type: none"> <li>(i) life safety and emergency systems;</li> <li>(ii) communications, electronic security, and surveillance systems;</li> <li>(iii) building automation and control systems, equipment, and devices for the bus fleet maintenance;</li> <li>(iv) information technology systems; and</li> </ul> </li> </ul>

	<ul style="list-style-type: none"> <li>(v) furniture, fixtures and equipment.</li> <li>(c) commissioning services;</li> <li>(d) assistance to the SFMTA to prepare for implementation of the SFMTA O&amp;M, including training and provision of as-built data and asset management systems; and</li> <li>(e) relocation services.</li> </ul> <p><u>Infrastructure Facility Maintenance</u>. Performance of Infrastructure Facility Maintenance, including the Work described in Division 7 (Asset Management Requirements) of the Technical Requirements.</p>
<p>1.8. Public Benefits</p>	<p>Subject to further development of the Project in accordance with the PDA, the Project will include the following public benefits:</p> <ul style="list-style-type: none"> <li>(a) fulfillment of the SFMTA’s transition to a zero emissions fleet at the Facility while increasing capacity for buses while reducing pollution and noise and reducing greenhouse gas emissions;</li> <li>(b) maximize affordable housing to 100% with a resident services delivery strategy and an affirmative marketing program that aims to reverse the outmigration of historically excluded communities of color populations;</li> <li>(c) commercial spaces for small business opportunities to Mission-based organizations/small businesses rooted in keeping the arts and culture of the neighborhood;</li> <li>(d) a transportation demand management (TDM) features to further reduce vehicle trips;</li> <li>(e) protected bike lanes on 17<sup>th</sup> Street;</li> <li>(f) placemaking with a neighborhood appropriate aesthetic and transparency through screens and windows offering views into the BYC to display the inner workings and add animation to the streetscape; and</li> <li>(g) conformance with Division 08 (<i>Public Benefit Principles</i>) of the Technical Requirements.</li> </ul>
<p>1.9. Ongoing Local Participation</p>	<p>Subject to Section 6.10 (<i>Local Business Enterprise Plan</i>) of the PDA, the design work Local Business Enterprise participation goal is 25% for the Infrastructure Facility and 25% for the Housing and Commercial Component. The construction work Local Business Enterprise participation goal is 20% for the Infrastructure Facility and 20% for the Housing and Commercial Component. The facility/property management Local Business Enterprise participation goal is 20% for the Infrastructure Facility and 20% for the Housing and Commercial Component.</p>
<p>1.10. Open Space</p>	<p>Subject to further development of the Project in accordance with the PDA, the Project will include public open spaces including two areas at grade (midblock on Bryant Street and at the corner of Bryant and 17th Street), two outdoor terraces for the BYC (fronting Mariposa and 17th Streets), as well as resident-serving open spaces on the podium level including community gardens, bioswales, general landscaping, and park amenities with robust programming, including a tot lot, gathering spaces, dog park, hard court, sports court, and a community garden.</p>

<p>1.11. Transportation Demand Management</p>	<p>Subject to further development of the Project in accordance with the PDA, Lead Developer, with significant community involvement and input, will prepare an innovative, sustainable TDM plan that will include the following programs and benefits:</p> <ul style="list-style-type: none"> <li>(a) coordination with the regional TDM plan in San Francisco, while locally leveraging design aspects for the Project to help enhance TDM capabilities;</li> <li>(b) reducing vehicle miles traveled through design, to reduce the carbon footprint (air pollution, greenhouse gases, and energy);</li> <li>(c) providing on-site housing improves the jobs-housing balance, in turn shortening commutes and reducing vehicle miles traveled;</li> <li>(d) reducing the need to rely on single occupant vehicle trips and reducing households' need for car ownership with the goal of achieving vehicle miles traveled by more than 15% below the regional average;</li> <li>(e) on-site amenities that will encourage smarter travel options so people can get around more easily without a car; and</li> <li>(f) sustainable transportation features, including a transit estimated time of arrival clock inside of the building, information that encourages residents to utilize bikes/car share programs, and help to qualify residents (such as low-income, students and seniors) for transportation discounts.</li> </ul>
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**SECTION 2. NATURE OF AGREEMENT; TERM**

<p>2.1. Nature of Agreement</p>	<p>City would grant to Principal Project Company the exclusive right, and Principal Project Company would accept the obligation and agree, during the Term (which term is defined in <u>Section 2.3</u>), to:</p> <ul style="list-style-type: none"> <li>(a) design, build, and finance the Infrastructure Facility, and maintain certain elements of it; perform Renewal Work (which term is defined in <u>Section 8.2</u>) and handback of the Infrastructure Facility at the end of the Infrastructure Facility Term (which term is defined in <u>Section 2.3</u>); and</li> <li>(b) perform all other activities relating to the foregoing not specifically retained by City for the Project as specified in the Project Agreement;</li> </ul> <p>In relation to the Infrastructure Facility, Principal Project Company will receive performance-based compensation from City in the form of a milestone payment at Substantial Completion of the Infrastructure Facility and quarterly availability payments during the Infrastructure Facility Term.</p>
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<p>2.2. Project Site; Right of Entry</p>	<p>Subject to the below provisions of this paragraph, PPC-Related Entities shall have the right to enter onto the Project Site from the date that is 180 days after Commercial Close Date (the "Access Date") and throughout the remainder of the Term on the terms of the Project Agreement to carry out Principal Project Company's obligations under the Project Agreement. If Lead Developer does not enter into an MME Construction Agreement with City in accordance with the terms of the PDA, then the Access Date will be extended by the lesser of (i) 180 days and (ii) the number of days between Performance Milestone 6B under the PDA and the date that City enters into a contract for delivery of the MME Expansion Project with another contractor.</p> <p>After the termination date of the Project Agreement, PPC-Related Entities may enter onto the Project Site to perform post-termination obligations pursuant to a separate</p>
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		license agreement mutually approved by City and Principal Project Company.
2.3.	Term	<p><u>Term.</u> The term of the Project Agreement related to the Infrastructure Facility shall commence on the date of execution and delivery of the Project Agreement by both City and Principal Project Company (“Effective Date”), and shall remain in effect until 30 years from the scheduled date of substantial completion of the Infrastructure Facility (“Term”), subject to the right of the Parties to terminate earlier.</p> <p><u>D&amp;C Period.</u> “D&amp;C Period” related to the Infrastructure Facility means that portion of the Term that commences on the Effective Date and ends at 11:59 p.m. on the day immediately preceding Substantial Completion of the Infrastructure Facility.</p> <p><u>Infrastructure Facility Term.</u> “Infrastructure Facility Term” means that portion of the Term commencing on the scheduled date of Substantial Completion of the Infrastructure Facility and ending on the termination date.</p>
2.4.	Title	<p><u>General.</u> Principal Project Company is not the legal or equitable owner or lessee of the Project Site or the Infrastructure Facility improvements. Principal Project Company’s rights under the Project Agreement for the Infrastructure Facility derive solely from status as an independent contractor, and not from any other interest in real property.</p> <p><u>Passage of Title – Infrastructure Facility.</u> Title to all materials, equipment, tools, and supplies furnished under the Project Agreement for incorporation into the Infrastructure Facility or that are required for operation or maintenance of the Infrastructure Facility shall pass to City, free and clear of all liens or other charges upon Substantial Completion of the Infrastructure Facility; <u>except that</u>, Principal Project Company shall retain title to and own certain items agreed by the Parties and to be set forth in the Project Agreement.</p> <p><u>Intellectual Property.</u> Title to any Intellectual Property made, conceived, prepared, or reduced to practice as part of the Work, incorporated into the Infrastructure Facility and/or the Housing and Commercial Component, shall vest in City on Substantial Completion of the Infrastructure Facility and/or the Housing and Commercial Component, as applicable.</p>
2.5.	Limitation on Principal Project Company’s Rights	Principal Project Company has no power or authority to make any commitments on the City’s behalf or to execute agreements in the name of or on behalf of the City.
<b>SECTION 3. FINANCIAL CLOSE</b>		
3.1.	Requirements for Financial Close	<p><u>Obligation to Achieve Financial Close.</u> Subject to the Parties’ rights to terminate the Project Agreement before Financial Close, Principal Project Company shall achieve Financial Close for the Infrastructure Facility by no later than November 30, 2024, as such date may be extended by agreement of the Parties or as a result of an Adverse Event or other excuse set forth in the Project Agreement (the “Financial Close Deadline”).</p> <p><u>Date of Financial Close.</u> Subject to certain exceptions to be set forth in Project Agreement, Principal Project Company shall determine the date scheduled for Financial Close. This scheduled date for Financial Close shall be subject to a minimum 60 calendar days’ prior notice to City and the Financial Close Deadline.</p> <p><u>Financial Close for Housing and Commercial Component.</u> The Financial Close relating to the Housing and Commercial Component may occur simultaneously with Financial Close for the Infrastructure Facility or be bifurcated and occur on a</p>



	<p>separate date after Financial Close relating to the Infrastructure Facility, to the extent determined during the PDA Term (which will be based on the requirements of HCC lenders).</p>
<p>3.2. Adverse Event; Affordability Event</p>	<p>“Adverse Event” applies to the Infrastructure Facility only and means:</p> <ul style="list-style-type: none"> <li>(a) an Affordability Event, with the understanding that an Affordability Event occurring before the Commercial Close Date shall be deemed to occur the day after the Commercial Close Date;</li> <li>(b) the CEQA Approval is invalidated for a reason other than PPC Fault;</li> <li>(c) a temporary restraining order, injunction or other form of legal order by a court prohibiting City or Principal Project Company from performing any of their respective material obligations under the Project Agreement or materially delaying the critical path;</li> <li>(d) the occurrence of exceptional circumstances in the financial markets in one or more of Europe, the United States of America, Japan/Asia Pacific and Canada that, in City’s opinion determined in City’s reasonable discretion, (A) results in material and substantial cessation of lending activity in national or relevant international capital or interbank markets and (B) adversely affects access by Principal Project Company to such markets preventing Financial Close by the scheduled Financial Close Date;</li> <li>(e) any action, litigation or proceeding pending against City or affecting the Project, which, in each case, has a material likelihood of success and if determined adversely would have the effect of (i) preventing Financial Close; or (ii) prohibiting or materially impairing City from performing any of its material obligations under the Project Documents; or</li> <li>(f) Such additional items, if any, to be determined based on Principal Project Company’s plan of finance during the PDA Term.</li> </ul> <p>“Affordability Event” means the occurrence of a fluctuation in the baseline interest rates and/or baseline credit spreads during the applicable interest rate protection period that results, or in the good faith opinion of City, is likely to result, in an increase to the availability payment of an amount that either exceeds the maximum availability payment determined during the PDA Term or increases the availability payment by an amount equal to 10% or greater.</p> <p>Depending on the nature of the Adverse Event, the Adverse Event may lead to an extension of the Financial Close Deadline and a delayed Financial Close, termination of the Project Agreement, an adjustment to the availability payment and/or other obligations or mitigations, all of which will set forth in the Project Agreement.</p>
<p>3.3. Financial Close Requirements and Deliverables</p>	<p><u>Delivery of Financing Agreements and Other Documents for Infrastructure Facility.</u> No later than 30 days before the scheduled date for Financial Close for the Infrastructure Facility, Principal Project Company shall deliver the following documents to City, to the extent applicable to the Financial Close, for City’s review and comment:</p> <ul style="list-style-type: none"> <li>(a) final drafts of the Project’s initial financing agreements and security documents, which shall be in substantially the same form as mutually approved by the Parties during the PDA Term (“Initial Financing Documents”);</li> <li>(b) direct agreement(s) among the City, Principal Project Company, and lender(s) respecting certain of lenders’ rights under the Contract Documents, which shall</li> </ul>

	<p>be in substantially the same form as mutually approved by the Parties during the PDA Term (“Direct Agreement(s)”):</p> <ul style="list-style-type: none"> <li>(c) any loan agreement, credit agreement or other similar financing agreement or subordination agreement providing for or evidencing equity member debt, which shall be in substantially the same form as mutually approved by the Parties during the PDA Term (“Equity Members Funding Agreements”; and</li> <li>(d) a list of key contracts, including prime contracts for the D&amp;C Work, Infrastructure Facility Maintenance, and other prime contracts with a single contractor in excess of threshold dollar amount to be set forth in the Project Agreement (“Key Contracts”). <b>[Note: Key Contracts will have been finalized and agreed upon by the Parties prior to Commercial Close. Minor changes to Key Contract may be required prior to Financial Close in order to satisfy lender or credit rating agency requirements. In any case, the Key Contracts shall be substantively the same as those reviewed by the City prior to Commercial Close.]</b></li> </ul> <p>City will provide its comments on these documents no later than 10 business days after their submission, with such comments limited to addressing (i) changes in these documents from those approved by City during the PDA Term; (ii) changes in the Project Agreement or the commercial or legal structure of the Project; (iii) changes arising out of changed circumstances, new events or occurrences or additional information after the date of approval by City during the PDA Term; (iv) clarifications, errors, ambiguities or conflicts in such documents; (v) the relationship and interface of the Infrastructure Facility and the Housing and Commercial Component; (vi) the impacts and implications of any decision by Principal Project Company to bifurcate the Financial Close for the Infrastructure Facility and the Housing and Commercial Component; or (vii) changes in applicable law or Project standards.</p> <p><u>Base Interest Rate Fluctuation and Credit Spread Risk Mitigation.</u> At Financial Close of the Infrastructure Facility and subject to Principal Project Company’s compliance with certain conditions and using a formula agreed by the Parties and to be set forth in the Project Agreement, City will adjust the maximum availability payment mutually agreed to by the Parties during the PDA Term for the Infrastructure Facility to offset 100% of the fluctuations in base interest rates and a percentage to be determined by City during the PDA Term of certain fluctuations in credit spreads for debt financing proposed in Principal Project Company’s final debt financing plan, as developed during the PDA Term. The period of protection shall be set forth in the Project Agreement. Notwithstanding the foregoing, credit spread protection will not apply to a private placement, bank debt or other debt facilities for which committed credit spreads or margins are available.</p> <p><u>Conditions Precedent to Financial Close for Infrastructure Facility.</u> Financial Close for the Infrastructure Facility will occur upon each Party’s satisfaction of certain conditions agreed by the Parties and to be set forth in the Project Agreement, including Principal Project Company’s delivery to the City of:</p> <ul style="list-style-type: none"> <li>(a) executed versions of the Initial Financing Documents, Direct Agreement(s), Equity Members Funding Agreements, and Key Contracts;</li> <li>(b) a certification signed by Principal Project Company’s chief financial officer, certifying customary statements related to Financial Close;</li> <li>(c) an interim financial model update that incorporates any proposed amendments to Principal Project Company’s base case financial model (i.e., the Project’s financial model as approved by the Parties as of the Effective Date);</li> </ul>
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	<p>(d) customary legal opinions required from Principal Project Company's legal counsel; and</p> <p>(e) payment and performance security required under <u>Section 11.2</u> in forms to be set forth in the Project Agreement.</p> <p>City shall deliver, through the City Attorney's Office, customary legal opinions as set forth in the Project Agreement.</p>
<p>3.4. Post-Financial Close Requirements and Deliverables</p>	<p>Following Financial Close relating to the Infrastructure Facility, Principal Project Company shall deliver to City each of the items required under the Project Agreement to replace the base case financial model approved by the Parties during the PDA Term with an updated financial model that reflects all changes agreed by the Parties as of the date of Financial Close.</p> <p>If the Parties entered into an Early Works Agreement or the MME Construction Contract, at Financial Close relating to the Infrastructure Facility, Principal Project Company shall, in accordance with the Early Works Agreement or the MME Construction Contract and, if so requested by City, in its sole discretion, reimburse City for all amounts paid by City to Principal Project Company or Lead Developer pursuant to them.</p> <p>The City shall return to Principal Project Company any Financial Close security within five business days of achieving Financial Close for both the Infrastructure Facility and Housing and Commercial Component; <u>provided; however,</u> that if Financial Close for the Housing and Commercial Component is bifurcated from Financial Close for the Infrastructure Facility and occurs later, the Financial Close security for the Infrastructure Facility will be returned to Principal Project Company within five (5) business days of achieving Financial Close for the Infrastructure Facility so long as, in City's determination, (i) any anticipated financial contributions from the Housing and Commercial Component towards the Infrastructure Facility are fully guaranteed and collateralized; and (ii) all equity contributions relating to the Housing and Commercial Component are fully guaranteed and collateralized (through the Financial Close security for the Housing and Commercial Component or otherwise).</p>
<p>3.5. Principal Project Company's Failure to Achieve Financial Close</p>	<p>If Financial Close relating to the Infrastructure Facility is not achieved by the Financial Close Deadline, then, unless excused under the Project Agreement (e.g., related to an Adverse Event, breach by City, failure of City to satisfy a City condition to Financial Close, etc.), the City shall have the right to:</p> <p>(a) terminate the Project Agreement in its entirety by written notice to Principal Project Company with immediate effect; and/or</p> <p>(b) draw and retain the full amount of any Financial Close security.</p> <p>Exercising either remedy will not prejudice any rights or remedies the City may have for other actions or breaches Principal Project Company causes under the Project Agreement or, if applicable, any Early Works Agreement or MME Construction Contract.</p> <p>Financial Close security for the Infrastructure Facility shall be in an amount equal to \$15,000,000 and shall be in the form of a bond or letter of credit acceptable to City. Financial Close security for the Infrastructure Facility shall be provided no later than Commercial Close of the Project Agreement. Additional provisions addressing the forfeiture and release of Financial Close security shall be developed during the PDA Term. If the obligation to achieve Financial Close for the Infrastructure Facility is</p>

	<p>excused and the Project Agreement is terminated, the Financial Close security for the Infrastructure Facility shall be returned to Principal Project Company within five business days after the termination. Financial Close security is intended to act as security for Principal Project Company's obligations under the Project Agreement to achieve Financial Close by the Financial Close Deadline, as the same may be extended pursuant to the Project Agreement. Financial Close security is not intended to act as security for Lead Developer's obligations under the Predevelopment Agreement.</p> <p>If Financial Close for the Housing and Commercial Component is bifurcated from the Financial Close for the Infrastructure Facility, the Project Agreement will set forth provisions relating to termination for failure to reach Financial Close for the Infrastructure Facility. Financial Close security will separately be required for the Housing and Commercial Component, in a form and amount acceptable to City and will be developed during the PDA Term.</p>
<p><b>SECTION 4. PRINCIPAL PROJECT COMPANY FINANCING; LENDERS' RIGHTS; REFINANCING; PRIVATE CAPITAL INVESTMENTS; FINANCIAL MODEL</b></p>	
<p>4.1. Principal Project Company's Right and Responsibility to Finance</p>	<p>Principal Project Company is solely responsible for obtaining and repaying, at its own cost and risk and without recourse to City or SFMTA, all financing necessary for the Work that is the Principal Project Company's responsibility under the Project Agreement.</p>
<p>4.2. No City or SFMTA Responsibility for Project Debt</p>	<p>All bona fide indebtedness respecting the Principal Project Company's interest in the Project ("Project Debt") or other obligations issued or incurred by a PPC-Related Entity in connection with the Project Agreement or the Project shall be issued or incurred only in the name of a PPC-Related Entity or a conduit issuer or other entity acting on behalf of a PPC-Related Entity as the ultimate obligor.</p> <p>Neither the City nor the SFMTA shall have any obligation to pay debt service on any Project Debt or any other debt issued or incurred by a PPC-Related Entity.</p>
<p>4.3. Lenders' Rights</p>	<p>The Project Agreement is exclusively for the benefit of City and Principal Project Company, and shall not provide any lender with any remedy, claim, liability, reimbursement, cause of action or other right, except for the rights of any lender as provided in any Direct Agreement.</p>
<p>4.4. Refinancing</p>	<p>City's prior written approval is required for the refinancing of any Project Debt, financing agreement, or security document, except for exempt refinancings as will be defined in the Project Agreement.</p> <p>City shall have no obligations or liabilities in connection with any refinancing other than its obligations relating to lenders' rights in any Direct Agreement.</p> <p>If City renders any assistance or performs any requested activity in connection with a refinancing, then concurrently with close of the refinancing, and as a condition precedent to Principal Project Company's right to close the refinancing, Principal Project Company shall reimburse City its reasonable costs and fees incurred in connection with the refinancing.</p>
<p>4.5. Refinancing Gain</p>	<p>Except as set forth in the Project Agreement (for defined exempt refinancings and other specifically delineated financings where a different share may be determined), City shall be entitled to receive a 50-50 percentage share of any refinancing gain attributable to any refinancing.</p>

	<p>The refinancing gain amount shall be calculated in accordance with a method agreed by the Parties and set forth in the Project Agreement and shall take into account reasonable costs incurred in connection with the refinancing, as permitted under the Project Agreement.</p>
<p><b>SECTION 5. SUBMITTALS; MANAGEMENT SYSTEMS AND OVERSIGHT</b></p>	
<p>5.1. Submittal Review Terms and Procedure</p>	<p>“Submittal(s)” means, generally, any document, work product, or other written or electronic end-product, report or item required to be delivered or submitted to City, Third Parties, or Regulatory Agencies in connection with the Project Agreement or the Project.</p> <p>Principal Project Company shall comply with the terms and procedures for Submittals reviews agreed by the Parties and to be set forth in the Project Agreement.</p> <p>Except as set forth in the Project Agreement, the standard for review and approval of design and construction Submittals that comply with the Technical Requirements shall be reasonable discretion; provided, however, that decisions regarding waivers, releases, acceptance of Nonconforming Work, Deviations, PPC Change Requests and other matters that are not consistent with or comply with the Contract Documents shall be within City’s sole discretion.</p>
<p>5.2. Project Management Plan</p>	<p>The “Project Management Plan” means the document setting forth Principal Project Company’s prescribed approaches to, and plan for, the Work, as it may be modified and updated from time to time, following approval thereof by City.</p> <p>The Project Management Plan will include applicable component plans of the PDA Management Plan developed by Lead Developer and approved by City under the Predevelopment Agreement.</p> <p>Principal Project Company shall perform or cause to be performed the Work in accordance with the Project Management Plan, Design Deliverables, other deliverables submitted by Lead Developer to City and approved by City under the Predevelopment Agreement and Project Agreement (as applicable), certain software requirements and document control requirements (set forth in Appendix B-2 to the Predevelopment Agreement), and good industry practice.</p>
<p>5.3. Quality Assurance, Quality Control, Generally</p>	<p>Principal Project Company is primarily responsible for quality assurance and quality control activities (including self-monitoring activities) necessary to manage the delivery of the Facility.</p> <p>Principal Project Company shall undertake the primary aspects of quality assurance and quality control for the Facility and the Work in accordance with the Project Management Plan, the Technical Requirements, other applicable provisions of the Contract Documents, good industry practice and Applicable Law.</p> <p>The foregoing shall not limit City’s rights of inspection, audit, oversight and quality assurance/quality control verification, all as set forth in the Project Agreement.</p>
<p>5.4. Independent Engineer</p>	<p>The City, in its sole discretion, will consider inclusion of an independent engineering consultant to verify whether the conditions to Substantial Completion and Final Acceptance have been met. If agreed to by the City, the independent engineer’s determinations shall be advisory only and not binding or admissible in any later dispute process.</p> <p>The procedures for selecting and replacing the independent engineer will agreed by</p>

	the Parties and set forth in the Project Agreement.
<b>SECTION 6. GENERAL PRINCIPAL PROJECT COMPANY OBLIGATIONS</b>	
6.1. Planning and Engineering Activities	Principal Project Company shall furnish or cause to be furnished all planning and engineering activities appropriate for design and development of the Facility in accordance with the Contract Documents and good industry practice.
6.2. Site Conditions	<p><u>General.</u> Principal Project Company acknowledges and agrees that:</p> <ul style="list-style-type: none"> <li>(a) it has investigated and satisfied itself as to the conditions affecting the D&amp;C Work;</li> <li>(b) it has satisfied itself as to the character, quality, and quantity of surface and subsurface materials or obstacles to be encountered at the Project Site; and</li> <li>(c) any failure by Principal Project Company to conduct due diligence investigations of the Project Site will not relieve Principal Project Company from responsibility for estimating properly the difficulty or cost of successfully performing the D&amp;C Work and shall not be the basis of a claim for any extension of time, additional compensation, or other relief relating to a Relief Event. (which term is defined in <u>Section 14.1.</u>)</li> </ul> <p><u>Hazardous Materials.</u> "Hazardous Material(s)" means any:</p> <ul style="list-style-type: none"> <li>(a) substance, product, waste, pollutant, contaminant or other material of any nature whatsoever that exceeds maximum allowable concentrations for that material, as defined by any environmental law;</li> <li>(b) substance, product, waste, pollutant, contaminant or other material of any nature whatsoever that is or becomes listed, regulated, or addressed under any environmental law;</li> <li>(c) substance, product, waste, pollutant, contaminant or other material of any nature whatsoever which may give rise to liability under <u>clause (a)</u> or <u>(b)</u> or under any statutory or common law theory based on negligence, trespass, intentional tort, nuisance, or strict liability or under any reported decisions of a state or federal court;</li> <li>(d) petroleum hydrocarbons excluding de minimis amounts and excluding petroleum hydrocarbon products contained within regularly operated motor vehicles or equipment; and</li> <li>(e) hazardous building materials including asbestos or asbestos-containing materials, lead or PCBs in structures and/or other improvements on or in the Project Site or in subsurface artifacts (other than mineral asbestos naturally occurring in the ground).</li> </ul> <p><u>Notice to City of Discovery of Unforeseen Site Conditions.</u> During the progress of the Work, if Principal Project Company encounters any unidentified Hazardous Materials or other conditions on the Project Site that were not discovered through Principal Project Company's due diligence investigations and that may entitle Principal Project Company to claim that a Relief Event has occurred, then Principal Project Company shall notify City of the specific condition promptly before it is disturbed, or as soon as practicable afterwards, and before the affected Work continues. City shall promptly investigate such conditions.</p> <p>Other than as described in <u>Sections 14</u> and <u>15</u>, Principal Project Company shall bear the risk of site conditions, including geotechnical conditions, utilities, Hazardous</p>

	Materials and other site conditions.
6.3. Regulatory Approvals	<p><u>Regulatory Approvals.</u> “Regulatory Approvals” means all documented permits, licenses, consents, concessions, grants, franchises, authorizations, waivers, variances or other approvals, guidance, protocol(s), mitigation agreement(s), or memoranda of agreement/understanding, and any amendment(s) or modification(s) of any of them provided by “Regulatory Agencies,” including State, local, or federal regulatory agencies, agents, or employees, which authorize or pertain to the Project or the Work.</p> <p>Except for the CEQA Approval, Principal Project Company shall obtain all Regulatory Approvals required for the Project and the Work and shall, except with respect to a CEQA Event (as defined in Section 14), bear the risk of any delay in obtaining such approvals, except as provided in the Project Agreement, as well as the risk of conditions imposed on performance of the Work by such approvals.</p> <p>Principal Project Company shall conduct all necessary environmental studies and prepare all necessary environmental documents in compliance with applicable environmental laws as needed to obtain Regulatory Approvals and shall obtain all necessary modifications, renewals, and extensions thereof.</p> <p>Principal Project Company shall pay all costs associated with obtaining Regulatory Approvals, except as otherwise provided in the Project Agreement.</p> <p><u>Copies to City.</u> Concurrently with submitting any application for a Regulatory Approval to a Regulatory Agency, Principal Project Company shall submit a copy of same, together with any supporting studies, analyses and data, to City. Principal Project Company shall deliver to City complete copies of all new or amended Regulatory Approvals.</p> <p><u>Certain Risks Relating to Government Approvals.</u> Except as provided for in the Project Agreement, Principal Project Company shall not be entitled to any incremental costs, delayed payment compensation, time extensions, or any other relief associated with securing Regulatory Approvals.</p> <p><u>Changes to Government Approvals.</u> If Principal Project Company wishes to obtain, modify, renew, or extend any Regulatory Approvals, Principal Project Company shall first comply with, and obtain any consent or waiver required in accordance with, then-existing agreements between the SFMTA and other City departments or agencies or between City and other Regulatory Agencies.</p> <p><u>City Assistance with Government Approvals.</u> Principal Project Company may, by notice to City, request City’s reasonable assistance and cooperation in obtaining, modifying, renewing or extending any Regulatory Approvals. If City, in its sole discretion, elects to provide that assistance and cooperation, City will reasonably assist and cooperate with Project Company in seeking to obtain the Regulatory Approvals. Principal Project Company acknowledges and agrees that no cooperation or assistance by the City shall, or is intended to, waive or modify City’s police, permitting and regulatory powers with respect to Regulatory Approvals, including the issuance, modification or requirements relating thereto.</p> <p>City and Principal Project Company shall work jointly to establish a scope of work and budget for City’s recoverable costs related to the assistance and cooperation City agrees to provide.</p>
6.4. Compliance with Laws	Principal Project Company shall comply with, and require that all Contractors comply with, all Applicable Laws.

<p>6.5. Compliance with Government Approvals</p>	<p><u>General</u>. Throughout the term of the Project Agreement and the course of the Work, Principal Project Company shall:</p> <ul style="list-style-type: none"> <li>(a) comply with all conditions and requirements imposed by all Regulatory Approvals; and</li> <li>(b) undertake all actions required by, or necessary to maintain in full force and effect all Regulatory Approvals to be obtained by Principal Project Company.</li> </ul> <p><u>CEQA Mitigation, Monitoring, and Reporting Program</u>. Principal Project Company shall comply with and implement, and cause Contractors to comply with and implement, all mitigation, monitoring, and reporting measures listed in the CEQA MMRP, to the satisfaction of the Planning Department.</p>
<p>6.6. Coordination, Cooperation, and Access</p>	<p>Principal Project Company shall coordinate and cooperate with City, the independent engineer (if one is utilized), and Regulatory Agencies in matters relating to the Work, including facilitating their oversight of the Work, as applicable.</p> <p>Principal Project Company shall not interfere with the work of or cause any delay to any other contractors that may be carrying out work within the Project Site or in the land adjoining or near the Project Site and will allow them reasonable access to the Project Site.</p> <p>Subject to the terms of the Project Agreement, when accessing the Project Site during the D&amp;C Work, the City, Third Parties and contractors of the City will not unreasonably and materially interfere with Principal Project Company's performance of the Work and shall comply with Principal Project Company's reasonable, non-discriminatory and previously announced site access and work health and safety policies and procedures.</p>
<p>6.7. Cooperation Agreements</p>	<p>Principal Project Company shall comply with and observe the any cooperation agreements that City has entered into with other Regulatory Agencies ("Cooperation Agreement(s)") throughout performance of the Work. The terms and impacts of any Cooperation Agreements shall be provided and developed during the PDA Term</p>
<p>6.8. Safety Compliance</p>	<p>City may from time to time issue orders to Principal Project Company to implement any improvements, repair, reconstruction, rehabilitation, restoration, renewal, replacement, changes in configuration, or procedures implemented to correct a specific safety condition or risk that City has reasonably determined to exist by investigation or analysis (excluding a safety condition or risk that exists by reason of Principal Project Company's failure to comply with the requirements of the Contract Documents) ("Safety Compliance Order(s)").</p> <p>Except in the case of an Emergency and except for Safety Compliance Orders directed by a Regulatory Agency or other regulatory authority other than City, City will consult with Principal Project Company before issuing a Safety Compliance Order concerning the risk to public or worker safety, alternative compliance measures, cost impacts, and the availability of Principal Project Company resources to fund the Safety Compliance Order work.</p> <p>An "Emergency" means any unplanned event within or near the Project Site that:</p> <ul style="list-style-type: none"> <li>(a) causes or has the potential to cause disruption to operation of the Infrastructure Facility;</li> <li>(b) presents an immediate or imminent threat to the long-term integrity of any part of the Facility, to the environment, to property immediately adjacent to the</li> </ul>



	<p>Facility or to the safety of users or the traveling public; or</p> <p>(c) is recognized or declared to be an emergency by the governor of the state, the Federal Emergency Management Administration (FEMA), the U.S. Department of Homeland Security or other Regulatory Agency with authority to declare an emergency.</p> <p>Where a Regulatory Agency or other regulatory authority other than City directs a Safety Compliance Order, in order for Principal Project Company to comply with the Safety Compliance Order, City shall issue a corresponding Safety Compliance Order to Principal Project Company under the terms of the Project Agreement.</p> <p>Principal Project Company shall implement each Safety Compliance Order as expeditiously as reasonably possible following its issuance. Principal Project Company shall diligently prosecute the Work necessary to achieve such Safety Compliance Order until completion.</p>
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**SECTION 7. DESIGN AND CONSTRUCTION WORK**

<p>7.1. General Obligations of Principal Project Company Concerning D&amp;C Work</p>	<p>Principal Project Company shall:</p> <ul style="list-style-type: none"> <li>(a) expeditiously and diligently progress performance of the D&amp;C Work with the goal of achieving Substantial Completion for the Infrastructure Facility by deadline set forth in the Project Agreement for Substantial Completion of the Infrastructure Facility;</li> <li>(b) carry out or do all things necessary to perform the D&amp;C Work and design and construct the Facility in accordance with the Contract Documents and good industry practice;</li> <li>(c) ensure the Facility meets the requirements of the Contract Documents, including that the Facility be constructed in compliance with the San Francisco Green Build Code (Chapter 7 (Green Building Requirements for City Buildings) of the San Francisco Environment Code) and achieve LEED Gold certification;</li> <li>(d) provide maintenance and other services as described in the Contract Documents;</li> <li>(e) ensure adequate materials, equipment and resources are available to ensure compliance with the requirements of the Contract Documents under normal conditions and reasonably anticipated abnormal conditions;</li> <li>(f) ensure all materials and equipment are of good quality and new unless otherwise expressly stated;</li> <li>(g) ensure that, as of the date for Substantial Completion of the Infrastructure Facility, it shall be free of defects, including design defects, errors and omissions, except as may be set out in the Infrastructure Facility punch list (which shall be fully resolved as of Final Acceptance of the Infrastructure Facility);</li> <li>(h) ensure the Project Site is kept in a safe, secure, neat and clean condition at all times;</li> <li>(i) cooperate with City and Regulatory Agencies in all matters relating to the D&amp;C Work, including their oversight of the D&amp;C Work;</li> <li>(j) remove and replace Nonconforming Work (which term is defined in <a href="#">Section 7.7</a>) and/or materials, whether discovered or rejected by City or Principal Project Company, or otherwise remedy such Nonconforming Work in an acceptable</li> </ul>
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	<p>manner and in accordance with the requirements of the Contract Documents; and</p> <p>(k) pay all direct and indirect costs for all Utility (which term will be defined in the Project Agreement) services required to perform and complete the D&amp;C Work in accordance with the requirements of the Contract Documents.</p>
<p>7.2. Performance, Design and Construction Standards</p>	<p>Principal Project Company shall construct and equip the Facility in accordance with the Project's release for construction documents.</p> <p>After Commercial Close, City may modify relevant provisions of the Technical Requirements to incorporate any changed, added, or replaced codes and standards applicable to the D&amp;C Work by delivering a City-initiated change order to Principal Project Company.</p>
<p>7.3. Design Implementation</p>	<p>Principal Project Company, through appropriately qualified professional engineers and architects registered and licensed in the State of California and identified in the Project Management Plan, shall furnish designs, plans, and specifications in accordance with the Contract Documents. Principal Project Company shall cause the Project's architect(s) of record and/or engineer(s) of record to sign and seal all final design documents.</p>
<p>7.4. Schedule, Deadlines, Notices to Proceed, and Commencement of Work</p>	<p><u>Project Schedule.</u> Subject to occurrence of a delay that is (a) directly attributable to a Delay Event and (b) not concurrent with any delay not caused by a Delay Event, Principal Project Company represents that its critical-path method schedule for the entire Facility ("Project Schedule") represents a practical schedule to complete performance of the Work through Final Acceptance and is consistent with applicable deadlines.</p> <p><b>[NOTE:</b> The initial Project Schedule at the time of Commercial Close and as attached to the Project Agreement shall be reviewed and approved by the City prior to Commercial Close.]</p> <p>The Parties shall use the Project Schedule for planning and monitoring the progress of the D&amp;C Work. The Project Schedule shall include the deadlines for Substantial Completion and Final Acceptance of the Facility.</p> <p>Principal Project Company shall not be limited in the sequencing or staging of the D&amp;C Work, except to the extent that the Project Agreement imposes limitations.</p> <p>Throughout the D&amp;C Period, the Principal Project Company shall submit to City a monthly progress schedule and report in accordance with the requirements of the Project Agreement. The reporting shall include updates to the Project Schedule so that it is at all times an accurate, reasonable, and realistic representation of Principal Project Company's plans for the completion of the D&amp;C Work in accordance with the requirements of the Project Agreement. Principal Project Company shall undertake the D&amp;C Work in compliance with the Project Schedule, including any updates to it.</p> <p><u>Commencement of Preconstruction Work.</u> The Project Agreement shall set forth conditions for the City to issue a first notice to proceed ("Conditions to NTP 1") for the Infrastructure Facility. Principal Project Company shall not commence any Work until City has issued NTP 1 authorizing commencement of preconstruction Work.</p> <p><u>Commencement of Construction Work.</u> The Project Agreement shall set forth conditions for the City to issue a second notice to proceed ("Conditions to NTP 2") for the Infrastructure Facility. Principal Project Company shall not commence any portion of the construction Work for the Project until City has issued NTP 2</p>

	authorizing commencement of the applicable portion of construction Work.
7.5. Utility Adjustments	<b>Note:</b> The scope of any Utility adjustment Work will be developed during the PDA Term and set forth in the Project Agreement.]
7.6. Hazardous Materials Management.	<u>Hazardous Materials Management.</u> Except as otherwise provided in the Project Agreement, Principal Project Company shall perform, or cause to be performed, all Hazardous Materials site investigation above and below ground, testing, mitigation, management, and proper disposal in accordance with the Technical Requirements and Applicable Law.
7.7. Nonconforming Work – D&C Work	<p><u>Obligations to Replace Nonconforming Work.</u> Principal Project Company shall perform all Work in conformity with the Contract Documents.</p> <p>“Nonconforming Work” means any D&amp;C Work (including any product of the D&amp;C Work) that does not conform to the requirements of the Contract Documents, the Regulatory Approvals, applicable law, or the Facility’s design documents or construction documents, including any Work required to be repaired or replaced under the Contract Documents.</p> <p>If Principal Project Company has not performed the D&amp;C Work in conformity with the Contract Documents, then, in addition to any other remedies available to City, City may direct Principal Project Company to, and Principal Project Company shall, remove and replace or otherwise remedy the Nonconforming Work.</p> <p>Principal Project Company shall not be entitled to make a claim in connection with such D&amp;C Work except as it relates to a dispute regarding whether Project Company had performed the D&amp;C Work in conformity with the Contract Documents.</p> <p><u>City’s Remedies.</u> City shall have the right and authority to cause Nonconforming Work to be removed, replaced or otherwise remedied, and to withhold or deduct the costs from any monies due or that become due to Principal Project Company under the Contract Documents upon:</p> <ul style="list-style-type: none"> <li>(a) any failure of Principal Project Company to provide a proposed remedial plan, obtain City’s approval thereof and implement such approved plan; or</li> <li>(b) any failure of Principal Project Company to comply with City’s direction relating to any safety issue, including Safety Compliance Orders.</li> </ul> <p>In addition to the right to cause the removal, replacement or remedy of the Nonconforming Work, at the request of Principal Project Company or upon its failure to remove, replace or otherwise remedy the Nonconforming Work within the timelines set forth in the Project Agreement, City may, in its sole discretion, accept such Nonconforming Work and receive reimbursement in an amount equal to the greater of: (a) the amount deemed appropriate by City (acting in good faith) to provide compensation for future impacts, maintenance and/or other costs relating to the Nonconforming Work, or (b) 100% of Principal Project Company’s cost savings associated with its failure to perform the Work in accordance with the requirements of the Contract Documents</p>
7.8. Substantial Completion and Final Acceptance	<p>Principal Project Company must satisfy a number of conditions to achieve Substantial Completion of the Facility, which conditions will be agreed by the Parties and set forth in the Project Agreement.</p> <p>Immediately after the date on which Substantial Completion is achieved for the Infrastructure Facility, Principal Project Company must diligently progress the</p>

	<p>activities required to achieve Final Acceptance of the Infrastructure Facility, the conditions for which will be agreed by the Parties and set forth in the Project Agreement.</p> <p>Substantial Completion of the HCC must occur no later than one year following Substantial Completion of the Infrastructure Facility, subject to the concepts and requirements set forth in Predevelopment Agreement <u>Section 6.9(a)</u> relating to HCC construction activities that occur after Substantial Completion of the Infrastructure Facility. The relevant provisions, conditions and restrictions will be further developed during the PDA Term and included in the Project Agreement.</p>
<p><b>SECTION 8. INFRASTRUCTURE FACILITY MAINTENANCE</b></p>	
<p>8.1. General; Asset Management Plan</p>	<p>Principal Project Company is responsible for performance of Infrastructure Facility Maintenance in accordance with requirements specified in the Contract Documents, including the Asset Management Plan approved by City during the PDA Term.</p>
<p>8.2. Principal Project Company Inspection, Testing and Reporting</p>	<p>Principal Project Company shall carry out inspections and tests in accordance with the Technical Requirements and Asset Management Plan. Principal Project Company shall use the results of such inspections and tests to develop and update the Asset Management Plan, to maintain asset condition and service levels, and to develop programs of maintenance and Renewal Work (which term is defined in <u>Section 8.4</u>) to minimize the effect of Infrastructure Facility Maintenance on City employees, residents, and other members of the public.</p>
<p>8.3. Responsibility for Loss or Damage</p>	<p>Infrastructure Facility Maintenance includes having full charge and care of the Infrastructure Facility, except for those elements included in the SFMTA O&amp;M, from the date of Substantial Completion of the Infrastructure Facility through the end of the Infrastructure Facility Term.</p>
<p>8.4. Life-Cycle Renewal Work</p>	<p>“Life Cycle Renewal Work” means all work set forth in the Technical Requirements and related to the capital replacement, reconstruction, overhaul, refurbishment and reinstatement of the Infrastructure Facility, except for those elements included in the SFMTA O&amp;M, including, without limitation, the Work set forth in Division 7, Section 4.3, Table 7 #11 of the Technical Requirements.</p> <p>Principal Project Company shall diligently perform Life Cycle Renewal Work as and when necessary to comply with the Contract Documents. Project Company shall use the Asset Management Plan developed in accordance with the Technical Requirements as the principal guide for scheduling and performing Life Cycle Renewal Work; <u>except that</u> Principal Project Company may perform Life Cycle Renewal Work not identified in Asset Management Plan as necessary to maintain compliance with the Contract Documents, subject to scheduling the performance of such Life Cycle Renewal Work at times agreed to by City, in its reasonable discretion.</p>
<p>8.5. Coordination of Maintenance Responsibilities</p>	<p>At Principal Project Company’s reasonable request from time to time, City will, at no cost to City, reasonably assist Principal Project Company in seeking the cooperation and coordination of any Regulatory Agency with respect to Principal Project Company’s Infrastructure Facility Maintenance.</p> <p>The objectives of such assistance will be to minimize disruptions to transit operations, City employees, residents, and traffic and ensure that all Infrastructure Facility Maintenance activities are carried out in accordance with then-current maintenance standards and then-current traffic management standards, practices</p>

	and procedures of such authorities having jurisdiction.
8.6. SFMTA O&M	<p>City will be responsible for SFMTA O&amp;M services for the Bus Yard Component during the Infrastructure Facility Term. The scope of the SFMTA O&amp;M services is described in Division 7 (Asset Management Program Requirements) of the Technical Requirements and will be included in the Project Agreement.</p> <p>City will manage and own the risk of a failure to comply by City staff or other City contractors undertaking SFMTA O&amp;M.</p>
8.7. Handback Requirements	<p>“Handback Requirements” means the terms, conditions, requirements, and procedures governing the condition in which Principal Project Company is to deliver the Infrastructure Facility and its assets upon expiration of the Infrastructure Facility Term. The Handback Requirements will include an inspection regime and requirements for providing performance security (e.g., reserves, letters of credit, etc.) relating to the Handback Requirements.</p> <p>The Handback Requirements are described in Section 4.10 of Division 7 (Asset Management Program Requirements) of the Technical Requirements.</p>
SECTION 9. INTENTIONALLY OMITTED	
SECTION 10. CONTRACTING AND LABOR PRACTICES	
<p><b>[Note:</b> The Project Agreement will include provisions respecting contracting and labor practices that are customary in City public works contracts, including prevailing wage, construction hiring and labor harmony requirements.]</p>	
SECTION 11. INSURANCE; PAYMENT AND PERFORMANCE SECURITY; INDEMNITY	
11.1. Insurance	<p><b>[Note:</b> City and Lead Developer will identify during the PDA Term the insurance policies, minimum coverage requirements, and terms of coverage that will be required with respect to the Infrastructure Facility under the Project Agreement. These insurance requirements will be consistent with precedent from comparable social infrastructure P3 availability payment projects and will include provisions on commercial unavailability and benchmarking. ]</p>
11.2. Payment and Performance Security	<p><u>Design and Construction Security For Infrastructure Facility.</u> Principal Project Company shall, as a condition precedent to Financial Close, obtain or cause to be obtained and deliver to City (a) one or more payment bonds or letters of credit with an aggregate value equal to the cost of the D&amp;C Work and one or more performance bonds or letters of credit with an aggregate value equal to an amount determined by the City during the PDA Term, which amount may equal 100% of the cost of the D&amp;C Work. The forms of the payment and performance bonds or letter of credit will be included in the Project Agreement and the Project Agreement will address issues relating to lenders’ rights, as well as whether a mix of bonds and letters of credit will be allowed by City.</p> <p><u>Infrastructure Facility Maintenance Security.</u> <b>[Note:</b> City will identify during the PDA Term the requirements for IFM security. These requirements will be consistent with precedent from comparable social infrastructure P3 availability payment projects.]</p>
11.3. Guarantees	<p>If Principal Project Company, any contractor under a Key Contract, any affiliate, or any lender receives from any person a guaranty of payment or performance of any obligation(s) of a contractor for a Key Contract (i.e., design-build contractor, IFM contractor, and other prime contractors with contracts in excess of \$25 million), then</p>

	<p>either Principal Project Company shall:</p> <ul style="list-style-type: none"> <li>(a) Cause such person to expressly include City as a guaranteed party under such guaranty, with the same protections and rights of notice, enforcement and collection as are available to any other guaranteed party; or</li> <li>(b) Deliver to City, concurrently with the issuance of such guaranty, a duplicate original of such guaranty to City permitting City, subject to the rights of lenders under any Direct Agreement, to become the transferee beneficiary under such guaranty; and the guaranty shall expressly authorize such transfer without condition and permit draw without presentation of the original guaranty under the circumstances that shall be set forth in the Project Agreement.</li> </ul>
<p>11.4. Principal Project Company's Obligation to Defend and Indemnify</p>	<p>Principal Project Company shall defend, indemnify, protect and hold harmless City, including its boards and commissions, other persons and entities designated as "Indemnitees" in the Contract Documents, and all of their officers, agents, members, employees, authorized representatives, (or any other persons deemed necessary by any of them to the extent that any claims against such other persons arise from or are related to the Work or obligations under the Project Agreement) from and against claims, losses, and liability of every kind, nature, and description directly or indirectly arising out of, connected with, or resulting from :</p> <ul style="list-style-type: none"> <li>(a) Any alleged or actual PPC Fault, if asserted or incurred by or awarded to any Third Party or any PPC-Related Entity;</li> <li>(b) Any claim asserted by tenants or other occupants of the Housing and Commercial Component;</li> <li>(c) Damage to public or private property owned by Third Parties (or any PPC-Related Entity) and for injuries to any person or entity arising out of Principal Project Company's performance of the Project or Work;</li> <li>(d) Any alleged intellectual property infringement or other allegedly improper appropriation or use of intellectual property by any PPC-Related Entity in performance of the Project or the Work, or in connection with the Facility;</li> <li>(e) Any and all claims by any governmental or taxing authority claiming taxes based on gross receipts, purchases or sales, or the use of any property or income of any PPC-Related Entity with respect to any payment for the Project or Work made to or earned by any PPC-Related Entity;</li> <li>(f) The failure or alleged failure by any PPC-Related Entity to pay sums due for the Work or services of Contractors, laborers, or suppliers;</li> <li>(g) Any actual or threatened Principal Project Company release of Hazardous Materials;</li> <li>(h) The claim or assertion by any other City contractor or a Utility that any PPC-Related Entity (i) failed to cooperate reasonably with such party, so as to cause interference, disruption, delay or loss; or (ii) interfered with or hindered the progress or completion of work being performed by such City contractor or Utility, so as to cause interference, disruption, delay or loss, to the extent such claim arises out of any PPC Fault;</li> <li>(i) Any PPC-Related Entity's breach of or failure to perform an obligation that City</li> </ul>

	<p>owes to a Third Party, including Regulatory Agency and Utilities, under Applicable Law or under any agreement between City and a Third Party, where City has delegated performance of the obligation to Principal Project Company under the Project Agreement or the acts or omissions of any PPC-Related Entity which render City unable to perform or abide by an obligation that City owes to a Third Party, including Regulatory Agencies and Utilities, under any agreement between City and a Third Party, where, in each case, the agreement was expressly disclosed or known to Principal Project Company;</p> <p>(j) Inverse condemnation, trespass, nuisance or similar taking of or harm to real property by reason of: (i) the failure of any PPC-Related Entity to comply with good industry practices, requirements of the Project Agreement, the Project Management Plan or Regulatory Approvals respecting control and mitigation of construction activities and construction impacts, (ii) the intentional misconduct or negligence of any PPC-Related Entity in connection with performance of the Project or the Work, or (iii) the actual physical entry onto or encroachment upon another's property by any PPC-Related Entity in connection with performance of the Project or the Work;</p> <p>(k) Errors or other defects in the design, supply, construction (including installation), operation or maintenance of the Project or of Utility adjustments included in the Project or the Work; and</p> <p>(l) Such other matters and events as are set forth in the Project Agreement.</p> <p>“PPC Fault” means:</p> <p>(a) the breach by any PPC-Related Entity of any of its obligations or any representation, warranty or covenant under the Contract Documents;</p> <p>(b) a breach of Applicable Law or any Regulatory Approval by any PPC-Related Entity; and</p> <p>(c) fraud, criminal conduct, intentional misconduct, recklessness, bad faith, gross negligence, negligence or other culpable act or omission of any PPC-Related Entity</p> <p>This indemnification shall include, without limitation, reasonable fees of attorneys, consultants, and experts and related costs and City's costs of investigating any claims against City. In addition to Principal Project Company's obligation to indemnify City, Principal Project Company specifically acknowledges and agrees that it has an immediate and independent obligation to defend City from any claim which actually or potentially falls within this indemnification provision, even if the allegations are or may be groundless, false or fraudulent, which obligation arises at the time such claim is tendered to Principal Project Company by City and continues at all times thereafter.</p> <p>Principal Project Company's indemnity obligations shall not extend to any claims, suits, actions, losses and liabilities to the extent directly caused by:</p> <p>(a) the gross negligence, reckless or willful misconduct, bad faith or fraud of an Indemnitee;</p> <p>(b) a City-Caused Delay Event or a City-Caused Relief Event; or</p>
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	<p>(c) City's breach of any of its obligations under the Contract Documents.</p> <p>This indemnification shall not be valid in the instance where the loss is caused by the sole negligence or willful misconduct tort of any Indemnitee. Principal Project Company's obligations under this section apply regardless of whether or not such claim, suit, action, loss or liability was caused in part or contributed to by an Indemnitee. However, without affecting the rights of the City under any provision of the Project Agreement, Principal Project Company, Principal Project Company shall not be required to indemnify and hold harmless City for liability attributable to the extent caused by (i) the negligence, reckless or willful misconduct, bad faith or fraud of an Indemnitee; or (ii) City's breach of any of its material obligations under the Contract Documents. In instances where City is shown to have been actively negligent, reckless, engaged in willful misconduct or acting in bad faith or with fraud and where such City actions negligence accounts for only a percentage of the liability involved, the obligation of Principal Project Company will be for that entire portion or percentage of liability not attributable to such actions of City.</p>
<p>11.5. City Consultants</p>	<p>Principal Project Company's defense, indemnity, and hold harmless obligations shall extend to City's consultants (e.g., design professionals and construction managers) providing services covering any portion of the Project under a separate written agreement with City and designated in the Contract Documents as persons or entities to be listed on Principal Project Company's insurance policies as "Additional Insureds."</p> <p>But Principal Project Company's defense, indemnity, and hold harmless obligations shall not extend to the liability of a City consultant (including but not limited to architects and engineers) designated as an Indemnitee or its agents, employees, or subconsultants arising out of, connected with or resulting from such Indemnitee's own active negligence, willful misconduct, bad faith, fraud, errors or omissions or from such Indemnitee's preparation or approval of maps, plans, opinions, reports, surveys, change orders, designs or specifications, or such Indemnitee's issuance of or failure to issue directions or instructions provided that such issuance or failure to issue is the primary cause of the damage or injury.</p>
<p>11.6. Indemnitees by Contractor</p>	<p>Principal Project Company shall ensure that each subcontract includes indemnity provisions appropriate to the scope of the work to be performed by the contractor, naming as indemnitees City, including its boards and commissions, other persons and entities designated as "Indemnitees" in the Contract Documents, and all of their officers, agents, members, employees, authorized representatives, (or any other persons deemed necessary by any of them to the extent that any claims against such other persons arise from or are related to the work or obligations under the contract or relate to the work performed by the contractor. .</p>
<p>11.7. Special Damages</p>	<p>Except as stated here, Principal Project Company shall have no liability to City for any type of special, consequential, or incidental damages arising out of or connected with Principal Project Company's performance of the Work. This limit of liability applies under all circumstances including, but not limited to, the breach, completion, termination, suspension or cancellation of the services under the Project Agreement, and negligence or strict liability of Principal Project Company. This limit of liability, however, shall NOT apply to, limit or preclude:</p> <p>(a) Principal Project Company's obligation to pay liquidated damages as set forth in the Contract Documents, including any credits, deductions or offsets for failure to meet performance requirements or pursuant to the noncompliance/deduction</p>



	<p>regime;</p> <ul style="list-style-type: none"> <li>(b) damages caused by Principal Project Company’s gross negligence, reckless conduct, willful acts or omissions, fraud or illegal or unlawful acts;</li> <li>(c) Principal Project Company’s obligations to indemnify and defend City and other Indemnities as set forth in the Contract Documents;</li> <li>(d) Principal Project Company’s liability damages that fall within the insurance coverages required under the Project Agreement;</li> <li>(e) Principal Project Company’s liability for statutory damages imposed by City as a Regulatory Agency under Applicable Law;</li> <li>(f) statutory fines, penalties, and statutory damages, including punitive damages, treble damages, and statutory attorney fees and costs;</li> <li>(g) Amounts that Principal Project Company is obligated to reimburse City under the express provisions of this Agreement (including any express interest thereon);</li> <li>(h) Principal Project Company’s express Project warranties set forth in the Contract Documents;</li> <li>(i) damages and other liability arising under claims by Third Parties for loss or damage to property or personal injuries, including wrongful death;</li> <li>(j) liability for violation of environmental regulations and laws; or</li> <li>(k) damages and other liability for infringement of any Intellectual Property right.</li> </ul>
<p><b>SECTION 12. PAYMENTS TO PRINCIPAL PROJECT COMPANY</b></p>	
<p>12.1. Milestone Payment</p>	<p>Subject to any limitations and exceptions provided in the Project Agreement, City will pay milestone payment to Principal Project Company upon achievement of Substantial Completion of the Infrastructure Facility. The amount of the Milestone Payment will be [TBD – developed during the PDA Term].</p>
<p>12.2. Availability Payments</p>	<p>Commencing from the date of Substantial Completion of the Infrastructure Facility and subject to any limitations and exceptions expressly provided in the Project Agreement, City will make availability payments to Principal Project Company in accordance with the availability payment mechanism agreed by the Parties and to be set forth in the Project Agreement with respect to the Infrastructure Facility.</p> <p>The availability payments shall be subject to deduction based on failure to achieve performance as required by performance requirements set forth in the Project Agreement. The performance requirements and the noncompliance/deduction regime shall be set forth in the Project Agreement.</p> <p>City will make quarterly availability payments to Principal Project Company subject to the terms of the Project Agreement.</p> <p>City will pay Principal Project Company each regularly scheduled disbursement within 30 days after receipt of a properly submitted invoice for such payment.</p>
<p>12.3. Utilities/Energy Consumption</p>	<p>The Project Agreement will set forth a painshare/gainshare payment mechanism outside of the availability payment structure with respect to utilities/energy consumption of the Infrastructure Facility. The mechanics, baseline consumption rates and risk sharing shall be developed during the PDA Term.</p>

<p>12.4. Taxes</p>	<p><u>General</u>. Except in the case of any possessory interest tax payments assessed on the Infrastructure Facility, Principal Project Company shall pay all applicable taxes on or before the due date.</p> <p>If an exemption from applicable sales or use taxes becomes available for the Project following the execution of the Project Agreement, City shall have no obligation to reimburse Principal Project Company for any such taxes, and City shall be entitled to an upfront payment from Principal Project Company or a reduction in payments made by City, as agreed upon by the Parties, equal to the amount actually saved following the date such exemption becomes available.</p> <p><u>Possessory Interest Tax</u>. City shall compensate Principal Project Company (through an adjustment of the availability payment or otherwise as agreed to by City) for any possessory interest tax imposed on or assessed against the Principal Project Company in respect of the Principal Project Company's interest in the Infrastructure Facility (but excluding any portion of the tax imposed on the Housing and Commercial Component and/or the Housing and Commercial Component share of the Common Infrastructure).</p>
<p>12.5. Other Adjustments; Full Compensation</p>	<p>The milestone payment and availability payments shall be subject to adjustment to reflect previous over-payments and/or under-payments, any interest payable in respect of any amounts owed, and any other amount due and payable from Principal Project Company to City or from City to Principal Project Company under the Project Agreement, including credits, deductions or offsets for failure to meet performance requirements or pursuant to the noncompliance/deduction regime.</p> <p>The payments provided under Project Agreement constitute full compensation for performance of all the Work, subject only to Principal Project Company's rights to payment.</p>
<p>12.6. Appropriation</p>	<p>All payments due from the City to the Principal Project Company under the Project Agreement shall be paid solely from moneys made available to City from an appropriation of funds for the purpose of making all such payments coming due in such fiscal year. Please see <u>Section 24</u>, below.</p>
<p><b>SECTION 13. CITY CHANGE PROCESS; UNILATERAL CHANGE ORDERS; DEVIATIONS</b></p>	
<p>13.1. City-Initiated Changes</p>	<p>With respect to (i) the D&amp;C Work, at any time between the NTP1 and Final Acceptance, and (ii) the IFM, at any time after NTP1, City may order additions, deletions, or revisions in the Work, or changes to the requirements applicable to the Work, as it may direct in its sole discretion (each, a "City Change").</p> <p>Principal Project Company agrees to perform the Work, as altered or changed by any City Change, as if it had been a part of the original Project Agreement.</p> <p>Principal Project Company shall not be entitled to any additional compensation, time extension, or other relief in connection with a City Change, except to the extent granted under the Project Agreement or otherwise agreed by City and Principal Project Company pursuant to the change order procedures agreed to by the Parties and to be set forth in the Project Agreement.</p> <p>Principal Project Company shall not be required to implement any City Change to the extent the City Change would:</p> <p>(a) result in a breach of Applicable Law or breach of any conditions of a Regulatory Approval or revocation of any Regulatory Approval;</p>

	<ul style="list-style-type: none"> <li>(b) require a material new Regulatory Approval which would not be reasonably obtainable;</li> <li>(c) render any material insurance policy void or voidable (unless City agrees to assume the risk arising out of such voiding); or</li> <li>(d) materially and adversely affect the health and safety of the public at the Project Site;</li> </ul>
13.2 Principal Project Company Change Requests	With respect to (i) the D&C Work, at any time between the NTP1 and Final Acceptance; and (ii) the IFM, at any time after NTP1, Principal Project Company may request additions, deletions, or revisions in the Work (each, a “PPC Change Request”) pursuant to the change order procedures to be set forth in the Project Agreement.
13.3 Directive Letter	<p>At any time after NTP1, City may issue a “Directive Letter” instructing Principal Project Company to proceed with a change in the Work.</p> <p>The Directive Letter will either: (a) direct Principal Project Company to implement a City-initiated changer order; or (b) state that Work is within Principal Project Company’s original scope of Work or is necessary to comply with the requirements of the Contract Documents.</p> <p>The procedures for the Parties to negotiate any applicable compensation or time extension and for Principal Project Company to assert a claim, as applicable, in response to a Directive Letter will be set forth in the Project Agreement.</p>
13.4 Deviations	<p>Principal Project Company may request City approval of certain minor changes to the Technical Requirements that do not impact schedule, costs, function, performance, or safety (“Deviations”).</p> <p>Deviations may be approved by City, in its sole discretion, on a “no-cost” basis, and in such event shall not require a change order. Any other change in the requirements of the Contract Documents shall require a change order.</p>
<b>SECTION 14. DELAY EVENTS AND RELIEF EVENTS; PROCESS</b>	
14.1 General	The provisions concerning Delay Events, Relief Events and Force Majeure shall apply to the Infrastructure Facility.
14.2 CEQA Event	<p>“CEQA Event” means:</p> <ul style="list-style-type: none"> <li>(a) any new or modified CEQA Approval necessitated solely by a City Change, a Delay Event or Relief Event;</li> <li>(b) legal action being taken in respect of the CEQA Approval that results in a temporary restraining order, preliminary injunction or other form of interlocutory relief by a court of competent jurisdiction that prohibits prosecution of, or by complying with such temporary restraining order, preliminary injunction or other form of interlocutory relief by a court of competent jurisdiction results in prohibiting the prosecution of, a material portion of the Project Work;</li> <li>(c) review or revocation or material change to, the CEQA Approval; or</li> <li>(d) any review or revocation of, or change to, a CEQA Approval directly resulting from the circumstances specified in clauses (b) and (c),</li> </ul> <p>except to the extent resulting from Principal Project Company’s design, Work or from any PPC Fault.</p>

<p>14.3. Change of Law</p>	<p>“Change in Law” means</p> <ul style="list-style-type: none"> <li>(a) any repeal (in whole or in part) of, or amendment or modification to, any Applicable Law by, any Governmental Entity or any written change in interpretation or application of, any Applicable Law, in each case, after the Setting Date; or</li> <li>(b) the adoption or enactment of any new Applicable Law by any Governmental Entity after the Setting Date,</li> </ul> <p>which, in either case, is materially inconsistent with any existing Applicable Law or any existing interpretation or application of, any such Applicable Law in effect prior to the Setting Date; but excluding, (i) any repeal of, or amendment or modification to, a written change in interpretation or application of, and Applicable Law, or any new Applicable Law, in each case, that is pending, passed or adopted but not yet effective as of the Setting Date, (ii) any repeal of, or amendment or modification to, or written change in interpretation or application of, or the adoption or enactment of, state or federal tax laws of general application, and (iii) any repeal of, or amendment or modification to, or written change in interpretation or application of, or adoption or enactment of, state labor laws.</p>
<p>14.4. City-Caused Delay Event and City-Caused Relief Event</p>	<p>“City-Caused Delay Event” means any event falling under <u>clauses (a)-(e), (k), (n), (q) and (r)</u> of the definition of Compensable Delay Event.</p> <p>“City-Caused Relief Event” means any event falling under <u>clauses (a)-(c), (g), (j), (q) and (l)</u> of the definition of Compensable Relief Event.</p>
<p>14.5. City Fault</p>	<p>“City Fault” means:</p> <ul style="list-style-type: none"> <li>(a) a breach by City of any of its material obligations or any material representation or warranty under the Project Agreement;</li> <li>(b) City’s violation of any (i) Applicable Law or (ii) Regulatory Approval that is consistent with the Technical Requirements and with respect to which Principal Project Company has delivered prior written notice to City of the Regulatory Approval and the requirements set forth therein;</li> <li>(c) the prevention by City (acting in its proprietary capacity under the Project Agreement) of Principal Project Company from commencing or prosecuting the Work; or</li> <li>(d) fraud, criminal conduct, willful misconduct or grossly negligent act by City.</li> </ul>
<p>14.6. Compensable Delay Event</p>	<p>Compensable Delay Event means any of the following events or circumstances to the extent, in each case, that it directly and adversely impacts the D&amp;C Work during the D&amp;C Period:</p> <ul style="list-style-type: none"> <li>(a) the implementation of a City Change, excluding any Change following a Change Request;</li> <li>(b) City Fault;</li> <li>(c) Failure by City to provide Principal Project Company with access to the Project Site as required under the Project Agreement by the Access Date, except to the extent that (i) such failure is caused, in whole or in part, by delay in completion of the MME Expansion Project; (ii) a contractor performing the MME Expansion Project work is a PPC-Related Entity; and (iii) such contractor is not entitled to a time extension under the MME Construction Contract;</li> </ul>

	<ul style="list-style-type: none"> <li>(d) Failure by City to issue NTP1 or NTP2, as applicable, within 10 business days after full and complete satisfaction of the conditions precedent to the relevant NTP under the Project Agreement;</li> <li>(e) a Hazardous Materials Event caused by City;</li> <li>(f) a Relevant Change in Law;</li> <li>(g) discovery of an unidentified underground "Utility" (which term will be defined in the Project Agreement) within the Project Site that is: (1) not identified in the as-built drawings, existing facility drawings, or other documentation of existing underground Utilities within the Project Site available to or generated by Principal Project Company ("Utility Information") and which could not have been reasonably inferred as of the Setting Date, including from the presence of other facilities, such as buildings, meters, junction boxes, manholes or identifying markers, visible during a surface inspection of the Project Site, or (2) misidentified in the Utility Information, provided that an underground Utility shall only be deemed to be misidentified to the extent (A) the Utility's actual horizontal centerline location is not within five feet of the indicated coordinates (based on the inside diameter indicated for such Utility in the Utility Information), or (B) the Utility is not vertically located within three feet of the vertical elevation location indicated for such Utility in the Utility Information.</li> <li>(h) a CEQA Event;</li> <li>(i) compliance by Principal Project Company with an order or direction of an emergency service provider in an Emergency (except for Emergencies that are or arise out of Force Majeure Events);</li> <li>(j) any condemnation or other taking by eminent domain of any material portion of the Project Site or the D&amp;C Work;</li> <li>(k) failure of City to provide responses to proposed schedules, plans, design documents, and other Submittals and matters submitted to City after the Commercial Close for which response is required under the Project Agreement as an express prerequisite to Principal Project Company's right to proceed or act, within the time periods indicated in the Project Agreement, or if no time period is indicated, within a reasonable time, taking into consideration the nature, importance and complexity of the Submittal or matter; provided, however, that the foregoing shall apply only following delivery of Notice after the expiration of the applicable time period from Principal Project Company requesting such action in accordance with the terms and requirements of the Project Agreement;</li> <li>(l) discovery at, near or on the Project Site of any archeological, paleontological or cultural resources (including historic properties), excluding any such substance or resources known or disclosed to Principal Project Company as of the Setting Date (or which should have been known to Principal Project Company pursuant to a Reasonable Investigation);</li> <li>(m) discovery at, near or on the Project Site of any threatened or endangered species, excluding any such presence of species known or disclosed to Principal Project Company as of the Setting Date (or which should have been known to Principal Project Company pursuant to a Reasonable Investigation);</li> <li>(n) loss or damage to the Work directly caused by City Fault;</li> <li>(o) issuance of a temporary restraining order, preliminary injunction or other form of interlocutory relief by a court of competent jurisdiction that prohibits prosecution</li> </ul>
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	<p>of, or by complying with such temporary restraining order, preliminary injunction or other form of interlocutory relief by a court of competent jurisdiction results in prohibiting the prosecution of, any material portion of the D&amp;C Work;</p> <p>(p) discovery of (i) actual subsurface or latent physical conditions identified in the Geotechnical Baseline Report that differ materially from the subsurface conditions indicated in such report, excluding any such conditions known or disclosed to Principal Project Company prior to the Setting Date or that could have been reasonably anticipated as potentially present by an experienced global civil works contractor based on the information contained in such Geotechnical Baseline Report; or (ii) discovery of actual subsurface physical conditions within the Project Site of an unusual nature, differing materially from those ordinarily encountered in the area and generally recognized as inherent in the type of work provided for in the Project Agreement, excluding any such conditions known or disclosed to Principal Project Company prior to the Setting Date or that would become known to Principal Project Company by undertaking a Reasonable Investigation; <b>Note:</b> City intends to use a geotechnical baseline report as the means to allocate geotechnical risk, per industry practice. The geotechnical baseline report will be developed during the PDA Term and will be agreed by the Parties prior to the competitive procurement of the Design-Build Contract];</p> <p>(q) any order of City to suspend for convenience exceeding 24 hours in total for a single suspension or 144 cumulative hours in total across multiple suspensions;</p> <p>(r) subject to Principal Project Company complying with its obligations for coordination set forth in the Project Agreement, performance of work on the Project Site by City or City Contractors (other than any PPC-Related Entities) that materially and directly disrupts, damages or interferes with the D&amp;C Work;</p> <p>(s) a change in Project standards during the D&amp;C Term materially impacting the D&amp;C Work or the Project with which City directs Principal Project Company to comply under the Project Agreement; and</p> <p>(t) a Hazardous Materials Event caused by Third Parties.</p>
<p>14.7. Compensable Relief Event</p>	<p>Compensable Relief Event means any of the following events or circumstances to the extent, in each case, that it interferes directly and adversely with, or causes a failure of, the performance of the IFM after the Substantial Completion Date:</p> <p>(a) the implementation of a City Change, excluding any Change following a Change Request;</p> <p>(b) City Fault;</p> <p>(c) a Hazardous Materials Event caused by the City;</p> <p>(d) compliance by Principal Project Company with an order or direction of an emergency service provider in an Emergency (except for Emergencies that are or arise out of Force Majeure Events);</p> <p>(e) a change in Project standards during the Infrastructure Facility Term materially impacting the IFM or the Project with which City directs Principal Project Company to comply under the Project Agreement;</p> <p>(f) a Relevant Change in Law;</p> <p>(g) failure of City to provide responses to proposed schedules, plans, design documents, and other Submittals and matters submitted to City after the Setting</p>

	<p>Date for which response is required under the Project Agreement as an express prerequisite to Principal Project Company's right to proceed or act, within the time periods (if any) indicated in the Project Agreement, or if no time period is indicated, within a reasonable time, taking into consideration the nature, importance and complexity of the Submittal or matter; provided, however, that the foregoing shall apply only following delivery of Notice after the expiration of the applicable time period from the Principal Project Company requesting such action in accordance with the terms and requirements of the Project Agreement;</p> <p>(h) discovery at, near or on the Project Site of any archeological, paleontological or cultural resources (including historic properties), excluding any such substance or resources known or disclosed to the Principal Project Company as of the Setting Date (or which should have been known to Principal Project Company pursuant to a Reasonable Investigation);</p> <p>(i) discovery at, near or on the Project Site of any Threatened or Endangered Species (regardless of when the species was listed as threatened or endangered), excluding any such presence of species known to the Principal Project Company as of the Setting Date (or which should have been known or disclosed to Principal Project Company pursuant to a Reasonable Investigation);</p> <p>(j) loss or damage to the Infrastructure Facility directly caused by City Fault;</p> <p>(k) issuance of a temporary restraining order, preliminary injunction or other form of interlocutory relief by a court of competent jurisdiction that prohibits prosecution of a material portion of the IFM;</p> <p>(l) subject to Principal Project Company complying with its coordination obligations under the Project Agreement, performance of work on the Project Site by City or City Contractors (other than any PPC-Related Entities) that materially and directly disrupts, damages or interferes with the IFM;</p> <p>(m) Vandalism <b>[NOTE: vandalism/theft during the IFM Term shall be a shared risk with the amounts, maximum limits (if any) to be developed during the PDA Term];</b></p> <p>(n) any condemnation or other taking by eminent domain of any material portion of the Project Site or the Project; and</p> <p>(o) a Hazardous Materials Event caused by Third Parties.</p>
<p>14.8. Delay Event</p>	<p>Delay Event means any of the following events or circumstances that occur during the D&amp;C Period and directly impact the D&amp;C Work:</p> <p>(a) a Force Majeure Event; or</p> <p>(b) a Compensable Delay Event.</p>
<p>14.9. Force Majeure Event</p>	<p>'Force Majeure Event' means any of the following events or circumstances which directly cause either Party to be unable to perform all or a material part of its obligations under the Project Agreement:</p> <p>(a) war (including civil war or revolution), invasion, violent act of foreign enemy or armed conflict, military or armed blockade, or military or armed takeover of the Project, occurring within the State;</p> <p>(b) any act of terrorism, riot, insurrection, civil commotion or sabotage that causes direct physical damage to, or otherwise directly causes interruption to</p>

	<p>construction or direct losses during maintenance of the Project;</p> <ul style="list-style-type: none"> <li>(c) national or state-wide strikes not specific to Principal Project Company or embargoes, that, in each case, directly causes interruption to construction or direct losses during maintenance of the Project;</li> <li>(d) nuclear, radioactive, or biological contamination of the Project unless the source or cause of the contamination is brought to or near the Project Site by PPC-Related Entities, or is the result of any PPC Fault;</li> <li>(e) Flood, fire, explosion, tidal wave, sinkhole caused by natural events, or landslide caused by natural events, in each case directly impacting and damaging the physical improvements of the Project or performance of Work;</li> <li>(f) a seismic event in excess of a magnitude 3.5 on the Richter Scale, where such earthquakes, ground shaking, liquefaction, settlement, or ground movements directly impact, and cause damage to, temporary or permanent works of the Project;</li> <li>(g) any governor-declared Emergency within the limits or precluding access to the Project Site;</li> <li>(h) any epidemic specifically in the State; or (ii) Pandemic (defined as the worldwide spread of a new disease due to lack of immunity in most people. COVID-19 is a Pandemic); and</li> <li>(i) a Utility Delay.</li> </ul>
<p>14.10. Hazardous Materials Event</p>	<p>“Hazardous Materials Event” means Hazardous Materials in, over, under or emanating from the Project Site or which has migrated onto the Project Site from land or premises adjoining the Project Site that (1) render use of the Project unsafe or potentially unsafe absent assessment, containment and/or remediation, or (2) are required by Applicable Law to be recycled, treated or stored, excluding Hazardous Materials:</p> <ul style="list-style-type: none"> <li>(a) which are Known or Suspected Hazardous Materials;</li> <li>(b) that could have been reasonably avoided by use of available construction techniques or incorporation of anticipated or minor design changes which are consistent with Good Industry Practice;</li> <li>(c) to the extent caused, contributed or exacerbated by any PPC-Related Entity;</li> <li>(d) to the extent Principal Project Company is required and failed to manage or mitigate against the risk of in accordance with the Project Agreement;</li> <li>(e) to the extent a contractor, acting in accordance with Good Industry Practice, would have taken preventative measures to prevent or minimize, and Principal Project Company has failed to take such preventative measures; or</li> <li>(f) which arise out of or relate to the demolition of the existing facility on the Project Site.</li> </ul>
<p>14.11. Known or Suspected Hazardous Materials</p>	<p>“Known or Suspected Hazardous Materials” means Hazardous Materials that are known or reasonably suspected to exist as of the Setting Date based on information, data or analysis contained or referenced in the Reference Documents as of the Setting Date or which should have been known or reasonably suspected pursuant to a Reasonable Investigation prior to the Setting Date, including those listed in Technical Requirements. Known or Suspected Hazardous Materials include Hazardous Materials arising in or from any of the Hazardous Materials sites listed in</p>



	the CEQA documents or in the Technical Requirements.
14.12. PPC Fault	<p>“PPC Fault” means:</p> <ul style="list-style-type: none"> <li>(a) the breach by any PPC-Related Entity of any of its obligations or any representation, warranty or covenant under the Contract Documents;</li> <li>(b) a breach of Applicable Law or any Regulatory Approval by any PPC-Related Entity; and</li> <li>(c) fraud, criminal conduct, intentional misconduct, recklessness, bad faith, gross negligence, negligence or other culpable act or omission of any PPC-Related Entity</li> </ul>
14.13. Reasonable Investigation	<p>“Reasonable Investigation” means the following activities by appropriate, qualified professionals prior to the Setting Date:</p> <ul style="list-style-type: none"> <li>(a) Visit and inspection of the Project Site and adjacent locations, except areas to which access rights have not been made available by the Setting Date;</li> <li>(b) Undertaking the geotechnical, Utility, Hazardous Material and other site conditions investigations, sampling, testing, analyses and assessments as required or contemplated by the Predevelopment Agreement;</li> <li>(c) Review and analysis of all Reference Documents;</li> <li>(d) Review and analysis of CEQA Approval;</li> <li>(e) Reasonable inquiry with Utility Owners, including request for and review of Utility plans provided by Utility Owners;</li> <li>(f) Review and analysis of material Applicable Law to the Project or the Work as of the Setting Date; and</li> <li>(g) Other activities consistent with Good Industry Practice sufficient to familiarize Principal Project Company with surface and subsurface conditions, including the presence of Utilities, Hazardous Materials, archeological, paleontological and cultural resources, and Threatened or Endangered Species, affecting the Project Site or surrounding locations.</li> </ul>
14.14. Relevant Change of Law	<p>“Relevant Change of Law” means</p> <ul style="list-style-type: none"> <li>(a) a Change in Law that is principally directed at and the effect of which is principally borne by Principal Project Company, except where such change (i) is in response, in whole or in part, to any PPC Fault, (ii) is a directive by the U.S. Department of Homeland Security or comparable State agency, or (iii) is otherwise expressly permitted under the Contract Documents;</li> <li>(b) a Change in Law for which compliance requires material capital expenditures by Principal Project Company; or</li> <li>(c) a Change in Law for which compliance requires specific and material adverse changes in Principal Project Company’s normal and compliant operation or maintenance procedures.</li> </ul>
14.15. Relief Events	<p>“Relief Event” means any of the following events or circumstances and to the extent, in each case, that it interferes directly and adversely with, or causes a failure of, the performance of the IFM and occurs after the Substantial Completion Date:</p> <ul style="list-style-type: none"> <li>(a) a Force Majeure Event; and</li> </ul>

	(b) any Compensable Relief Event
14.16. Setting Date	“Setting Date” means 15 days prior to the date of Commercial Close.
14.17. Delay Event and Relief Event Process	<p><u>General.</u> If a Delay Event or Relief Event occurs (subject to reasonable limitations and requirements to be set forth in the Project Agreement), Principal Project Company may seek additional compensation, time extension, and/or other relief, if applicable, in accordance with the agreed by the Parties and to be set forth in the Project Agreement.</p> <p><u>Notification Requirements.</u> Principal Project Company shall have 10 days after Principal Project Company discovers (or should have discovered in the exercise of reasonable prudence) the occurrence of a Delay Event or Relief Event, as applicable, in which to deliver a Notice to City. Failure to do so shall result in a waiver any right to seek a time extension with respect to any delay which accrued prior to the date Notice is delivered. If the failure to provide Notice extends to 30 days or more, then Principal Project Company shall have waived and forfeited any relief, compensation or time extension related to the event or occurrence. Other time periods and information submittals shall be set forth in the Project Agreement.</p> <p><u>City Response to Delay Event or Relief Event Claim.</u> Within 30 days after receipt of a Delay Event or Relief Event claim, City will issue a written determination as to the extent, if any, to which it concurs with Principal Project Company’s request (including reasons). City’s failure to respond to full and final documentation of a Delay Event or Relief Event claim, as applicable, within such 30-day period shall constitute City’s rejection of such claim.</p> <p><u>Agreement or Dispute.</u> The agreement of the Parties as to the specific compensation, time extension, or other relief to be given Principal Project Company on account of a Delay Event or Relief Event, as applicable, shall be evidenced by a written amendment or change order to the Project Agreement.</p> <p>The Project’s dispute resolution procedures agreed by the Parties will be set forth in the Project Agreement. Either Party may initiate the dispute resolution procedures if:</p> <ul style="list-style-type: none"> <li>(a) the Parties are unable to agree as to the specific compensation, time extension, or other relief to be given Principal Project Company on account of an alleged Delay Event or Relief Event; or</li> <li>(b) City rejects the Delay Event or Relief Event claim, as applicable.</li> </ul> <p>The time period to pursue the dispute process and the various steps thereof shall be set forth in the Project Agreement.</p>
14.18. Utility Delay	<p>“Utility Delay” means a failure by a Utility Owner to complete design, construction and/or materials procurement for a Relocation on or before the date set forth in the approved Project schedule set forth in the Project Agreement, but, in each instance, subject to Principal Project Company (i) having timely complied with the coordination, monitoring and notification requirements of the Project Agreement, (ii) satisfying the “Conditions to Assistance” requirements of the Project Agreement (which will be developed during the PDA Term) and (iii) providing evidence satisfactory to the City that (x) Principal Project Company took advantage of float available early in the Project schedule for coordination activities with respect to the Utility(ies) to which such Utility Delay relates, (y) Principal Project Company has fulfilled its obligation to coordinate with the Utility Owner to prevent or reduce such delays, and (z) Principal Project Company has otherwise made diligent efforts to obtain timely performance by</p>

	the Utility Owner but has been unable to obtain such timely performance.
14.19. Delay Events During Early Works	<u>Delay Events During Early Works</u> . If the Parties entered into the Early Works Agreement, any Delay Event that affected performance of the Early Works shall be deemed to have occurred under the Project Agreement, and Principal Project Company shall be entitled to submit a corresponding Delay Event claim under the Project Agreement, subject to reasonable limitations and exceptions to be set forth in the Project Agreement, provided that Principal Project Company shall have complied with the corresponding requirements to be set forth in the Project Agreement with respect to the Delay Event.
14.20. Third Parties	“Third Parties” means any person or entity unrelated to City or Principal Project Company. Third Parties expressly exclude any PPC-Related Entities.
<b>SECTION 15. COMPENSATION AND OTHER RELIEF FOR DELAY EVENTS AND RELIEF EVENTS</b>	
15.1. Entitlement to Relief – Time for Delay Event	<p>Upon the occurrence of a Delay Event, Principal Project Company shall be entitled to an extension of the Substantial Completion Deadline or Final Acceptance Deadline, as applicable, arising out of the Delay Event, equal to the delay to the critical path directly caused by the Delay Event.</p> <p>If Principal Project Company has made a claim for an extension of time as a result of a Delay Event, Principal Project Company is not entitled to an extension of time to the Substantial Completion Deadline or Final Acceptance Deadline, as applicable, to the extent and for so long as the Delay Event is concurrent with any other unrelated delay to a critical path for which any Principal Project Company-Related Entity is responsible under the Project Agreement.</p> <p>In addition, if the Delay Event is a Utility Delay, the eligible time extension for critical path delays shall be equal to 100% of the Utility Delay after the first 60 days in the aggregate during the D&amp;C Period (e.g., Principal Project Company shall bear the 1<sup>st</sup> 60 days of Utility Delay).</p>
15.2. Entitlement to Relief – Compensation for Compensable Delay Event	<p>If a Compensable Delay Event occurs, City shall reimburse Principal Project Company for:</p> <ul style="list-style-type: none"> <li>(a) Extra Work costs calculated in accordance with the Project Agreement (e.g., direct costs of additional Work beyond the original scope of Work);</li> <li>(b) Delay costs (e.g., delay and disruption damages/extended overhead) calculated in accordance with the Project Agreement attributable to the Compensable Delay Event, but only where an extension of time is granted for a City-Caused Delay Event (and delay costs shall not be compensable for any other Compensable Delay Event); and</li> <li>(c) Financing Delay Costs calculated in accordance with the Project Agreement.</li> </ul> <p>“Financing Delay Costs” means:</p> <ul style="list-style-type: none"> <li>(a) In the case of Delay Events, an amount equal to interest payments on the Senior Debt Service Amount accrued and paid, or which became payable, by Principal Project Company to the Senior Lenders in accordance with the Funding Agreements that accrued during the period of Critical Path delay as a direct result of the Delay Event; and</li> <li>(b) in the case of City-Caused Delay Event only, such other amounts so as to result</li> </ul>

	<p>in Principal Project Company achieving the same Equity IRR (with reference to the Base Case Equity IRR) as if such Compensable Delay Event had not occurred.</p> <p>In addition, if the Delay Event is a Hazardous Materials Event, no compensation or time relief shall be provided for any Hazardous Materials arising out of or relating to the demolition of the existing facility.</p> <p><b>[Note:</b> The Lead Developer proposed in its Proposal an allowance for Hazardous Materials relating to the demolition of the existing facility, which allowance is outside of the FBL. During the PDA Term and with due diligence by Lead Developer, this allowance will be refined and moved into the final pricing of the Project and part of the scope of work. Accordingly, no relief for Hazardous Materials relating to the existing facility demolition will be provided]</p>
15.3. Entitlement to Relief – Force Majeure Compensation During D&C Work	<p>If a Delay Event for which an extension of time was granted under the Project Agreement is:</p> <p>(a) A Force Majeure Event; and</p> <p>(b) The Force Majeure Event is not insured against and is not required to be insured against in accordance with the Project Agreement,</p> <p>City will reimburse Principal Project Company for Extra Work costs and Financing Delay Costs, if any.</p>
15.4. Entitlement to Relief – Relief Event Compensation	<p>Upon the occurrence of a Compensable Relief Event, City will reimburse Principal Project Company for all Extra Work costs incurred by Principal Project Company as a direct result of the Compensable Relief Event calculated in accordance with the Project Agreement (e.g., direct costs of additional Work). City will not be entitled to make Deductions/assess Noncompliance Points for non-performance that is caused directly as a result of a Compensable Relief Event; <u>provided; however,</u> that the availability payment shall be reduced for any avoided costs resulting from the Compensable Relief Event.</p>
15.5. Entitlement to Relief – Force Majeure Compensation During IFM Term	<p>If a Force Majeure Event:</p> <p>(a) Is not insured and is not required to be insured in accordance with the Project Agreement; and</p> <p>(b) Directly and adversely impacts the IFM Work after Substantial Completion,</p> <p>City will reimburse Principal Project Company for Extra Work costs, if any.</p> <p>City is entitled to make Deductions/assess Noncompliance Points in accordance with the Project Agreement notwithstanding the cancellation of Noncompliance Points as provided in the Project Agreement [Deductions/Noncompliance Points to be determined during the PDA Term] provided that such Deductions/Noncompliance Points shall not exceed, in the aggregate, the amount that would reduce payments to Principal Project Company to an amount below the sum of the Senior Debt Service Amount and a percentage of the fixed IFM Costs that will be determined during the PDA Term.</p>
15.6. Insurance	<p>Any entitlement of Principal Project Company to compensation with respect to a Delay Event or Relief Event, as applicable, shall be net of:</p>

	<ul style="list-style-type: none"> <li>(a) all insurance proceeds received by any PPC-Related Entity pursuant to any Insurance Policy;</li> <li>(b) any amounts which Principal Project Company is deemed to have self-insured, including any deductibles (except for City-Caused Delay Events or City-Caused Relief Events, with respect to which the City shall be responsible for any deductible); and</li> <li>(c) any other insurance proceeds received by any PPC-Related Entity in connection with the Delay Event or Relief Event, as applicable.</li> </ul>
<p>15.7. Method of Payment of Compensation for Compensation Events</p>	<p>Subject to certain exceptions, any additional compensation due for a Compensable Delay Event or Compensable Relief Event, as applicable, shall be in the form of:</p> <ul style="list-style-type: none"> <li>(a) periodic payments over the Infrastructure Facility Term;</li> <li>(b) an adjustment to availability payments over the Infrastructure Facility Term;</li> <li>(c) completion payments or progress or other payments invoiced as Work is completed;</li> <li>(d) an up-front lump sum payment; or</li> <li>(e) any combination of the above, as determined by City, in its sole discretion.</li> </ul> <p>If City elects to compensate Principal Project Company by multiple payments over the Infrastructure Facility Term or by an adjustment to the Availability Payments over the Infrastructure Facility Term, and Principal Project Company demonstrates to City's reasonable satisfaction that Principal Project Company has made commercially reasonable efforts to finance its cash flow based on such payment method but is unable to do so, City shall compensate Principal Project Company through completion payments or progress or other payments invoiced as Work is completed or by an up-front lump sum payment, at City's election, in its sole discretion.</p>
<p>15.8. Open Book Basis</p>	<p>Principal Project Company shall provide City with all data, documents and information, and shall conduct all discussions and negotiations, pertaining to a claimed Delay Event and Relief Event, as applicable, on an open book basis.</p>
<p>15.9. Public Contract Code 7104</p>	<p>Information regarding site conditions included in the Technical Requirements and Reference Documents (including any information, reports, or studies about site conditions, geotechnical conditions, Utilities or structure and bridge design, and any interpretations, extrapolations, analyses and recommendations contained therein) shall not be considered "indicated" therein as such term is used in Public Contract Code section 7104.</p> <p>Principal Project Company is responsible for investigating and satisfying itself as to the site conditions affecting the Project Site and the Work. To the maximum extent permitted by Law, Principal Project Company knowingly, unconditionally, irrevocably and specifically waives each and every right and benefit of Public Contract Code section 7104 to the extent that it may be inconsistent with any provision of the Contract Documents. Principal Project Company acknowledges and agrees that this waiver and the risk allocations set forth in the Contract Documents are material consideration for City to award and enter into the Project Agreement with Principal Project Company.</p>

**SECTION 16. DEDUCTIONS REGIME, PAYMENT MECHANISM, AND NON-COMPLIANCE POINTS**

**Note:** The Project Agreement will include procedures agreed by the Parties for City to assess monetary deductions and non-compliance points for certain unavailability, breaches of and failures to perform by Principal Project Company with respect to the Infrastructure Facility. These procedures will be consistent with precedent from comparable social infrastructure P3 availability payment projects.]

**SECTION 17. PRINCIPAL PROJECT COMPANY EVENTS OF DEFAULT; CITY REMEDIES**

**Note:** The Project Agreement will include provisions regarding Principal Project Company default, cure periods (as and if applicable) and remedies agreed by the Parties, including City’s termination and step-in rights and lenders’ step-in rights. These provisions will be consistent with precedent from comparable social infrastructure P3 availability payment projects.]

A default under the HCC Agreement relating solely to the Housing and Commercial Component shall not result in a default under the Project Agreement or allow for an offset of the availability payments payable in connection with the Infrastructure Facility. The commercial and contract structure of these elements shall be developed during the PDA Term.

**SECTION 18. CITY EVENTS OF DEFAULT; PRINCIPAL PROJECT COMPANY REMEDIES**

<p>18.1. General</p>	<p>“City Event of Default” means either of the following events or circumstances:</p> <ul style="list-style-type: none"> <li>(a) subject to <u>Section 24.1</u> (Appropriation Required), the failure of City to pay the availability payments, any termination payment, or any other payment due to Principal Project Company on the due date for such payment under the Project Agreement, provided that such payment is not subject to a dispute;</li> <li>(b) the failure of City to make a timely submission of a budget change proposal in accordance with <u>Section 24.2</u>;</li> <li>(c) the failure of the City to include availability payments, any termination payment or any other payment due to Principal Project Company in a budget for the fiscal year in which such payment is due; or</li> <li>(d) except as provided in the <u>paragraph (a)</u>, a breach, or series of breaches, by City of any term, obligation, covenant or undertaking City is required to make to the Principal Project Company or any representation or warranty made by City to Principal Project Company in the Project Agreement being incorrect when made, which has a material and adverse effect on Principal Project Company.</li> </ul>
<p>18.2. City Cure Periods</p>	<p>For breaches under Section 18.2(a)-(c), 45 days after receipt of notice.</p> <p>For breaches under <u>Section 18.2(d)</u>, 90 days after receipt of notice, but extendable up to 180 days after receipt of notice if the <u>breach</u> is of such a nature that the cure cannot with diligence be completed within such time period and City has commenced meaningful steps to cure.</p>
<p>18.3. Principal Project Company Options Upon City Event of Default</p>	<p><b>Note:</b> The Project Agreement will include provisions regarding remedies available to Principal Project Company for City Events of Default, including termination and suspension rights. These provisions will be consistent with precedent from comparable social infrastructure P3 availability payment projects.]</p>

**SECTION 19. TERMINATION**

**Note:** The Project Agreement will include termination provisions agreed by the Parties, as to the Infrastructure Facility, which will be consistent with precedent from comparable social infrastructure P3 availability payment projects. At minimum, these

provisions will provide for: (1) termination by City for convenience; (2) termination by City for Principal Project Company default; (3) termination by Principal Project Company for City default; (4) termination for failure to achieve Financial Close; (5) a City Non-Appropriation Event; (6) termination for extended Force Majeure Events, insurance unavailability and adverse court rulings; (7) termination relating to an Adverse Event; (8) other terminations as set forth in the Project Agreement; and (9) applicable termination compensation for each case.

For terminations occurring prior to Financial Close for City convenience or for an excused failure to achieve Financial Close by the Financial Close Deadline, the Principal Project Company, if not previously compensated under the Predevelopment Agreement, shall be entitled to receive the amount of the termination payment that was payable under the Predevelopment Agreement.

All termination compensation shall be subject to appropriation.

**SECTION 20. DISPUTE RESOLUTION PROCEDURES**

**Note:** The Project Agreement will include dispute resolution procedures agreed by the Parties, which will be consistent with precedent from comparable social infrastructure P3 availability payment projects and shall incorporate the City's procedures for establishing a collaborative partnering process.]

**SECTION 21. REPRESENTATIONS AND WARRANTIES**

**Note:** The Project Agreement will include representations and warranties for both Parties, which will be consistent with precedent from comparable social infrastructure P3 availability payment projects.]

**SECTION 22. ASSIGNMENT AND TRANSFER**

22.1. Restrictions on Equity Transfers and Change of Control

Subject to certain exceptions agreed by the Parties and to be set forth in the Project Agreement, a Change of Control of Principal Project Company or an Equity Transfer that results in any Equity Member ceasing to own (directly or indirectly) the same percentage of the issued share capital, partnership or membership interests, as applicable, in Principal Project Company that it owned (directly or indirectly) as of Financial Close shall be subject to City's prior written approval ((i) within 2 years after Substantial Completion of the entire Facility, in City's sole discretion; and (ii) after 2 years after Substantial Completion of the entire Facility, in City's discretion, not to be unreasonably withheld or delayed).

"Equity Transfer" means any assignment, mortgage, encumbrance, hypothecation, conveyance, sale, or other transfer of equity interest in Principal Project Company.

"Change of Control" means any Equity Transfer, transfer of an interest, direct or indirect, in an Equity Member, or other assignment, sale, financing, grant of security interest, hypothecation, conveyance, transfer of interest or transaction of any type or description, including by or through voting securities, asset transfer, contract, merger, acquisition, succession, dissolution, liquidation, bankruptcy or otherwise, that results, directly or indirectly, in a change in possession of the power to direct or control or cause the direction or control of the management of Developer or a material aspect of its business. A change in possession of the power to direct or control or cause the direction or control of the management of an Equity Member may constitute a Change in Control of Developer if such Equity Member possesses, immediately prior to such Change in Control, the power to direct or control or cause the direction or control of the management of Developer. Notwithstanding the foregoing, the following shall not constitute a Change in Control:

- (a) a change in possession of the power to direct or control the management of Principal Project Company or a material aspect of its business due solely to bona fide open market transactions in securities effected on a recognized public

	<p>stock exchange, including such transactions involving an initial public offering;</p> <p>(b) an upstream reorganization or transfer of indirect interests in Principal Project Company so long as no change occurs in the entity with ultimate power to direct or control or cause the direction or control of the management of Principal Project Company;</p> <p>(c) a change in possession of the power to direct or control the management of Principal Project Company or a material aspect of its business due solely to a bona fide transaction involving a beneficial interest in the ultimate parent organization of an Equity Member (but not if the Equity Member is the ultimate parent organization) if the references, experience or financial statements of the ultimate parent organization were not considered or evaluated in the statement of qualifications or proposal, provided, however, that this exception shall not apply if at the time of the transaction the transferee is suspended or debarred from bidding, proposing or contracting with the City or any federal or State department or agency, or is subject to a suspension or debarment proceeding;</p> <p>(d) an Equity Transfer, where the transferring Equity Member and the transferee are under the same ultimate parent organization ownership, management and control before and after the transfer;</p> <p>(e) a transfer of interests (i) between managed funds that are under common ownership, management or control or (ii) by an Equity Member to a fund, investment vehicle or other entity managed by or under common control of such Equity Member, except, in each case, a change in the management or control of a fund, investment vehicle or other entity, as applicable, that manages or controls;</p> <p>(f) the exercise of minority veto or voting rights (whether pursuant to applicable Law, by Principal Project Company's organizational documents or by related member or shareholder agreements or similar agreements) over major business decisions of Principal Project Company, provided that if such minority veto or voting rights are exercised pursuant to shareholder or similar agreements, City received copies of such agreements on or before the date of the Project Agreement; and</p> <p>(g) the grant of Security Documents, including the Initial Security Documents, in compliance with the Direct Agreement or the exercise of lender remedies under such Security Documents, including foreclosure</p>
<p>22.2. Standards and Procedures for City Approval</p>	<p>The Project Agreement will set forth the standards and procedures for obtaining City's approval of requested transactions, including a proposed sale, assignment, conveyance, transfer, pledge, mortgage, encumbrance, grant of right of entry, or grant of other special use, management or control, or for any proposed change of control or equity transfer.</p>
<p>22.3. Restrictions on Assignment, Subletting and Other Transfers of Principal Project Company's Interest or the Project</p>	<p>Principal Project Company shall not voluntarily or involuntarily sell, assign, convey, transfer, pledge, mortgage or otherwise encumber Principal Project Company's interest in the Project Agreement or any portion thereof without City's prior written approval, which shall be in City's sole discretion, except:</p> <p>(a) to lenders for security as permitted by the Project Agreement, provided Principal Project Company retains responsibility for the performance of Principal Project Company's obligations under the Contract Documents;</p> <p>(b) to any substituted entity approved by City in accordance with the Direct</p>



	<p>Agreement, provided that such substituted entity assumes in writing full responsibility for performance of the obligations of Principal Project Company under the Project Agreement, the other Contract Documents, and the Key Contracts and Financing Documents arising from and after the date of assignment; or</p> <p>(c) With respect to the Housing and Commercial Component in accordance with the terms of the Project Agreement and/or HCC Agreement.</p>
22.4. Assignment by City	<p>City may assign all or any portion of its right, title and interest in the Contract Documents, payment bonds and performance bonds, guarantees, letters of credit and other security for payment or performance:</p> <p>(a) in its sole discretion and without Principal Project Company's consent, to any other Person that succeeds to the powers and authority of SFMTA under the San Francisco Charter and San Francisco Administrative Code, has the legal authority to perform its obligations under the Project Agreement and has sources of funds to perform the payment obligations of the City under the Project Agreement that are at least as adequate and secure as the City's as of the time of the assignment; and</p> <p>(b) to others with the prior written consent of Principal Project Company, in its reasonable discretion.</p>
22.5. Assumption	<p>Each transferee of Principal Project Company's Interest shall execute and deliver to City an assumption agreement in form acceptable to City, providing that the transferee takes Principal Project Company's Interest subject to, and shall be bound by, the City-approved Project Management Plan, including the Design Quality Plan, Construction Quality Plan, and Asset Management Plan, the Key Contracts, the Regulatory Approvals, all agreements between the transferor and Third Parties, and all agreements between the transferor and Regulatory Agencies with jurisdiction over the Project or the Work, except to the extent otherwise approved by City.</p>
22.6. Change of Organization or Name	<p>Principal Project Company shall not change the legal form of its organization in a manner that adversely affects City's rights, protections and remedies under the Contract Documents without the prior written approval of City.</p> <p>If either Party changes its name, such Party agrees to promptly furnish the other Party with notice of change of name and appropriate supporting documentation.</p>
<b>SECTION 23. RECORDS AND AUDITS; INTELLECTUAL PROPERTY</b>	
23.1. Maintenance and Inspection of Records	<p>The Project Agreement will set forth requirements for Principal Project Company's maintenance and City's right to inspect records related to the Project.</p>
23.2. Audits	<p>Subject to certain conditions to be set forth in the Project Agreement, City may review and audit Principal Project Company, its contractors and their respective books and records as and when City deems necessary for purposes of verifying compliance with the Contract Documents and applicable law and verifying claims.</p>
23.3. Public Records Laws	<p>All submittals, records, documents, drawings, plans, specifications and other materials in City's possession, including any books and records submitted by Principal Project Company to City, may be considered public information subject to disclosure under the California Public Records Act (the "PRA") and San Francisco Sunshine Ordinance.</p>

23.4. Intellectual Property	<b>Note:</b> The Project Agreement will include provisions regarding intellectual property rights, which will be consistent with precedent from comparable social infrastructure P3 availability payment projects.]
<b>SECTION 24. APPROPRIATIONS</b>	
24.1. Appropriation Required	All payments due from the City to the Project Company under this Project Agreement, including the milestone payment, availability payments, and any termination payment shall be paid solely from moneys made available to City from an appropriation of funds for the purpose of making all such payments coming due in such fiscal year. The SFMTA Board or San Francisco Board of Supervisors, as applicable, shall have the absolute and unconditional right, to be exercised in their discretion, for any reason, not to appropriate such funds.
24.2. City Budget Requests – Availability Payments	The SFMTA Director of Transportation must: (a) make a timely submission for the fiscal year in which Substantial Completion of the Infrastructure Facility will occur of a budget change proposal to the SFMTA Board of Directors requesting a budget adjustment that includes the milestone payment and initial availability payment; and (b) make a timely submission of a budget change proposal to the SFMTA Board requesting a budget adjustment for any subsequent change to the maximum availability payment (determined during the PDA Term and set forth in the Project Agreement).
24.3. City Budget Requests – Other Payments	The SFMTA Director of Transportation must request an appropriation of funds for the purpose of paying any termination payment payable by City or any other amount due from City under the Project Agreement other than the availability payments (as to which City shall take the budget request actions referred to in the <u>Section 24.2</u> ).  If City fails to appropriate money to make a termination payment, there shall be no contractual obligation of the City to make such payment that may be enforced; such contractual payment obligation shall arise only if and when any such amounts have been appropriated by City.
24.4. Notice	City shall provide written notice to Principal Project Company no later than 10 business days following the enactment of any City budget with respect to a particular fiscal year that does not make an appropriation of funds for the purpose of paying the scheduled availability payments due for such fiscal year.  City shall also respond promptly in writing to any reasonable written request submitted by Principal Project Company for information regarding the status of any request City is obligated to make under <u>Sections 24.2</u> and <u>24.3</u> .
24.5. City Non-Compliance with Notice and Request Covenant.	Non-compliance by City with its obligations under <u>Sections 24.2</u> , <u>24.3</u> , and <u>24.4</u> shall constitute a breach of the Project Agreement.
24.6. City Non-Appropriation Event	“City Non-Appropriation Event” means the failure for any reason of the San Francisco Board of Supervisors to appropriate funds necessary to make any payment due from City to Principal Project Company under the Project Agreement.  Upon the occurrence of a City Non-Appropriation Event, Principal Project Company shall have the right to:

	<p>(a) Request, and cooperate with, City to seek alternative sources of funds for City to make payments due to Principal Project Company, in which City must indemnify Principal Project Company for its actual losses resulting from the City Non-Appropriation Event; or</p> <p>(b) subject to City's right to cure within 120 days, terminate the Project Agreement upon 30 days' notice, whether or not Principal Project Company has exercised or is exercising its rights under <u>paragraph (a)</u> of this <u>Section 24.6</u>, in which case City shall pay compensation to Principal Project Company in an amount agreed by the Parties to be calculated in accordance with a method to be set forth in the Project Agreement, which compensation shall be subject to appropriation.</p>
<p>24.7. Payments Under this Project Agreement Not a City Debt</p>	<p>The obligation of City to make any payments under the Project Agreement does not constitute a debt of the City under applicable law and does not constitute a liability of or a lien or charge upon the funds or property of the City beyond the fiscal year for which there has been an appropriation of funds to make such payments.</p> <p>The obligation of City to make payments hereunder does not constitute an obligation of City for which City is obligated to levy or pledge any form of taxation or for which City has levied or pledged any form of taxation.</p>
<p><b>SECTION 25. ADVERTISING AND OTHER BUSINESS OPPORTUNITIES</b></p>	
<p>25.1. Rights and Interests in the Project and Site</p>	<p>Principal Project Company rights and interests in the Project and Project Site under the Project Agreement are limited to such rights and interests that are required for performing the Work and Principal Project Company timely fulfillment of its obligations under the Contract Documents. Principal Project Company rights and interests exclude any airspace or other real property interest.</p>
<p>25.2. Advertising and Business Opportunities</p>	<p>City reserves all rights and opportunities concerning:</p> <p>(a) advertising on the Infrastructure Facility and, as between Principal Project Company and City, within the Project Site, including use of Infrastructure Facility physical assets for advertising purposes; and</p> <p>(b) entrepreneurial, commercial and business activities that are ancillary or collateral to the use and operation of the Infrastructure Facility and Project Site, whether developed or pursued by City or through others worldwide.</p> <p>Principal Project Company shall cooperate and grant all necessary access to City and any Third Party designees, including tenants and vendors, authorized by City in connection with City's exercise of its rights relating to advertising and business opportunities at the Infrastructure Facility.</p> <p>Unless otherwise agreed to by the Parties and other than rents paid by tenants of the Housing and Commercial Component, City shall be entitled to all revenues generated by business opportunities arising out of, relating to or resulting from the Facility or in the Project Site's airspace.</p> <p>Principal Project Company may request City to consider business opportunities. If City, in its sole discretion, consents, the Parties shall execute an amendment to the Contract Documents memorializing the agreement reached, including any agreement as to any revenue and cost attribution.</p>
<p><b>SECTION 26. MISCELLANEOUS</b></p>	

<p>26.1. Standard for Approvals</p>	<p>In all cases where approvals, acceptances, or consents are required to be provided by City or Principal Project Company under the Project Agreement, such approvals, acceptances or consents shall not be withheld unreasonably, except in cases where a different standard (such as sole discretion) is specified. Any approval required by the SFMTA Board or San Francisco Board of Supervisors will be at their respective sole discretion.</p> <p>In cases where City's sole discretion is specified, the decision shall not be subject to Dispute Resolution Procedures hereunder.</p>
<p>26.2. Amendments</p>	<p>The Contract Documents may be amended only by a written instrument duly executed by or on behalf of the Parties, except to the extent expressly provided otherwise in the Project Agreement.</p>
<p>26.3. Waiver</p>	<p>The failure of a Party to exercise or delay in exercising any right under the Project Agreement shall not: (a) constitute a waiver of such right or any other right under the Contract Documents; or (b) relieve the other Party from performance of its obligations under the Contract Documents except as otherwise provided in the Contract Documents.</p>
<p>26.4. Independent Contractor; No Joint Venture or Partnership</p>	<p>Principal Project Company is an independent contractor.</p> <p>Nothing in the Contract Documents is intended or shall be construed to create any partnership, joint venture or similar relationship between City and Principal Project Company; and in no event shall either Party take a position in any tax return or other writing of any kind that a partnership, joint venture or similar relationship exists.</p>
<p>26.5. Successors and Assigns</p>	<p>The Contract Documents shall be binding upon and inure to the benefit of City and Principal Project Company and each of their permitted successors, assigns and legal representatives.</p>
<p>26.6. Limitation on Third Party Beneficiaries</p>	<p>Except to the extent that specific provisions (such as the warranty and indemnity provisions, and the provisions for the protection of certain lenders under any Direct Agreement) identify Third Parties and state that they are entitled to benefits, (a) it is not intended by any of the provisions of the Contract Documents to create any Third Party beneficiary to this Agreement or to authorize anyone not a Party to maintain a suit for personal injury or property damage under this Agreement, and (b) the duties, obligations and responsibilities of the Parties with respect to Third Parties shall remain as imposed by Law. The Contract Documents shall not be construed to create a contractual relationship of any kind between City and a Contractor or any Person other than Principal Project Company.</p>
<p>26.7. Governing Law; Venue</p>	<p>The Contract Documents shall be governed by and construed in accordance with the laws of the State, any applicable federal law, the San Francisco City Charter and Municipal Code, and the ordinances, regulations, codes, and executive orders enacted and/or promulgated pursuant thereto.</p> <p>Venue for all litigation concerning the Project Agreement shall be in San Francisco, California to the extent that a court located in San Francisco has subject matter jurisdiction.</p>
<p>26.8. Entire Agreement</p>	<p>Except for the Predevelopment Agreement(which, except as set forth in the Project Agreement, will survive the execution and delivery of the Project Agreement), City and Principal Project Company agree and expressly intend for the Contract</p>

	Documents to constitute a single, non-severable, integrated agreement whose terms are interdependent and non-divisible. Except for the Predevelopment Agreement (which, except as set forth in the Project Agreement, will survive the execution and delivery of the Project Agreement), the Contract Documents contain the entire understanding of the Parties with respect to the subject matter of the Project Agreement and supersede all prior agreements, understandings, statements, representation and negotiations, in each case oral or written, between the Parties with respect to the subject matter of the Project Agreement, including the Proposal.
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**SECTION 27. LIST OF EXHIBITS**

**Note:** The Project Agreement will include the following exhibits, which will be negotiated during the PDA Term. This list of exhibits is subject to change and is not exhaustive. The final exhibits will be consistent with precedent from comparable social infrastructure P3 availability payment projects.]

1. Abbreviations and Definitions
2. Proposal Commitments; Alternative Technical Concepts
3. Initial Designation of Authorized Representatives
4. Payment Mechanism; Deductions Regime
5. Finance Documents
6. Forms of Payment and Performance Security
7. Insurance Requirements
8. City-Provided Approvals
9. City Changes Procedures and Directive Letters
10. Interface Obligations
11. Submittal Review Process
12. Additional Project Requirements
13. Base Incremental Costs and Permitted Markup
14. Key Contract Provisions
15. Conditions Precedent [e.g., Notices to Proceed, Substantial Completion, Final Acceptance, etc.]
16. [Federal], State, and City Requirements
17. Project Neutral List

Lead Developer acknowledges that this Term Sheet is non-binding and intended only to set forth basic terms and conditions for good-faith negotiation of the Project Agreement and other Transaction Documents during the PDA Term; the Project Agreement and other Transaction Documents will be subject to review and approval by the Parties, their respective legal counsel, the SFMTA Board of Directors, and as applicable, by the San Francisco Board of Supervisors.

City reserves the right, in its sole discretion, to modify this Term Sheet (either through a revised Term Sheet or through development of the Project Agreement) to reflect Principal Project Company's proposal, the commercial/financial structure that is developed during the PDA Term and for impacts to the terms of this Term Sheet arising out of the commercial/financial structure of the Housing and Commercial Component. If and to the extent that City does decide to modify this Term Sheet (either through a revised Term Sheet or through development of the Project Agreement), City will collaborate with Lead Developer on the modified terms.

**LEAD DEVELOPER**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

**APPENDIX G**  
**FINANCIAL PROPOSAL**

The files comprising the Financial Proposal are stored on USB flash drives, which were delivered to, and reviewed for completeness by, each Party prior to execution of this Agreement. The Financial Proposal is incorporated into this Agreement.

Promptly following the Effective Date, Lead Developer shall include the files comprising the Financial Proposal in the data room described in Section 7.9 (*Data Room*).

All initially-capitalized, terms or abbreviations used and not otherwise defined in this Appendix have the meanings assigned to them in Article 1 (*Definitions*) of the Agreement.

## APPENDIX H

### TECHNICAL PROPOSAL

The files comprising the Technical Proposal are stored on USB flash drives, which were delivered to, and reviewed for completeness by, each Party prior to execution of this Agreement. The Technical Proposal is incorporated into this Agreement.

Promptly following the Effective Date, Lead Developer shall include the files comprising the Technical Proposal in the data room described in Section 7.9 (*Data Room*).

All initially-capitalized, terms or abbreviations used and not otherwise defined in this Appendix have the meanings assigned to them in Article 1 (*Definitions*) of the Agreement.



**APPENDIX I**  
**DEVELOPMENT TEAM AND KEY PERSONNEL**

**COMMITMENT OF TEAM AND KEY PERSONNEL**

Provide a complete list of names for the Team Members and Key Personnel positions listed below. The individuals proposed to fill these positions must be the same as those identified in the Proposer’s SOQ, except for any additional Key Personnel positions requested by this RFP that were not requested in the RFQ and any changes approved in writing by the City pursuant to Section 5.8 (*Material Changes to Proposer’s Organization*) of RFP Part I (*Instructions to Proposers*). In the space provided below, Proposers must also list names for any additional Key Personnel positions offered in Proposer’s SOQ that were not requested in the RFQ.

Lead Developer – controlling Equity Member:	<u>Plenary Americas US Holdings Inc.</u>
Lead Developer – additional Equity Member(s):	<u>N/A</u>
Affordable Housing Developer:	<u>Mission Economic Development Agency</u> <u>Young Community Developers, Inc.</u> <u>Tabernacle Community Development Corp</u>
Housing Developer:	<u>Presidio Development Partners, LLC</u> <u>Tabernacle Community Development Corp</u>
Design Consultant:	<u>IBI Group, A California Partnership</u> <u>Y.A. studio</u>
Construction Management Consultant:	<u>Plant Construction Company, L.P.</u> <u>The Allen Group, LLC</u>
Infrastructure Facility Maintenance Consultant:	<u>WT Partnership</u>

<b>Position</b>	<b>Name</b>
Lead Developer's Project Director	<u>Stuart Marks</u>
Lead Developer's Project Manager	<u>Brian Middleton</u>
Equity Member's Project Principal	<u>Chris Jauregui</u>
Affordable Housing Developer's Project Executive	<u>Karoleen Feng</u>
Affordable Housing Developer's Project Manager	<u>Daniel Jimenez</u>
Housing Developer's Project Executive	<u>Mark Conroe</u>
Housing Developer's Project Manager	<u>Cliff Miller</u>
Design Consultant's Principal-in-Charge	<u>David Chow</u>
Design Consultant's Design Manager	<u>Tony Gill</u>
Design Consultant's Building Information Modeling Manager	<u>Bijan Shoeleh</u>
Design Consultant's Transit Maintenance Facility Design Lead	<u>Eric Czerniak</u>
Design Consultant's Design Architect	<u>Yancey Clayton</u>
Design Consultant's Lead Engineer	<u>Jim Fox</u>
Design Consultant's DC Fast-Charging Infrastructure Engineer	<u>Paul Williams</u>
Construction Management Consultant's Lead Construction Manager	<u>David Smith</u>
Infrastructure Facility Maintenance Consultant's Facility Manager	<u>Binh Phan</u>

Understanding the City's concern that the personnel resources specifically represented and listed in this Proposal actually be assigned to the Project and not also be committed to other projects, Proposer commits that if awarded the PDA, to the extent within Proposer's control, the named individuals above will be available on a full-time basis for the periods necessary to fulfill their responsibilities. Capitalized terms not otherwise defined herein shall have the meanings set forth in the RFP for the Potrero Yard Modernization Project.

Respondent Name: Potrero Neighborhood Collective

Signed: 

Printed Name: Stuart Marks

Title: Vice President, Plenary Americas US Holdings Inc.

Date: July 22, 2022



The SFMTA  
**Potrero Yard**  
Modernization Project

Material Changes to Organization Submittal







Potrero Neighborhood Collective

555 W Fifth Street, Suite 3150

Los Angeles CA 90013

T 424 278 2173

June 21, 2022

Mr. Tim Kempf, P.E., LEED-AP  
Project Manager, San Francisco Public Works  
Email: DPW-SFMTAPotrero@sfdpw.org

## **RE: MATERIAL CHANGES TO ORGANIZATION**

Dear Mr. Tim Kempf,

Potrero Neighborhood Collective (PNC) is pleased to submit this notice and request for consent to changes in accordance with Section 5.8 (Material Changes to Proposer's Organization) of the ITP in respect of the SFMTA Potrero Yard Modernization Project (Project).

**Changes to Key Personnel, Equity Member's Project Principal:** In its SOQ, PNC identified Dan Wurst as our Equity Member's Project Principal. PNC is seeking to replace Dan with Chris Jauregui. The reason for this request is that Dan Wurst is no longer employed at Plenary. Please see resume (following) for Chris' qualifications.

If you should have any questions or would like to discuss, please feel free to reach out.

Yours sincerely,

**POTRERO NEIGHBORHOOD COLLECTIVE**

Stuart Marks  
Authorized Representative



RFQ TS Submittal 2

**Lead Master Developer's  
Key Personnel Qualifications**

# RFQ Technical Submittal 2

## Lead Master Developer’s Key Personnel Qualifications

### Key Personnel



EQUITY MEMBER’S PROJECT PRINCIPAL  
**CHRIS JAUREGUI**

Chris Jauregui will serve as the Equity Member Project Principal, supporting the development of the financing plan, including the investment of Plenary equity into the Project. Since joining Plenary in 2013, Chris has served as the commercial and financial lead for several of Plenary’s pursuits in the United States, Canada and Australia. Among other P3 projects, Chris served as the Project Manager during the RFP phase, preferred bidder phase, and PDA phase for the Long Beach Civic Center Redevelopment project where he arranged short-term construction financing with longterm private placement notes for the first hybrid DBFOM deal in North America combining both public infrastructure and private development components.





## CHRIS JAUREGUI EQUITY MEMBER'S PROJECT PRINCIPAL

### CURRENT TITLE

Vice President

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### CURRENT OFFICE LOCATION

Los Angeles, California

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### PROPOSED OFFICE LOCATION FOR THE PROJECT

Los Angeles, California

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### YEARS AT CURRENT COMPANY

9 years

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### YEARS OF RELEVANT EXPERIENCE

15 years

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### EDUCATION, LICENSES AND CERTIFICATIONS

- Bachelor of Science in Economics, University of Pennsylvania, Wharton School
- Master of Urban Planning, University of Southern California

### ROLE ON THE PROJECT

As the Equity Member's Project Principal, Chris will have the ultimate responsibility for managing the equity investment in the Project. Chris will work closely with the Project Director, Stuart Marks, ensuring a seamless process between the development of the Project and the internal equity commitment and funding and debt raising process. Chris will take an active role in the debt financing of the project, leading the debt raising process and related due diligence and credit rating process, and coordinating directly with the Housing Project Company in relation to financing of the Housing Component financing and grant funding.

### BIOGRAPHY

Having 15 years of experience in bidding and closing infrastructure and real estate projects in the US, Canada, and Australia, Chris is responsible for a range of financial and commercial aspects of Plenary's infrastructure transactions, with particular focus on capital arranging, tender development, financial structuring, contract negotiation and execution of P3 transactions.

Chris has played an integral role in the development of numerous innovative taxable and tax-exempt financing structures in his bidding and/or closing over \$4 billion of P3 projects worldwide. Prior to Chris' experience in the P3 industry, Chris worked in the municipal bond and project finance departments at two leading investment banks, equipping him with a comprehensive understanding of a variety of project and municipal debt markets.

### RELEVANT WORK EXPERIENCE

#### Long Beach Civic Center Redevelopment Project, Long Beach, CA

Work Performed: 2014-Present

**Project Description:** Plenary is the project sponsor, financial arranger, and 80% equity investor for the Pennsylvania Rapid Bridge Replacement Project; the first public private partnership to bundle

multiple bridges in a single procurement in the U.S. and Plenary's third U.S. project to close.

The project will see the accelerated replacement of 558 geographically dispersed bridges across Pennsylvania that have been classified as being in poor condition.

**Role on the Project:** As Finance Lead, Chris worked closely with the consortium's underwriters, advisors, and credit rating agencies to develop the financial structuring and capital arranging for a \$793 million tax-exempt Private Activity Bonds bond to finance the project. Chris worked closely with the construction and operations partners to maximize availability payments and construction milestone payments by optimizing the construction schedule to target cash inflows from the client (Pennsylvania Department of Transportation). The project achieved investment grade rating (BBB) by S&P at financial close and received the 2014 P3 Deal of the Year North America Award by *Infrastructure Investor Magazine*.

### **Sydney Metro, City and Southwest Expansion, Sydney, New South Wales, Australia**

**Work Performed:** Nov. 2017-Dec. 2018

**Project Description:** The City and Southwest Expansion package comprised of the delivery of: 45 fully-automated, six-carriage metro trains; 31 metro railway stations; 66 kilometres of track; a facility for the stabling and maintenance of the trains and operations control centre to the northwest of the CBD; an additional stabling facility to the south of the CBD; and a 10-year operations and maintenance contract.

**Role on the Project:** Chris supported the Commercial Lead by managing the lender's insurance advisor, reviewing financial model updates, and general lender due diligence for City and Southwest Expansion program.

### **Regional Rail Fleet Project, Sydney, New South Wales, Australia**

**Work Performed:** Dec. 2017-Nov. 2018

**Role on the Project:** As Commercial Lead, Chris led Plenary's contract negotiations with the client (Transport for NSW), construction partners, and operations partners. As part of the DBFM pursuit, Chris managed all financial and commercial documentation to develop optimum risk allocation across the parties through subcontract negotiations and security package discussions with the contractor. For risks the Plenary-led consortium

was unable to assume in the contract, Chris led the development of the "project deed departures", which is the consortium's bid-back position on various commercial provisions in the project deed. Lastly, Chris provided oversight and in debt structuring and financial model development throughout the bid pursuit and BAFO phase.

### **1350 Front Street, San Diego, CA**

**Work Performed:** Apr. 2022 - Current

**Role on the Project:** Chris is serving as Plenary's project director to develop a civic center and fire station for the City of San Diego, CA under a predevelopment agreement. Plenary's scope is part of a large project with the Department of General Services (DGS) and the Department of Housing and Community Development (HCD) to enter into a Public-Private Partnership to develop a mixed use community, that will provide new affordable, workforce and market rate housing along with supporting retail/commercial spaces, and a community plaza.

### **Los Angeles Convention Center**

**Work Performed:** 2022

**Role on the Project:** Chris is currently serving as one of the Plenary leads on the Los Angeles Convention Center Expansion Project and Rehabilitation ("LACC Expansion"), which is being advanced under an ENA in a manner similar to that envisioned for this Project. Chris' activities on the LACC Expansion include management of the target project budget process to confirm financial feasibility, oversight of the preliminary financing plan, and drafting and negotiation of project documents.

### **HART Honolulu Rail Transit, Honolulu, Hawaii**

**Work Performed:** 2019 - 2020

**Role on Project:** As Commercial Lead, Chris led Plenary's contract negotiations with the clients, Honolulu Authority for Rapid Transportation (HART) and the City of Honolulu, construction partners, and operations partners. As part of the pursuit, Chris managed all financial and commercial documentation to develop optimum risk allocation across the parties through subcontract negotiations and security package discussions with the contractor. Lastly, Chris provided oversight and in debt structuring and financial model development throughout the bid pursuit and BAFO phase.

**TS FORM B – REFERENCES FOR LEAD MASTER DEVELOPER KEY PERSONNEL**

Complete and submit in the SOQ one TS Form B summarizing all individuals identified in Technical Submittal 2 (the Respondent’s project director, project manager, and project principal) and providing three references for each individual. References must follow the requirements for Technical Submittal 3, as defined in Appendix A.2.1.3.

Lead Master Developer Key Person – Equity Member, Project Principal		
Name: Chris Jauregui		
Equity Member Firm: Plenary Americas US Holdings Inc.		
References		
Name: Richard Anthony	Name: Adrian Granda	Name: Brent Butzin
Company: City of Long Beach, CA	Company: City of San Diego, CA	Company: Kaplan Kirsch Rockwell
Position: Deputy City Attorney	Position: Director, Department of Government Affairs	Position: Owner’s Representative for City of Honolulu, Hawaii
Project: Long Beach Civic Center	Project: 1350 Front Street, San Diego, CA	Project: HART Honolulu Rail Transit
Email: Richard.anthony@longbeach.gov	Email: ADGranda@sandiego.gov	Email: bbutzin@kaplankirsch.com
Phone: (562)570-2211	Phone: (619)218-7083	Phone: (303) 825-7000



**Ronald Alameida, Deputy Director & City Architect** | Building Design & Construction  
ronald.alameida@sfdpw.org | T. 628.271.3075 | 49 South Van Ness Ave. Suite 1600, San Francisco, CA 94103

## Memorandum

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**To:**

Stuart Marks  
Project Director, Potrero Neighborhood Collective

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**From:**

Tim Kempf  
Project Manager, San Francisco Public Works

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**Date:** 6-24-22

**Subject:** Potrero Yard Modernization, Material Changes to Organization

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Dear Mr. Marks,

We have received your letter dated June 21, 2022, in which you request the City's consent to the Potrero Neighborhood Collective's substitution of Dan Wurst with Chris Jauregui for the role of your Equity Member's Project Principal. You submitted your request in accordance with Section 5.8 (Material Changes to Proposer's Organization) of the Instructions to Proposers.

We have reviewed Mr. Jauregui's resume, included in your request, and the City hereby consents to the proposed substitution in your team's Key Personnel.

Sincerely,

DocuSigned by:  
  
3BDFC06C00544DD...  
Tim Kempf, PE, LEED AP

Cc: Chris Jauregui  
Kerstin Magary  
Sid Jimenez

## APPENDIX J

### FORM OF GUARANTY

#### GUARANTY

This Guaranty (the “**Guaranty**”) is made by [INSERT NAME OF PARENT COMPANY GUARANTOR, a partnership/joint venture/corporation] (“**Guarantor**”), in favor of the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation acting by and through the SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY (“**City**”).

WHEREAS, [INSERT NAME OF LEAD DEVELOPER] (“**Lead Developer**”), and City are parties to that certain Predevelopment Agreement (the “**Agreement**”) pursuant to which Lead Developer has agreed to perform predevelopment work for City’s Potrero Yard Modernization Project. Unless the context otherwise requires, capitalized terms used but not separately defined in this Guaranty will have the meaning given to them in the Agreement.

To induce City to (i) enter into the Agreement; and (ii) consummate the transactions contemplated thereby, Guarantor has agreed to enter into this Guaranty.

Lead Developer is [a corporation/joint venture/partnership] [to be completed following selection]. The Guarantor is a [corporation/joint venture/partnership] [to be completed following selection]. The execution of the Agreement by City and the consummation of the transactions contemplated by the Agreement will materially benefit Guarantor. Without this Guaranty, City would not have entered into the Agreement with Lead Developer. In consideration of City’s execution of the Agreement and consummation of the transactions contemplated by the Agreement, Guarantor has agreed to execute this Guaranty.

**NOW, THEREFORE**, in consideration of the foregoing Recitals, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Guarantor agrees as follows:

**1. Guaranty.**

a. Guarantor guarantees to City and its successors and assigns the full and prompt payment and performance when due of all of the obligations of the Lead Developer arising out of, in connection with, under or related to the Agreement (including, without limitation Lead Developer’s obligation to make payment to City for Lead Developer’s indemnity obligations). The obligations guaranteed pursuant to this Guaranty are collectively referred to in this Guaranty as the “**Guaranteed Obligations.**”

b. Guarantor covenants to City that if at any time Lead Developer should default in the performance when due of, observance when due of, or should commit a breach of, any of the Guaranteed Obligations, Guarantor shall promptly, upon written notice by City, perform or pay the Guaranteed Obligations or cause the performance or payment of the Guaranteed Obligations.

c. Guarantor agrees that, to the extent Guarantor's obligations under this Guaranty relate to obligations of Lead Developer which require performance other than the payment of money, City may proceed against Guarantor to effect specific performance of such obligations (to the extent that such relief is available). Guarantor agrees to assume or to procure the assumption of the Agreement, and to perform or to procure the performance of all of the terms and conditions under the Agreement should the Agreement be disaffirmed or rejected by a trustee or court in a bankruptcy proceeding involving Lead Developer, or, at the option of City, Guarantor shall, in the event of Lead Developer's bankruptcy, make and enter into or have made and entered into, by one or more entities reasonably satisfactory to City, new contract documents for the balance of the term of the Agreement, which new contract documents shall be in form and substance identical to the replaced Agreement.

**2. Unconditional Obligations.** This Guaranty is a guaranty of payment and performance and not of collection. Except as provided in Section 20 (Defenses), this Guaranty is an absolute, unconditional and irrevocable guarantee of the full and prompt payment and performance when due of all of the Guaranteed Obligations, whether or not from time to time reduced or extinguished or hereafter increased or incurred, and whether or not enforceable against Lead Developer. If any payment made by Lead Developer or any other Person and applied to the Guaranteed Obligations is at any time annulled, set aside, rescinded, invalidated, declared to be fraudulent or preferential or otherwise required to be repaid or refunded, then, to the extent of such payment or repayment, the liability of Guarantor will be and remain in full force and effect as fully as if such payment had never been made. Guarantor covenants that this Guaranty will not be fulfilled or discharged, except by the complete payment and performance of the Guaranteed Obligations, whether by the primary obligor or Guarantor under this Guaranty. Without limiting the generality of the foregoing, Guarantor's obligations under this Guaranty will not be released, discharged or otherwise affected by:

a. except as to applicable statutes of limitation, failure, omission, delay, waiver or refusal by Lead Developer to exercise, in whole or in part, any right or remedy held by Lead Developer with respect to the Agreement or any transaction under the Agreement;

b. any change in the Agreement or the obligations under the Agreement, any change in the existence, structure or ownership of Guarantor or Lead Developer, or any dissolution, winding up, liquidation, insolvency, bankruptcy, reorganization or similar proceeding affecting the Lead Developer, Guarantor or their respective assets or any defense that may arise in connection with or as a result of such dissolution, winding up, liquidation, insolvency, bankruptcy, reorganization or other proceeding;

c. the existence of any claim or set-off which Lead Developer has or Guarantor may have against City, whether in connection with this Guaranty or any unrelated transaction, provided that nothing in this Guaranty will be deemed a waiver by Guarantor of any claim or prevent the assertion of any claim by separate suit;

d. any release of Lead Developer from any liability with respect to the Agreement;

e. any failure of consideration or lack of authority of Lead Developer, any lack of validity or enforceability, illegality or defect or deficiency, or any other defense to formation of the Agreement (or any term, condition or covenant thereof);

f. any change in the time, manner, terms, place of payment of, or any other term of all or any of the Guaranteed Obligations, or any other amendment, waiver of, or any consent to departure from any contract executed in connection therewith;

g. the incapacity or lack of power or authority of, or dissolution or change in, the [members/partners/shareholders] [to be completed following selection] of Lead Developer;

h. any release or subordination of any collateral then held by City as security for the performance by Lead Developer of the Guaranteed Obligations; or

i. any other circumstance that might otherwise constitute a defense available to, or a discharge of, Guarantor with respect to the Guaranteed Obligations, other than performance or payment in full of the Guaranteed Obligations.

This Guaranty will in all respects be a continuing, absolute, and unconditional guaranty irrespective of the genuineness, validity, regularity or enforceability of the Agreement, Guaranteed Obligations or any part thereof or any instrument or agreement evidencing any of the Guaranteed Obligations or relating thereto, or the existence, validity, enforceability, perfection, or extent of any collateral therefor or any other circumstances relating to the Guaranteed Obligations, except as provided in Section 20 (*Defenses*).

**3. Independent Obligations.** Guarantor agrees that the Guaranteed Obligations are independent of the obligations of Lead Developer and if any default occurs under this Guaranty, a separate action or actions may be brought and prosecuted against Guarantor whether or not Lead Developer is joined therein. City may maintain successive actions for other defaults of Guarantor. City's rights under this Guaranty will not be exhausted by the exercise of any of its rights or remedies or by any such action or by any number of successive actions until and unless all Guaranteed Obligations have been indefeasibly paid and fully performed.

a. Guarantor agrees that City may enforce this Guaranty, at any time and from time to time, without the necessity of resorting to or exhausting any security or collateral and without the necessity of proceeding against Lead Developer. Guarantor waives the right to require City to proceed against Lead Developer, to exercise any right or remedy under the Agreement, or to pursue any other remedy or to enforce any other right.

b. Guarantor will continue to be subject to this Guaranty notwithstanding: (i) any modification, agreement or stipulation between Lead Developer and City or their respective successors and assigns, with respect to the Agreement or the Guaranteed Obligations; (ii) any waiver of or failure to enforce the Guaranteed Obligations or any of the terms, covenants or conditions contained in the Agreement or any modification thereof; (iii) any release of Lead Developer from any liability with respect to the Agreement; or (iv) any release or subordination of any collateral then held by City as security for the performance by Lead Developer of the Guaranteed Obligations.

c. The Guaranteed Obligations are not conditional or contingent upon the genuineness, validity, regularity or enforceability of the Agreement or the pursuit by City of any remedies which City either now has or may hereafter have with respect thereto under the Agreement.

d. Lead Developer and Guarantor acknowledge and agree that Guarantor's obligations and undertakings under this Guaranty are derivative of, and not in excess of, the Guaranteed Obligations and Guarantor shall be entitled to all rights and defenses of Lead Developer except as previously waived or disclaimed in this Guaranty. Notwithstanding any other term or provision of this Guaranty, in the event that Lead Developer's obligations have been changed by any modification, agreement or stipulation between Lead Developer and City or their respective successors or assigns, the term "Guaranteed Obligations" as used in this Guaranty shall mean the Guaranteed Obligations as so changed, except that the Guaranteed Obligations shall be determined without regard to the effect of any such modification, agreement or stipulation in the context of a bankruptcy or insolvency proceeding in which Lead Developer is the debtor, unless otherwise specified in the modification, agreement or stipulation.

#### **4. Liability of Guarantor.**

a. City may enforce this Guaranty upon the occurrence of a breach by Lead Developer of any of the Guaranteed Obligations, notwithstanding the existence of any dispute between City and Lead Developer with respect to the existence of such a breach.

b. Guarantor's performance of some, but not all, of the Guaranteed Obligations will in no way limit, affect, modify or abridge Guarantor's liability for those Guaranteed Obligations that have not been performed.

c. City, upon such terms as it deems appropriate, without notice or demand and without affecting the validity or enforceability of this Guaranty or giving rise to any reduction, limitation, impairment, discharge or termination of Guarantor's liability under this Guaranty, from time to time may (i) with respect to the financial obligations of Lead Developer, if and as permitted by the Agreement, renew, extend, accelerate, or otherwise change the time, place, manner or terms of payment of financial obligations that are Guaranteed Obligations, and/or subordinate the payment of the same to the payment of any other obligations, (ii) settle, compromise, release or discharge, or accept or refuse any offer of performance with respect to, or substitutions for, the Guaranteed Obligations or any agreement relating thereto, (iii) request and accept other guarantees of the Guaranteed Obligations and take and hold security for the payment and performance of this Guaranty or the Guaranteed Obligations, (iv) release, surrender, exchange, substitute, compromise, settle, rescind, waive, alter, subordinate or modify, with or without consideration, any security for performance of the Guaranteed Obligations, any other guarantees of the Guaranteed Obligations, or any other obligation of any Person with respect to the Guaranteed Obligations, (v) enforce and apply any security hereafter held by or for the benefit of City in respect of this Guaranty or the Guaranteed Obligations and direct the order or manner of sale thereof, or exercise any other right or remedy that City may have against any such security, as City in its discretion may determine, and (vi) exercise any other rights available to it under the Agreement.



d. This Guaranty and the obligations of Guarantor under this Guaranty will be valid and enforceable and will not be subject to any reduction, limitation, impairment, discharge or termination for any reason (other than infeasible performance in full of the Guaranteed Obligations), including without limitation the occurrence of any of the following, whether or not Guarantor will have had notice or knowledge of any of them: (i) any failure or omission to assert or enforce an agreement or election not to assert or enforce, or the stay or enjoining, by order of court, by operation of law or otherwise, of the exercise or enforcement of, any claim or demand or any right, power or remedy (whether arising under the Agreement, at law, in equity or otherwise) with respect to the Guaranteed Obligations or any agreement or instrument relating thereto; (ii) any rescission, waiver, amendment or modification of, or any consent to departure from, any of the terms or provisions (including without limitation provisions relating to events of default) of the Agreement or any agreement or instrument executed pursuant thereto; (iii) City's knowledge of or consent to the change, reorganization or termination of the corporate structure or existence of Lead Developer; (iv) any defenses, set-offs or counterclaims that Lead Developer may allege or assert against City in respect of the Guaranteed Obligations, except as provided in Section 20 (Defenses).

5. **Waivers.** To the fullest extent permitted by law, Guarantor hereby waives and agrees not to assert or take advantage of:

a. any right to require City to proceed against the Lead Developer or any other Person or to proceed against or exhaust any security held by City at any time or to pursue any right or remedy under any of the Agreement or any other remedy in City's power before proceeding against Guarantor;

b. any defense that may arise by reason of the incapacity, lack of authority, death or disability of, or revocation hereby by Guarantor, Lead Developer or any other Person or the failure of City to file or enforce a claim against the estate (either in administration, bankruptcy or any other proceeding) of any such Person;

c. any defense that may arise by reason of any presentment, demand for payment or performance or otherwise, protest or notice of any other kind or lack thereof;

d. any right or defense arising out of an election of remedies by City even though the election of remedies, such as non-judicial foreclosure with respect to any security for the Guaranteed Obligations, has destroyed Guarantor's rights of subrogation and reimbursement against Lead Developer by the operation of Section 580d of the California Code of Civil Procedure or otherwise;

e. all notices to Guarantor or to any other Person, including, but not limited to, notices of the acceptance of this Guaranty or the creation, renewal, extension, modification, accrual of any of the obligations of Lead Developer under the Agreement, or of default in the payment or performance of any such obligations, enforcement of any right or remedy with respect thereto or notice of any other matters relating thereto;

f. any defense based upon any act or omission of City which directly or indirectly results in or aids the discharge or release of Lead Developer, Guarantor or any security given or held by City in connection with the Guaranteed Obligations;

g. any duty on the part of City to disclose to Guarantor any facts City may now or hereafter know about Lead Developer, regardless of whether City has reason to believe that any such facts materially increase the risk beyond that which Guarantor intends to assume, has reason to believe that such facts are unknown to Guarantor, or has a reasonable opportunity to communicate such facts to Guarantor. Guarantor acknowledges that it is fully responsible for being and keeping informed of the financial condition of the Lead Developer and of all circumstances bearing on the risk of non-payment of any Guaranteed Obligations;

h. [the fact that Guarantor may at any time in the future dispose of all or part of its direct or indirect ownership or economic interests in Lead Developer; and

i. any and all suretyship defenses under applicable law.

**6. Waiver of Subrogation and Rights of Reimbursement.** Until the Guaranteed Obligations have been indefeasibly paid in full, Guarantor waives any claim, right or remedy which it may now have or may hereafter acquire against Lead Developer that arises from the performance of Guarantor under this Guaranty, including, without limitation, any claim, right or remedy of subrogation, reimbursement, exoneration, contribution, or indemnification, or participation in any claim, right or remedy of City against Lead Developer, or any other security or collateral that City now has or hereafter acquires, whether or not such claim, right or remedy arises in equity, under contract, by statute, under common law or otherwise. All existing or future indebtedness of Lead Developer or any shareholders, partners, members, joint venturers of Lead Developer to Guarantor is subordinated to all of the Guaranteed Obligations until such time as all Guaranteed Obligations shall have been indefeasibly paid in full. Whenever and for so long as Lead Developer shall be in default in the performance of a Guaranteed Obligation, no payments with respect to any such indebtedness shall be made by Lead Developer or any shareholders, partners, members, joint venturers of Lead Developer to Guarantor without the prior written consent of City. Any payment by Lead Developer or any shareholders, partners, members, joint venturers of Lead Developer to Guarantor in violation of this provision shall be deemed to have been received by Guarantor as trustee for City.

**7. Cumulative Rights.** All rights, powers and remedies of City under this Guaranty will be in addition to and not in lieu of all other rights, powers and remedies given to City, whether at law, in equity or otherwise.

**8. Notices.** All demands, notices and other communications provided for under this Guaranty shall, unless otherwise specifically provided herein, comply with Section 23 (*Additional Guarantor Waivers and Acknowledgements*) of the Agreement. Address for notices to Guarantor: [insert]

**9. No Waiver.** Any forbearance or failure to exercise, and any delay by City in exercising, any right, power or remedy under this Guaranty will not impair any such right, power or remedy or be construed to be a waiver thereof, nor will it preclude the further exercise of any such right, power or remedy.

**10. Assignability.** This Guaranty is binding upon and inures to the benefit of the successors and assigns of Guarantor and City, but is not assignable by Guarantor without the prior written

consent of City, which consent may be granted or withheld in City's sole discretion. Any assignment by Guarantor effected in accordance with this Section 10 (*Assignability*) will not relieve Guarantor of its obligations and liabilities under this Guaranty.

**11. Amendments.** No amendment of this Guaranty shall be effective unless in writing and signed by Guarantor and City. No waiver of any provision of this Guaranty nor consent to any departure by Guarantor therefrom shall in any event be effective unless such waiver shall be in writing and signed by City. Any such waiver shall be effective only in the specific instance and for the specific purpose for which it was given.

**12. Captions.** The captions in this Guaranty are for convenience only and shall not be deemed part of this Guaranty or considered in construing this Guaranty.

**13. Construction of Agreement.** Ambiguities or uncertainties in the wording of this Guaranty will not be construed for or against any party, but will be construed in the manner that most accurately reflects the parties' intent as of the date hereof.

**14. Representations and Warranties.** In addition to the representations and warranties with respect to solvency set forth in Section 16 (*Bankruptcy; Post-Petition Interest; Reinstatement of Guaranty; Solvency*), Guarantor represents and warrants that:

a. it is a [●] duly organized, validly existing, and in good standing under the laws of the State of [●] and qualified to do business and is in good standing under the laws of the State of California;

b. it has full power, right and authority to execute, deliver and perform this Guaranty;

c. the execution, delivery, and performance by Guarantor of this Guaranty have been duly authorized by all necessary [corporate] action on the part of Guarantor and proof of such authorization will be provided with the execution of this Guaranty;

d. this Guaranty has been duly executed and delivered and constitutes the legal, valid and binding obligation of Guarantor, enforceable against Guarantor in accordance with its terms;

e. neither the execution nor delivery of this Guaranty nor compliance with or fulfillment of the terms, conditions, and provisions hereof, will conflict with, result in a material breach or violation of the terms, conditions, or provisions of, or constitute a material default, an event of default, or an event creating rights of acceleration, termination, or cancellation, or a loss of rights under: (1) the [certificate of incorporation or by-laws] of Guarantor, (2) any judgment, decree, order, contract, agreement, indenture, instrument, note, mortgage, lease, governmental permit, or other authorization, right, restriction, or obligation to which Guarantor is a party or any of its property is subject or by which Guarantor is bound, or (3) any federal, state, or local law, statute, ordinance, rule or regulation applicable to Guarantor;

f. it now has and will continue to have full and complete access to any and all information concerning the transactions contemplated by the Agreement or referred to therein, the financial status of Lead Developer and the ability of Lead Developer to pay and perform the Guaranteed Obligations;

g. it has reviewed and approved copies of the Agreement and is fully informed of the remedies City may pursue, with or without notice to Lead Developer or any other Person, in the event of default of any of the Guaranteed Obligations;

h. it has made and so long as the Guaranteed Obligations (or any portion thereof) remain unsatisfied, it will make its own credit analysis of Lead Developer and will keep itself fully informed as to all aspects of the financial condition of Lead Developer, the performance of the Guaranteed Obligations and of all circumstances bearing upon the risk of nonpayment or nonperformance of the Guaranteed Obligations. Guarantor hereby waives and relinquishes any duty on the part of City to disclose any matter, fact or thing relating to the business, operations or conditions of Lead Developer now known or hereafter known by City;

i. no consent, authorization, approval, order, license, certificate, or permit or act of or from, or declaration or filing with, any governmental authority or any party to any contract, agreement, instrument, lease, or license to which Guarantor is a party or by which Guarantor is bound, is required for the execution, delivery, or compliance with the terms hereof by Guarantor, except as have been obtained prior to the date of this Guaranty;

j. there is no pending or, to the best of its knowledge, threatened action, suit, proceeding, arbitration, litigation, or investigation of or before any Governmental Entity which challenges the validity or enforceability of this Guaranty;

k. it is not subject to any outstanding judgment, rule, writ, injunction or decree of any Governmental Entity that adversely affects its ability to perform its obligations under this Guaranty;

l. it has sufficient net worth and sufficient liquidity of assets to enable Guarantor to promptly perform all of the Guaranteed Obligations as and when they are due; and

m. it derives a substantial direct or indirect economic benefit from the Agreement.

**15. Limitation by Law.** All rights, remedies and powers provided in this Guaranty may be exercised only to the extent that such exercise does not violate any applicable provision of law, and all the provisions of this Guaranty are intended to be subject to all applicable mandatory provisions of law that may be controlling and to be limited to the extent necessary so that they will not render this Guaranty invalid, unenforceable, in whole or in part, or not entitled to be recorded, registered or filed under the provisions of any applicable law.

**16. Bankruptcy; Post-Petition Interest; Reinstatement of Guaranty; Solvency.**

a. The obligations of Guarantor under this Guaranty will not be reduced, limited, impaired, discharged, deferred, suspended or terminated by any proceeding, voluntary or involuntary, involving the bankruptcy, insolvency, receivership, reorganization, liquidation or arrangement of Lead Developer or by any defense which Lead Developer may have by reason of the order, decree or decision of any court or administrative body resulting from any such proceeding. City is not obligated to file any claim relating to the Guaranteed Obligations if Lead Developer becomes subject to a bankruptcy, reorganization, or similar proceeding, and the failure of City so to file will not affect Guarantor's obligations under this Guaranty.

b. Guarantor acknowledges and agrees that any interest on any portion of the Guaranteed Obligations which accrues after the commencement of any proceeding referred to in clause (a) above (or, if interest on any portion of the Guaranteed Obligations ceases to accrue by operation of law by reason of the commencement of said proceeding, such interest as would have accrued on such portion of the Guaranteed Obligations if said proceedings had not been commenced) will be included in the Guaranteed Obligations because it is the intention of Guarantor and City that the Guaranteed Obligations should be determined without regard to any rule of law or order which may relieve Lead Developer of any portion of such Guaranteed Obligations. Guarantor will permit any trustee in bankruptcy, receiver, debtor in possession, assignee for the benefit of creditors or any similar person to pay City, or allow the claim of City in respect of, any such interest accruing after the date on which such proceeding is commenced.

**17. Governing Law.** This Guaranty shall be governed by and construed in accordance with the law of the State of California, without regard to conflict of law principles. The venue of any court, judicial or referee proceeding under this Agreement shall be in San Francisco, California, unless changed by the judicial officer.

**18. Attorneys' Fees.** Guarantor agrees to pay to City without demand reasonable attorneys' fees and all costs and other expenses (whether by lawsuit or otherwise, and including such fees and costs of litigation, arbitration and bankruptcy, and including appeals) incurred by City in enforcing, collecting or compromising any Guaranteed Obligation or enforcing or collecting this Guaranty against Guarantor or in attempting to do any or all of the foregoing.

**19. Joint and Several Liability.** If the Guarantor is comprised of more than one individual and/or entity, such individuals and/or entities, as applicable, shall be jointly and severally liable for the Guaranteed Obligations. If more than one guaranty is executed with respect to Lead Developer and the Agreement, each guarantor under such a guaranty shall be jointly and severally liable with the other guarantors with respect to the obligations guaranteed under such guaranties.

**20. Defenses.** Notwithstanding any other provision to the contrary, Guarantor shall be entitled to the benefit of all defenses available to Lead Developer under the Agreement except (a) those expressly waived in this Guaranty, (b) failure of consideration, lack of authority of Lead Developer and any other defense to formation of the Agreement, and (c) defenses available to Lead Developer under any federal or state law respecting bankruptcy, arrangement, reorganization or similar relief of debtors. Action against Guarantor under this Guaranty shall be subject to no prior notice or demand.

**21. Entire Agreement.** This Guaranty contains the entire understanding of the parties with respect to the subject matter hereof and supersedes all prior agreements, understandings, statements, representations and negotiations between the parties with respect to their subject matter.

**22. Severability.** If any clause, provision, section or part of this Guaranty is ruled invalid by a court having proper jurisdiction, it will be adjusted rather than voided, to achieve the intent of the parties. The invalidity or unenforceability of any such clause, provision, section or part shall not affect the validity or enforceability of the balance of this Guaranty, which shall be construed

and enforced as if this Guaranty did not contain such invalid or unenforceable clause, provision, section or part.

**23. Additional Guarantor Waivers and Acknowledgements.**

a. Guarantor hereby waives any and all defenses it might have that liquidated damages or stipulated damages constitute a penalty or that they do not bear a reasonable relation to the actual damages.

b. GUARANTOR ACKNOWLEDGES HAVING READ ALL OF THE PROVISIONS OF THIS GUARANTY AND AGREES TO ITS TERMS. IN ADDITION, GUARANTOR UNDERSTANDS THAT THIS GUARANTY IS EFFECTIVE UPON EXECUTION OF THIS GUARANTY. NO FORMAL ACCEPTANCE BY CITY IS NECESSARY TO MAKE THIS GUARANTY EFFECTIVE. THIS GUARANTY IS EFFECTIVE AS OF THE DATE HEREOF.

**[SIGNATURES ON NEXT PAGE]**

IN WITNESS WHEREOF, Guarantor has caused this Guaranty to be duly executed and delivered by its duly authorized officer effective as of this [\_\_\_\_\_] day of [\_\_\_\_\_] 2022.

\_\_\_\_\_  
\_\_\_\_\_

[INSERT NAME OF GUARANTOR]

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

## APPENDIX K

### MME CONSTRUCTION AGREEMENT TERMS

The provisions and other materials included in Document 22 (Draft Bid Set for MME Expansion Project) of the Reference Documents are derived from the City's template construction contract and shall form the foundation for negotiations of the construction aspects of the MME Construction Agreement.

As contemplated by Section 6.24 (*MME Expansion Project*) of the Agreement, the Parties shall negotiate the terms of the MME Construction Agreement to incorporate the relevant elements of Document 22, with such mutually agreed to revisions, additions and deletions as are needed to reflect: (i) the specific requirements and conditions of the MME Expansion Project; (ii) that Lead Developer (and not the City) shall procure the general contractor for the MME Expansion Project; and (iii) that Lead Developer shall provide 100% of the financing for the MME Expansion Project, either through (w) equity financing from Lead Developer or an Affiliate, (x) debt financing from third party lenders arranged by Lead Developer, (y) a combination of equity and debt financing, or (z) such other method of financing acceptable to the City.

It is currently contemplated that City shall pay for the MME Expansion Project, including the cost of financing secured by Lead Developer, through milestone payments at substantial completion of the MME Expansion Project and final acceptance of the MME Expansion Project.



## APPENDIX L

### ACCESS AGREEMENT

#### PERMIT TO ENTER AND INVESTIGATE PROPERTY

This Permit to Enter and Investigate Property (this "Permit") is entered into this \_\_\_\_ day of \_\_\_\_\_, 2022, by and between the City and County of San Francisco, a municipal corporation acting by and through the San Francisco Municipal Transportation Agency ("City") and \_\_\_\_\_, a \_\_\_\_\_ ("Permittee").

#### RECITALS

This Permit is entered into on the basis of the following facts, understandings and intentions of Permittee and City:

A. City owns that certain real property in San Francisco, California, identified as Assessor's Parcel Number 3971-001 and commonly known as 2500 Mariposa Street in San Francisco, California (the "Property"), which is under the jurisdiction of the San Francisco Municipal Transportation Agency ("SFMTA") and further described in the attached Exhibit A.

B. Permittee and City are parties to a Predevelopment Agreement dated \_\_\_\_\_, 2022 ("PDA"), with respect to predevelopment activities for the Project (as defined in the PDA) at the Property, including Permittee's due diligence investigation of the condition of the Property subject to the full execution of this Permit.

C. City and Permittee wish to set forth their understandings as they relate to Permittee's entry on the Property for that due diligence investigation from time to time during the term of this Permit.

#### AGREEMENT

In consideration of the mutual covenants and promises of the parties, City and Permittee hereby agree as follows:

##### 1. GRANT OF USE.

City hereby grants to Permittee a temporary, non-possessory, non-exclusive right for Permittee and its officers, employees, contractors, subcontractors, and agents (collectively, "Agents") to enter on and investigate the Property on the terms of this Permit. The specifics for each entry on and investigation of the Property will be described in an Addendum (as defined in Section 2 (*Use of the Property*)), which entry and investigation shall be further subject to coordination with City's staff at the Property pursuant to Section 6 (*No Interference with Use; Clearance Permit*). Any entry on or investigation of the Property by any Agent shall be subject to all terms and conditions of this Permit.

Permittee acknowledges, and will notify its Agents, that the Property is an active SFMTA bus storage and maintenance facility, with a two-story structure used for electric trolley bus parking, operations, and maintenance services, and an open trolley bus storage yard. Permittee also acknowledges, and will notify its Agents, that there are active high voltage overhead lines at the Property, and that special clearance procedures and authorizations will be necessary for

Permittee to undertake prior to commencing any Permitted Activities under an Addendum, as further described in Section 6 (*No Interference with Use; Clearance Permit*). For general information regarding SFMTA construction support and required clearance procedures, see <https://www.sfmta.com/permits/muni-construction-support-and-clearance-permit#:~:text=A%20Muni%20Clearance%20Permit%20is,protect%20the%20infrastructure%20from%20damage>.

## 2. USE OF THE PROPERTY.

(a) Prior to any entry on the Property, Permittee shall submit a signed request for entry that depicts the portion of the Property that will be affected by the entry (the “Permit Area”), and fully describes (a) the specific timing of its entry and use of the Permit Area during that entry, and (b) the due diligence activities (the “Permitted Activities”) it will conduct at the Permit Area during that entry, including the nature and extent of the proposed Permitted Activities. Such request is subject to the approval of the SFMTA’s Chief Financial Officer. If the City agrees to a submitted request for entry, City will countersign the request, which shall become an addendum to this Permit (each, an “Addendum”) and attached as Exhibit B. City will notify Permittee if it does not agree to any aspects of the request, and provide the basis of that decision. If Permittee and City sign an Addendum, Permittee can only use the Permit Area described in that Addendum during the times and for the performance of the Permitted Activities described in that Addendum. Permittee may not use any Pesticides (as defined by San Francisco Environment Code Section 301) in the Property.

(b) Permittee must provide City with copies of all boring logs, sample or laboratory test results, and reports resulting from the Permitted Activities promptly on Permittee’s receipt of them. Permittee shall notify City’s designated representative(s) by telephone or electronic mail at least five (5) business days in advance of all of Permittee’s invasive or destructive Permitted Activities, and at least two (2) business days in advance of Permittee’s other Permitted Activities. Permittee must allow City’s designated representative to observe, photograph and/or otherwise record all of Permittee’s activities, and to obtain duplicate samples of disturbed media, at no cost to Permittee.

(c) If any of the Permitted Activities involve the drilling of holes having a diameter dimension that could create a safety hazard for persons, Permittee shall, during any drilling operations, carefully safeguard such holes and secure them at the completion of each day’s work. Upon the completion of Permittee’s drilling operations, Permittee shall refill and compact all holes with the same or better material to the level of the original ground surface with the finish and color of such material to match the surrounding surface materials. Except for wells needed for subsequent monitoring, prior to the Termination Date (as defined in Section 5 (*Term of Permit; Termination*)), Permittee shall abandon any wells placed by Permittee on the Property in accordance with all laws, including without limitation, any Environmental Laws and City’s Department of Public Health (“DPH”) requirements. In the event that any wells are needed by Permittee for monitoring after the Termination Date, Permittee shall maintain such wells in accordance with all laws, including without limitation Environmental Laws and DPH requirements, and, when no longer required by Permittee, abandon them in accordance with all laws, including without limitation any Environmental Laws and DPH requirements. City shall allow Permittee reasonable access to the Property after the Termination Date, through the issuance of a license or permit to enter satisfactory to City, to maintain and abandon such wells as required.

(d) Permittee shall prevent all excavated materials (including soil), dewatered groundwater, equipment, and import materials (collectively, the “Excavation Materials”) from entering storm drains, sewers, or the San Francisco Bay, to the extent the Excavation Materials arise from Permittee’s activities in the Property. Permittee shall not store Excavation Materials

(including soil) where storm water runoff may wash materials into the Bay. Any Excavation Materials accidentally released by Permittee shall be immediately retrieved and/or cleaned up. Permittee shall immediately notify City, and any appropriate regulatory agencies as required by local, State, and Federal law, in case of any accidental release.

(e) Permittee shall not stockpile excavated soil at or near the Property. Permittee shall immediately deposit excavated soil into receptacles (e.g., transport trucks or bins) that can be covered and directly transported to an appropriate landfill (the "Receptacles"). Permittee shall arrange for the timely arrival of Receptacles to match the rate of Permittee's excavation. Permittee's Receptacles will be removed from the Property immediately after filling, and none of Permittee's Receptacles (empty or filled) will be left on the Property at the end of each workday. Permittee shall ensure that the Receptacles used by Permittee to contain saturated soil (i.e., wet soil excavated from below the groundwater table) are watertight and will retain all liquids. Permittee will capture and contain any liquids that drain from soil Receptacles and will manage such liquids as dewatered groundwater pursuant to appropriate regulatory approvals.

(f) Charges for Unauthorized Uses, Failure to Meet Insurance Requirements.

(1) In the event Permittee or its Agents uses or occupies any of the Property outside the Permit Area described in the applicable Addendum (the "Encroachment Area") without the prior written consent of City, then upon written notice from City ("Notice to Vacate"), Permittee shall immediately vacate such Encroachment Area and pay rent for each day Permittee used, occupied, uses or occupies such Encroachment Area, an amount equal to the rentable square footage of the Encroachment Area, multiplied by the higher of (a) the highest rental rate then approved by the City for the Property, or (b) then current fair market rent for such Property, as reasonably determined by City (the "Encroachment Area Charge"). Permittee's use or occupancy of the Encroachment Area for any portion of a day shall be considered use or occupancy for a full day. If Permittee uses or occupies such Encroachment Area for a fractional month, then the Encroachment Area Charge for such period shall be prorated based on a thirty (30) day month. In no event shall City's acceptance of the Encroachment Area Charge be deemed a consent by City to the use or occupancy of the Encroachment Area by Permittee, its Agents, or a waiver (or be deemed as a waiver) by City of any and all of City's other rights and remedies under this Permit (including Permittee's obligation to indemnify, defend and hold City harmless as set forth in this Section), at law or in equity.

In addition to the foregoing amount, Permittee shall pay to City, an amount equaling Two Hundred Dollars (\$200.00) upon delivery of the initial Notice to Vacate plus the actual cost associated with a survey of the Encroachment Area. In the event City determines during subsequent inspection(s) that Permittee has failed to vacate the Encroachment Area, then Permittee shall pay to City an amount equaling Two Thousand Dollars (\$2,000) for each additional Notice to Vacate, if applicable, delivered by City to Permittee following each inspection. The amounts set forth in this Section shall be due within three (3) business days following the applicable Notice to Vacate or separate invoice relating to the actual cost associated with a survey of the Encroachment Area.

In addition to the rights and remedies of City as set forth in the foregoing paragraphs of this Section, the terms and conditions of the indemnity and exculpation provision set forth in Section 10 (Indemnity) shall also apply to Permittee's and its Agents' use and occupancy of the Encroachment Area as if the Permit Area under the applicable Addendum originally included the Encroachment Area, and Permittee shall additionally indemnify, defend and hold City harmless from and against any and all loss or liability resulting from delay by Permittee in so surrendering the Encroachment Area including, without limitation, any loss or liability resulting from any Claims (as defined in Section 10 (Indemnity)) against City made by

any licensee, tenant or prospective licensee or tenant founded on or resulting from such delay and losses to City due to lost opportunities to use any portion of the Encroachment Area or to permit the use of any portion of the Encroachment Area to any such licensee, tenant or prospective licensee or tenant, together with, in each case, actual attorneys' fees and costs.

(2) Without limiting City's other rights and remedies set forth in this Permit, at law or in equity, in the event Permittee fails to submit to or obtain from the appropriate party, on a timely basis, the items identified in Sections 7(e) (Notification) and 7(f) (Notification of Any Notice, Investigation, or Claim), or to provide evidence of the required insurance coverage described in Section 14 (Insurance), then upon written notice from City of such failure, Permittee shall pay, an amount equaling One Thousand Dollars (\$1,000). In the event Permittee fails to provide the necessary document within the time period set forth in the initial notice and City delivers to Permittee additional written notice requesting such document, then Permittee shall pay to City, an amount equaling Two Thousand Dollars (\$2,000) for each additional written notice City delivers to Permittee requesting such document.

(3) In the event City determines after an inspection, that an activity other than the Permitted Activities described in the applicable Addendum is occurring on the Property (the "Prohibited Use"), then Permittee shall immediately cease the Prohibited Use and shall pay to City, an amount equaling Two Hundred Dollars (\$200.00) upon delivery of written notice to Permittee to cease the Prohibited Use. In the event City determines in subsequent inspection(s) of the Property that Permittee has not ceased the Prohibited Use, then Permittee shall pay to City, an amount equaling One Thousand Dollars (\$1,000) for each such additional notice delivered to Permittee.

The parties agree that the charges associated with activities described in this Section represent a fair and reasonable estimate of the administrative costs and expense that City will incur by reason of Permittee's failure to comply with the applicable terms of this Permit, City's inspection of the Property (if applicable) and Permittee's failure to comply with the applicable notice, and that City's right to impose the foregoing charges shall be in addition to and not in lieu of any and all other rights under this Permit, at law or in equity. By placing their initials below, each party specifically confirms the accuracy of the statements made in this Section and the reasonableness of the amount of the charges described therein.

Initials: \_\_\_\_\_ City \_\_\_\_\_ Permittee

### 3. PERMITTEE COSTS.

Permittee shall bear all costs or expenses of any kind or nature in connection with Permittee's use of the Property, including but not limited to all costs of excavation, construction, operation, sampling, monitoring, testing, transporting and disposing of Excavated Materials and backfilling, and shall keep the Property free and clear of any mechanics' liens or other claims of lien arising out of or in any way connected with its Permittee's use of the Property. Permittee shall also bear all costs necessitated by the presence of its equipment, including but not limited to monitoring or injection wells and treatment facilities, any costs for enhanced or revised design, construction and operation in order to protect, accommodate or relocate such equipment in light of City needs.

### 4. "AS IS" CONDITION.

The Property is accepted "as is" without any representation or warranty by City and entry upon the Property (including to any contamination or presence of Hazardous Materials (as defined in Section 7 (Hazardous Materials; Compliance; Notice; Disclosure))) by Permittee is an acknowledgment by Permittee that it will inspect the Property and accepts all risk associated with all dangerous places and defects on said Property. To the extent Permittee identifies any

dangerous places or defects on the Property and such places or defects are affected by Permittee's activities, Permittee shall notify the City of such dangerous places or defects, and shall secure and use commercially reasonable efforts to keep such places or defects in a secure condition during the Term (as defined in Section 5 (*Term of Permit; Termination*)). During any entry described in an applicable Addendum, Permittee shall maintain the Permit Area described in the applicable Addendum so that Permittee's activities do not result in the Permit Area being unsafe, unsightly or unsanitary (provided that Permittee's maintenance obligations shall not exceed the maintenance standard of the Property at the commencement of Permittee's then applicable entry). Permittee shall safeguard any portions of the Property that are excavated or otherwise affected by Permittee's Activities and secure them at the completion of each day's work. The parties acknowledge that City shall not provide any security for the Property.

#### 5. TERM OF PERMIT; TERMINATION.

The rights granted pursuant to this Permit are temporary only and shall commence on \_\_\_\_\_ (the "Commencement Date"), and shall expire on the earlier to occur of \_\_\_\_\_, or the expiration or earlier termination of the PDA (the "Termination Date"). The "Term" means the period from the Commencement Date to and including the Termination Date. If Permittee fails to comply with the terms and conditions of this Permit and such failure is not cured by Permittee within three (3) days of notice by City (except as provided in Section 2(f) (*Charges for Unauthorized Uses, Failure to Meet Insurance Requirements*)), or in the case of a non-compliance which cannot be cured within three days, Permittee has not commenced and is not diligently pursuing the cure of said non-compliance (but in no event shall Permittee have more than ten (10) days to cure such failure), Permittee shall be in default of this Permit and this Permit shall terminate upon one (1) day's written notice to Permittee, and if Permittee is conducting any Permitted Activities at the Property at the time of that termination, Permittee shall forthwith remove all equipment and installations from the then applicable Permit Area, and shall restore the then applicable Permit Area to its former condition.

#### 6. NO INTERFERENCE WITH USE; CLEARANCE PERMIT.

Permittee shall not materially interfere with or obstruct City's use of the Property and its conduct of normal business operations thereon. The City has no responsibility or liability of any kind or character with respect to any utilities that may be located in or on the Property. Permittee has the sole responsibility to locate the same and protect the same from damage arising from Permittee's activities. Permittee shall be solely responsible for any damage to utilities or other damages resulting from Permittee's activities under this Permit. Permittee acknowledges, and will notify its Agents, that due to the active high voltage overhead lines at the Property special clearance procedures must be followed and authorizations must be obtained prior to commencing the Permitted Activities. For general information regarding SFMTA construction support and required clearance procedures, see <https://www.sfmta.com/permits/muni-construction-support-and-clearance-permit#:~:text=A%20Muni%20Clearance%20Permit%20is,protect%20the%20infrastructure%20from%20damage>.

Permittee shall factor into its schedule sufficient time to obtain all required clearance permits and follow required procedures, and SFMTA shall not be responsible for any project delays resulting from the amount of time that is necessary to obtain such permits and to follow such procedures. In addition to the Addendum approval requirements of Section 2 (*Use of the Property*), prior to any entry on or use of the Property as described in an Addendum, Permittee shall (i) consult with SFMTA Construction Support Services and obtain any necessary Clearance Permits and other required authorizations for the Permitted Activities described in that Addendum.

Permittee's use of the Property is subject and subordinate to the rights of City and any other occupants of the Property. Permittee shall provide its own generator and stand-alone equipment for any utility needs in connection with any Permitted Activities, and City shall have no responsibility to provide Permittee with any such utilities.

7. HAZARDOUS MATERIALS; COMPLIANCE; NOTICE; DISCLOSURE.

(a) Definitions. For purposes of this Permit, the following terms have the following meanings:

(1) "Environmental Laws" means any federal, state or local laws, ordinances, regulations or policies judicial and administrative directives, orders and decrees dealing with or relating to Hazardous Materials (including, without limitation, their use, handling, transportation, production, disposal, discharge, storage or reporting requirements) or to health and safety, industrial hygiene or environmental conditions in, on, under or about the Property, including, without limitation, soil, air, bay water and groundwater conditions or community right-to-know requirements, related to the work being performed under this Permit.

(2) "Handle" or "Handling" means to use, generate, process, produce, package, treat, store, emit, discharge or dispose.

(3) "Hazardous Material" means any substance or material which has been determined by any state, federal, or local government authority to be a hazardous or toxic substance or material, including without limitation, any hazardous substance as defined in Section 101(14) of CERCLA (42 USC Section 9601(14)), or Sections 25281(f) or 25316 of the California Health and Safety Code, any hazardous material as defined in Section 25501(k) of the California Health and Safety Code, and any additional substances or materials which at such time are classified or considered to be hazardous or toxic under any federal, state or local law, regulation or other exercise of governmental authority.

(4) "Investigation" means activities undertaken to determine the nature and extent of Hazardous Materials which may be located on or under real property, or which have been, are being, or threaten to be released to the environment.

(5) "Remediation" shall mean activities undertaken to cleanup, remove, contain, treat, stabilize, monitor or otherwise control Hazardous Materials located on or under real property or which have been, are being or threaten to be released to the environment.

(6) "Regulatory Agency" means any federal, state or local governmental agency or political subdivision related thereto. Regulatory Agency shall include City to the extent that City is acting in its capacity as a regulatory authority, rather than in its proprietary capacity as a landowner.

(7) "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment of any Hazardous Material (including the abandonment or discarding of barrels, containers, and other closed receptacles containing any Hazardous Material or pollutant or contaminant).

(b) Compliance with Laws. All activities performed on the Property by Permittee, and its Agents shall be done in accordance with all laws, regulations and orders of any governmental or other regulatory entity.

(c) Hazardous Materials. Permittee shall Handle all Hazardous Materials introduced by Permittee or disturbed on the Property by Permittee during the Term in compliance with all

Environmental Laws. Permittee shall not be responsible for the safe Handling of Hazardous Materials Released on the Property solely by City or its Agents, except to the extent Permittee disturbs or exacerbates such Hazardous Materials. Permittee shall protect its employees and the general public from Permittee's activities in accordance with all Environmental Laws. City may from time to time request, and Permittee shall be obligated to provide, information reasonably adequate for City to determine that any and all Hazardous Materials are being Handled in a manner which complies with all Environmental Laws. In accordance with Section 10 (Indemnity), Permittee shall not have any liability under this Permit resulting from the discovery or disclosure of pre-existing Hazardous Materials on, in, under or about the Property.

(d) Removal of Hazardous Materials. Prior to the Termination Date, Permittee, at its sole cost and expense, shall remove any and all Hazardous Materials introduced or released in, on, under or about the Property or the Property by Permittee or its Agents during the Term and shall Remediate or dispose of any Hazardous Materials produced as a result of the Permitted Activities. All costs of storage, shipping and disposal of extracted soils and groundwater shall be the sole responsibility of Permittee including, without limitation, the costs of preparation and execution of shipping papers, including but not limited to hazardous waste manifests. With respect to shipping papers and hazardous waste manifests, Permittee shall be the "generator" and in no case shall the City be named as the generator.

(e) Notification. Permittee shall notify City upon the issuance of a permit issued by DPH and the receipt of a hazardous waste generator identification number issued by the U.S. Environmental Protection Agency or the California Environmental Protection Agency to itself or its Agents relating to the Permitted Activities.

(f) Notification of Any Notice, Investigation, or Claim. With respect to the Permitted Activities, the Property, and the Property, Permittee shall immediately notify City in writing of, and shall contemporaneously provide City with a copy of:

(1) Any release or discharge of any Hazardous Materials, whether or not the release is in quantities that would be required under applicable laws to be reported to a governmental or regulatory agency;

(2) Any written notice of release of Hazardous Materials in or on the Property or the Property that is provided by Permittee or its Agents to a governmental or regulatory agency, including any regulatory agency of City;

(3) Any notice of a violation, or a potential or alleged violation, of any Environmental Law relating to the Property or the Property that is received by Permittee or its Agents from any governmental or regulatory agency, including any regulatory agency of City;

(4) Any inquiry, investigation, enforcement, cleanup, removal, or other action that is instituted or threatened by a governmental or regulatory agency, including any regulatory agency of City, against Permittee or its Agents and that relates to the release or discharge of Hazardous Material on or from the Property or the Property;

(5) Any claim that is instituted or threatened by any third party against Permittee or its Agents and that relates to any release or discharge of Hazardous Materials on or from the Property or the Property; and

(6) Any notice of the termination, expiration or substantial amendment of any environmental operating permit or Permit needed by Permittee or its Agents in connection with the Property.

(g) Hazardous Material Disclosures. California law requires landlords to disclose to tenants the presence or potential presence of certain Hazardous Materials. Although this Permit grants Permittee only a license, Permittee is hereby advised that Hazardous Materials (as herein defined) may be present on the Property and the Property, including, but not limited to vehicle fluids, janitorial products, tobacco smoke, and building materials containing chemicals, such as formaldehyde. By execution of this Permit, Permittee acknowledges that the notice set forth in this Section satisfies the requirements of California Health and Safety Code Section 25359.7 and related statutes. Permittee also acknowledges its own obligations pursuant to California Health and Safety Code Section 25359.7 as well as the penalties that apply for failure to meet such obligations.

8. PROPRIETARY CAPACITY.

Permittee understands and agrees that City is entering into this Permit in its capacity as a landowner with a proprietary interest in, on, or around the Property and not as a regulatory agency of the City with certain police powers. Except as specifically stated herein, Permittee further understands and agrees that no City approval for purposes of this Permit shall be deemed to constitute any approval required by any federal, state, regional or City authority. Before beginning any Permitted Activities at the Property, Permittee shall obtain any and all necessary permits and other regulatory approvals for conducting the then applicable Permitted Activities and shall maintain such approvals as necessary throughout the Term. Promptly upon receipt of such approvals, Permittee shall deliver copies to City. City shall cooperate with Permittee, at no cost to City, to the extent necessary to obtain necessary approvals. To the fullest extent permitted by law, Permittee agrees to indemnify and hold City and its Agents harmless from and against any loss, expense, cost, damage, attorneys' fees, penalties, claims or liabilities which City or its Agents may incur as a result of Permittee's failure to obtain or comply with the terms and conditions of any regulatory approval received by Permittee related to the Property or applicable to Permittee's Activities under this Permit.

Initials: \_\_\_\_\_ Permittee

9. REPAIR OF DAMAGE.

If any portion of the Property, or any other property of City or its Agents, or City Occupants, or their respective agents or invitees, located on or about the Property, is damaged by any of the activities conducted by Permittee or its Agents, Permittee shall, at its own cost and expense, repair any and all such damage and restore said property to the conditions it was in when the activities by Permittee began. Such repair shall be done immediately if the damage creates an unsafe condition or, if the damage does not create an unsafe condition, within a reasonable period but not longer than five (5) days from the date of the damage.

10. INDEMNITY.

(a) General Indemnity. Permittee agrees to indemnify, hold harmless and defend, City and its Agents from and against any and all claims, demands, actions, causes of action or suits (actual or threatened), judgments, losses, costs, damages, penalties, fines or liabilities including, without limitation, interest, engineering fees, consultant fees and reasonable attorneys' fees of whatever kind (collectively "Claims") arising in any manner out of (i) any injury to or death of any person or damage to or destruction of any property occurring in, on, under or about the Property, on any part thereof, whether to the person or property of Permittee, or its Agents, or third persons, in connection with use of the Property by Permittee or its Agents; or (ii) any failure by Permittee or its Agents to faithfully observe or perform any of the terms, covenants or conditions of this Permit.



(b) Hazardous Materials Indemnity. Permittee agrees to indemnify, hold harmless and defend, without cost to City and its Agents from any and against any Claims arising from (i) any Handling, Release or threatened Release of Hazardous Materials, pollutant, or contaminant, or any condition of pollution, contamination or nuisance in the vicinity of the Property or in ground or surface waters associated with or in the vicinity of the Property in connection with the use of the Property by Permittee or its Agents during the Term; (ii) any requirement of a Regulatory Agency for Investigation or Remediation of any Release of Hazardous Materials at the Property in connection with use of the Property by Permittee or its Agents during the Term; (iii) any requirement of a Regulatory Agency for Investigation or Remediation of any Hazardous Materials arising out of or in connection with the activities under this Permit, including, without limitation, requirements which would not have been imposed except for Permittee's use of the Property or the Permitted Activities; or (iv) any breach of or failure to perform or observe any term, covenant, or agreement in this Permit to be performed or observed by Permittee, including, but not limited to any violation of any Environmental Law. These indemnity obligations shall apply to all Claims described above regardless of the active, passive or concurrent negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on City or its Agents, except to the extent Claims are caused by the gross negligence, or willful or intentional misconduct of City, or its officers, agents or employees. The provisions of this Section and any other indemnification obligation shall survive termination of this Permit with respect to any Claim arising out of Permittee's Activities hereunder. In addition to Permittee's obligation to indemnify City and its Agents, Permittee specifically acknowledges and agrees that it has an immediate and independent obligation to defend City and its Agents from any claim that actually or potentially falls within the indemnification provisions of this Section, even if the allegations are or may be groundless, false or fraudulent. Permittee's obligation to defend shall arise at the time such claim is tendered to Permittee by City and/or its Agents and shall continue at all times thereafter. Notwithstanding anything in this Section or otherwise in this Permit, Permittee shall not have any liability under this Permit resulting from the discovery or disclosure of pre-existing Hazardous Materials or the non-negligent aggravation of pre-existing Hazardous Materials on, in, under or about the Property.

(c) Waiver of Liability. City shall not be liable for any damage to the property of Permittee or its Agents, or for any bodily injury or death to any such Agent, resulting or arising from the condition of the Property or its use by Permittee with the exception of damage or injury caused by the active, willful or intentional misconduct of City or its Agents.

11. **WAIVER OF CLAIMS.** Permittee hereby waives and releases on behalf of itself and its heirs, successors, and assigns, including its Agents, any and all rights which it may have to file a claim or bring an action of any kind or character against City or its agents for damage to property or personal injury, including death, which might arise out of the use of the Property by Permittee, or activities conducted in, on or around the Property by Permittee, except to the extent that such damage or injury results from any claims caused by the active, willful or intentional misconduct of City or its agents.

12. **AGENTS ENTRY UNDER PERMITTEE'S AUTHORITY.**

This Permit to Enter granted to Permittee shall include all Agents of Permittee, including those identified in Exhibit C, and Permittee shall include in any agreement with all Agents that they shall be bound by the terms and conditions of this Permit. Permittee shall notify City of any changes in the Agents conducting Permitted Activities with the Property by providing the City with an updated Exhibit C within four (4) calendar days of any change. Unless City notifies Permittee of its rejection of an updated Exhibit C within ten (10) business days of receipt, the updated Exhibit C will be deemed disapproved. Permittee assumes all responsibility for the safety of all persons and property on the Property pursuant to this Permit. All work performed in the Property and all persons entering the Property and all property and equipment placed therein

in furtherance of the permission granted herein is presumed to be with the express authorization of Permittee.

### 13. REMOVAL OF EQUIPMENT AND INSTALLATIONS.

Upon completion of Permitted Activities described in an Addendum, Permittee shall promptly remove all equipment and installations from the Property, but in no event no later than the end of the entry period specified in that Addendum. Any equipment or any other property remaining in the Property after completion of activities may be deemed abandoned by City in its sole discretion and City may store, remove, and dispose of such equipment or property at Permittee's sole cost and expense. Permittee waives all claims for any costs or damages resulting from City's retention, removal, and disposition of such property.

### 14. INSURANCE.

During the Term, Permittee shall at its own costs and expense at all times while Permitted Activities are being conducted, procure and maintain and shall cause all Agents identified in Exhibit C attached hereto, to procure and maintain, insurance in the following amounts and coverages; provided, however that Pollution Legal Liability insurance specified below shall be provided only by Permittee or Permittee's Agents that perform invasive testing on the Property or that perform removal or transport of any Hazardous Material from the Property:

(a) Workers' Compensation as required by laws, with Employers' Liability limits not less than \$1,000,000 for each accident, injury or illness.

(b) Comprehensive General Liability Insurance with limits not less than \$2,000,000 for each occurrence for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations, and \$4,000,000 General Annual Aggregate Limit (other than Products-Completed Operations). The Comprehensive General Liability Insurance provided shall cover any property damage or personal injury resulting as part of the Permitted Activities.

(c) Comprehensive Automobile Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Owned and Non-owned and hired auto coverage, as applicable.

(d) Contractor's Pollution Legal Liability Insurance with combined single limit of \$2,000,000 each claim, \$2,000,000 aggregate, and with coverage to include legal liability arising from the sudden and accidental release of pollutants, and no less than a one-year extended reporting period.

(e) All policies and certificates shall be endorsed to provide that no cancellation for any reason, non-renewal, major change of coverage, or expiration shall become effective or occur until at least thirty (30) days' notice, if commercially available. Permittee shall provide thirty (30) days' advance written notice to City of cancellation, intended non-renewal, or reduction in coverages, except for non-payment for which no less than ten (10) days' notice shall be provided to City. Within one (1) business day of receiving any notice from its insurance provider or broker of intent to cancel, materially reduce, or deplete its required coverage, Permittee shall provide a copy of such notice to City and take prompt action to prevent cancellation, material reduction, or depletion of coverage, reinstate or replenish the cancelled, reduced, or depleted coverage, or obtain the full coverage required by this Section from a different insurer meeting the qualifications of this Section. Notice to City shall be delivered to the address(es) for City set forth in Section 15 (Notices).

(f) If at any time during the Term, Permittee or its Agents, as the case may be, fails to maintain the required insurance in full force and effect, all work under the Permit shall be discontinued immediately, and shall not resume until City receives notice that the required insurance has been renewed to full force and effect for a period satisfactory to City. Failure to maintain the required insurance will be sufficient cause for immediate termination of the Permit notwithstanding the notice required under Section 5 (*Term of Permit; Termination*) of this Permit.

(g) City's approval of insurance shall not relieve or decrease the liability of Permittee or its Agents under this Permit.

(h) Certificates of insurance, in form and with insurers satisfactory to the City, evidencing all coverages above shall be furnished to the City before commencement of any operations under this Permit, with complete copies of policies to be furnished promptly upon City's request.

(i) Permittee's provision of satisfactory evidence of the insurances required pursuant to this Section is a condition precedent to the effectiveness of this Permit.

(j) The parties release each other, and their respective authorized representatives, from any claims for damage to the Property or personal property of either City or Permittee in or on the Property which are caused by or result from risks insured against under any property insurance policies carried by the parties and in force at the time of any such damage, to the extent such claims for damage are paid by such policies. Each party shall cause each property insurance policy obtained by it to provide that the insurance company waives all right of recovery by way of subrogation against the other party in connection with any damage covered by any policy.

(k) All policies required by this Permit shall provide for the following: (i) be issued by one or more companies of recognized responsibility authorized to do business in the State of California with financial rating of at least a Class A- VIII (or its equivalent successor) status, as rated in the most recent edition of A.M. Best's "Best's Insurance Reports;" (ii) name as additional insureds the City and County of San Francisco, the San Francisco Municipal Transportation Agency, and their supervisors and commissioners, officers, agents, and employees; (iii) specify that such policies are primary insurance to any other insurance available to the additional insureds, with respect to any claims arising out of this Permit and that insurance applies separately to each insured against whom claim is made or suit is brought, except with respect to the insurer's limit of liability; and (iv) include a waiver of subrogation endorsement or provision wherein the insurer acknowledges acceptance of Permittee's waiver of claims against City. Such policies shall also provide for severability of interests and that an act or omission of one of the named insureds which would void or otherwise reduce coverage shall not reduce or void the coverage as to any insured, and shall afford coverage for all claims based on acts, omissions, injury, or damage that occurred or arose (or the onset of which occurred or arose) in whole or in part during the policy period.

(l) Prior to the commencement of the Term, Permittee shall deliver to City certificates of insurance and additional insured policy endorsements from insurers in a form satisfactory to City, evidencing the coverages required by this Permit, together with complete copies of the policies at City's request. Permittee and its contractors shall submit or cause their respective insurance brokers to submit requested information through any program used by City for verification of Permittee and contractor insurance coverage, if requested. If Permittee shall fail to procure such insurance, or to deliver such policies or certificates, at its option, City may procure the same for the account of Permittee, and Permittee shall reimburse City for any costs so paid by City within five (5) business days after delivery to Permittee of bills therefor.

(m) Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general aggregate limit shall double the occurrence or claims limits specified above.

(n) Should any of the required insurance be provided under a claims-made form, Permittee shall maintain such coverage continuously throughout the Term and, without lapse, for a period of three (3) years beyond the Termination Date, to the effect that should any occurrences during the Term give rise to claims made after the Termination Date, such claims shall be covered by such claims-made policies.

15. NOTICES.

Except as otherwise expressly provided herein, any notices given under this Permit shall be effective only if in writing and given by delivering the notice in person, by sending it first class mail or certified mail, with a return receipt requested, or overnight courier, return receipt requested, with postage prepaid, addressed as indicated below. For convenience of the parties, copies of notices may also be given by email to the email address set forth below or such other address as may be provided from time to time; however, neither party may give official or binding notice by email.

To City: San Francisco Municipal Transportation Agency  
Facilities & Real Property Management  
1 S. Van Ness Ave., 7th Floor  
Attn: Kerstin Magary  
Telephone: (415) 646-2847  
email: Kerstin.magary@sfmta.com

To Permittee: [Lead Developer]  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_  
Telephone: \_\_\_\_\_  
email: \_\_\_\_\_

With a copy to: \_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_  
Telephone: \_\_\_\_\_  
email: \_\_\_\_\_

The parties hereto may give notice pursuant to this Section of other persons to receive future notices on their behalf. Notices herein shall be deemed given two (2) days after the date mailed if sent by first class, certified or overnight courier, or upon the date personal delivery is made.

16. TAXES AND ASSESSMENTS.

(a) Payment of Taxes. During the Term, Permittee agrees to pay, when due, to the proper authority any and all real property and personal taxes, general and special assessments, license fees, permit fees and all other governmental charges of any kind or nature whatsoever, including without limitation all penalties and interest thereon, levied or assessed on the Property

and relating to this Permit, whether in effect at the time this Permit is entered into or which become effective thereafter, and all taxes levied or assessed on the possession, use or occupancy, as distinguished from the ownership, of the Property, including without limitation, any possessory interest tax. Permittee shall not permit any such taxes, assessments or other charges to become a defaulted lien on the Property. In the event of any dispute regarding the validity of any such tax; assessment or similar charge, Permittee shall indemnify and hold City and its agents harmless from and against all losses, damages, costs, or expenses, including attorneys' fees, resulting therefrom.

(b) Notice to County Assessor. San Francisco Administrative Code Sections 23.38 and 23.39 may require that the City and County of San Francisco report certain information relating to this Permit, and any renewals thereof, to the County Assessor within sixty (60) days after any such transaction and that Permittee report certain information relating to any assignment of or sublease under this Permit to the County Assessor within sixty (60) days after such assignment or sublease transaction.

#### 17. LIMITATION ON ASSIGNMENT.

This Permit is personal to Permittee and shall not be assigned, except with the written consent by City. Such consent may be withheld or conditioned at City's sole and absolute discretion.

#### 18. ATTORNEYS FEES.

If either party hereto brings an action or proceeding (including any cross complaint or counterclaim) against the other party by reason of a default, or otherwise arising out of this Permit, the prevailing party in such action or proceeding shall be entitled to recover from the other party its costs and expenses of suit, including but not limited to reasonable attorneys' fees, which shall be payable whether or not such action is prosecuted to judgment. "Prevailing party" within the meaning of this Section shall include, without limitation, a party who substantially obtains or defeats, as the case may be, the relief sought in the action, whether by compromise, settlement, judgment or the abandonment by the other party of its claim or defense. Attorneys' fees under this Section shall include attorneys' fees and all other reasonable costs and expenses incurred in connection with any appeal. For purposes of this Permit, reasonable fees of attorneys of the City's Office of the City Attorney shall be based on the fees regularly charged by private attorneys with an equivalent number of years of professional experience (calculated by reference to earliest year of admission to the Bar of any State) who practice in San Francisco in law firms with approximately the same number of attorneys as employed by the Office of the City Attorney.

#### 19. AUTHORITY.

If Permittee signs as a corporation or a partnership, each of the persons executing this Permit on behalf of Permittee does hereby covenant and warrant that Permittee is a duly authorized and existing entity, that Permittee has and is qualified to do business in California, that Permittee has full right and authority to execute this Permit and that each and all of the persons signing on behalf of Permittee is authorized to do so. Upon City's request, Permittee shall provide City with evidence reasonably satisfactory to City confirming the foregoing representations and warranties.

#### 20. CITY REQUIREMENTS.

(a) Prohibition of Alcoholic Beverage Advertising. Permittee acknowledges and agrees that no advertising of alcoholic beverages is allowed on the Property. For purposes of this Section, "alcoholic beverage" shall be defined as set forth in California Business and Professions

Code Section 23004, and shall not include cleaning solutions, medical supplies and other products and substances not intended for drinking. This advertising prohibition includes the placement of the name of a company producing alcoholic beverages or the name of any alcoholic beverage in any promotion of any event or product.

(b) Tobacco Products Advertising Ban. Permittee acknowledges and agrees that no advertising or sale of cigarettes or tobacco products is allowed on the Property. This advertising prohibition includes the placement of the name of a company producing cigarettes or tobacco products or the name of any cigarette or tobacco product in any promotion of any event or product.

(c) Non-Discrimination.

(1) Covenant Not to Discriminate. In the performance of the Permitted Activities, Permittee covenants and agrees not to discriminate on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), weight, height, association with members of classes protected under Chapter 12 of the San Francisco Administrative Code or in retaliation for opposition to any practices forbidden under said Chapter 12 against any employee of Permittee, any City and County employee working with Permittee, any applicant for employment with Permittee, any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by Permittee in the City and County of San Francisco.

(2) Other Contracts. Permittee shall include in all contracts, and shall cause Permittee's Agents to include any contract and other subcontracts relating to the Permitted Activities (collectively "Work Contracts") a non-discrimination clause applicable to such Permittee's Agent in substantially the form of Section 22(c)(1). In addition, Permittee shall and shall cause Permittee's Agents to incorporate by reference in all Work Contracts the provisions of Sections 12B.2(a), 12B.2(c)-(k) and 12C.3 of the San Francisco Administrative Code and shall require all Permittee's Agents to comply such provisions. Permittee's failure to comply with the obligations in this subsection shall constitute a material breach of this Permit.

(3) Non-Discrimination in Benefits. Permittee does not as of the date of this Permit and will not during the Term, in any of its operations in San Francisco or where the work is being performed for the City, 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 (collectively "Core Benefits") as well as any benefits other than the Core Benefits 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 of the San Francisco Administrative Code.

(4) Condition to Permit. As a condition to the effectiveness of this Permit, Permittee shall execute and deliver to City the Nondiscrimination in Contracts and Benefits form approved by the San Francisco Contract Monitoring Division of City's General Services Agency.

(5) Incorporation of Administrative Code Provisions by Reference. The provisions of Chapters 12B and 12C of the San Francisco Administrative Code relating to non-discrimination by parties contracting for the use of City property are incorporated in this Section by reference and made a part of this Permit as though fully set forth herein. Permittee shall comply fully with and be bound by all of the provisions that apply to this Permit under such

Chapters of the Administrative Code, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, Permittee understands that pursuant to Section 12B.2(h) of the San Francisco Administrative Code, a penalty of \$50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Permit may be assessed against Permittee and/or deducted from any payments due Permittee.

(d) MacBride Principles Northern Ireland. The provisions of San Francisco Administrative Code §12F are incorporated herein by this reference and made part of this Permit. By signing this Permit, Permittee confirms that Permittee has read and understood 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.

(e) Tropical Hardwoods and Virgin Redwood Ban. 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 product, except as expressly permitted by the application of San Francisco Environment Code sections 802(b) and 803(b). Permittee will not, except as permitted by the application of sections 802(b) and 803(b), use or incorporate any tropical hardwood, tropical hardwood wood product, virgin redwood, or virgin redwood wood product in the performance of this Permit.

(f) City Business and Tax Regulations Code. Permittee acknowledges that under Section 6.10-2 of the San Francisco Business and Tax Regulations Code, the City Treasurer and Tax Collector may require the withholding of payments to any vendor that is delinquent in the payment of any amounts that the vendor is required to pay the City under the San Francisco Business and Tax Regulations Code. If, under that authority, any payment City is required to make to Permittee under this Permit is withheld, then City will not be in breach or default under this Permit, and the Treasurer and Tax Collector will authorize release of any payments withheld under this paragraph to Permittee, without interest, late fees, penalties, or other charges, upon Permittee coming back into compliance with its San Francisco Business and Tax Regulations Code obligations.

(g) Consideration of Salary History. In addition to Permittee's obligations as an employer under San Francisco Police Code Article 33J, Permittee must comply with San Francisco Administrative Code Chapter 12K. For each employment application to Permittee for work of eight (8) or more hours per week at the Property, Permittee must not consider the applicant's current or past salary (a "Salary History") in deciding whether to hire the applicant or what salary to offer the applicant unless the applicant voluntarily discloses that Salary History without prompting. In addition, Permittee must not (1) ask those applicants about their Salary History, (2) refuse to hire, or otherwise disfavor, injure, or retaliate against applicants that do not disclose their Salary History, or (3) disclose a current or former employee's Salary History without that employee's authorization unless it is required by law, publicly available, or subject to a collective bargaining agreement. Permittee is subject to the posting, enforcement and penalty provisions in Chapter 12K. Information about Chapter 12K is available on the web at <https://sfgov.org/olse/consideration-salary-history>.

(h) Notification of Limitations on Contributions. For the purposes of this Section, a "City Contractor" is a party that contracts with, or seeks to contract with, the City for the sale or leasing of any land or building to or from the City whenever such transaction would require the approval by a City elective officer, the board on which that City elective officer serves, or a board on which an appointee of that individual serves. Through its execution of this Permit, Permittee acknowledges that it is familiar with Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits a City Contractor from making any campaign

contribution to (1) the City elective officer, (2) a candidate for the office held by such individual, or (3) 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 that contract or twelve (12) months after the date that contract is approved. Permittee 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 \$100,000 or more. Permittee further acknowledges that (i) the prohibition on contributions applies to Permittee, each member of Permittee's board of directors, Permittee's chief executive officer, chief financial officer and chief operating officer, any person with an ownership interest of more than ten percent (10%) in Permittee, any subcontractor listed in the contract, and any committee that is sponsored or controlled by Permittee, and (ii) within thirty (30) days of the submission of a proposal for the contract, the City department seeking to enter into the contract must notify the Ethics Commission of the parties and any subcontractor to the contract. Additionally, Permittee certifies it has informed each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126 by the time it submitted a proposal for the contract to the City, and has provided the names of the persons required to be informed to the City department seeking to enter into that contract within thirty (30) days of submitting its contract proposal to the City department receiving that submittal, and acknowledges the City department receiving that submittal was required to notify the Ethics Commission of those persons.

(i) Conflicts of Interest. Through its execution of this Permit, Permittee acknowledges that it is familiar with the provisions of Section 15.103 of the San Francisco Charter, Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Sections 87100 et seq. and Sections 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 provision, and agrees that if Permittee becomes aware of any such fact during the Term, Permittee shall immediately notify the City.

(j) Drug-Free Workplace. Permittee and Permittee's Agents acknowledge that pursuant to the Federal Drug-Free Workplace Act of 1989, the unlawful manufacture, distribution, possession or use of a controlled substance is prohibited on City or City premises. Permittee and Permittee's Agents agree that any violation of this prohibition by Permittee or any of Permittee's Agents, and their respective employees, contractors and agents or assigns shall be deemed a material breach of this Permit.

(k) First Source Hiring. The City has adopted a First Source Hiring Ordinance (San Francisco Administrative Code Sections 83.1 et seq.) that establishes specific requirements, procedures and monitoring for first source hiring of qualified economically disadvantaged individuals for entry-level positions. Pursuant to Section 83.7(b) of the First Source Hiring Ordinance, City Commission has adopted a First Source Hiring Implementation and Monitoring Plan ("City Plan") subject to approval by the First Source Hiring Administration. Permittee acknowledges receiving and reviewing the First Source Hiring Ordinance. Under Section 83.9(d) of the First Source Hiring Ordinance, compliance by an employer with City Plan is deemed to be compliance with the provisions of the First Source Hiring Ordinance.

Based on the foregoing, unless exempt, Permittee agrees to comply with City Plan through compliance with all of the following measures:

(1) Permittee shall notify the City and County of San Francisco's Workforce Development System, Department of Human Services of all projected Entry Level Positions and the approximate date such positions will be available, by using the Job Survey Form provided by City of San Francisco. The City will also provide Permittee with a detailed instruction sheet



summarizing the procedure for the commencement of this Permit. Permittee shall return the Job Survey Form to City within thirty (30) days after execution of this Permit by City and Permittee.

For purposes of this Permit the terms “Entry Level Position”, “San Francisco Workforce Development System”, “Qualified Economically Disadvantaged Individual”, and “First Source Hiring Agreement” shall have the meaning provided in Section 83.4 of the San Francisco Administrative Code.

Permittee shall notify the San Francisco Workforce Development System of all vacancies for existing or new Entry Level Positions in, on, or around the Property, during the Term, and shall offer the San Francisco Workforce Development System the first opportunity to provide Qualified Economically Disadvantaged Individuals for employment in these positions.

(2) Permittee shall not publicize or otherwise post such vacancies until the San Francisco Workforce Development System refers Qualified Economically disadvantaged Individuals for employment in these positions or notifies Permittee that no Qualified Economically Disadvantaged Individuals are available for the particular vacancies. The San Francisco Workforce Development System shall respond to Permittee within ten (10) business days. After ten (10) business days, if the San Francisco Workforce Development System does not refer applicants, Permittee can advertise and fill Entry Level Positions outside of the City referral system.

(3) Permittee shall interview qualified applicants and use good faith in hiring applicants. Permittee shall maintain good records of recruitment and hiring process, and shall permit City or City to audit such records upon request.

Pursuant to San Francisco Administrative Code Section 83.10, if upon administrative review, it is determined that Entry Level positions were not made available to the San Francisco Workforce Development System for referral of Qualified Economically Disadvantaged Individuals, and the Employer does not remedy the violations, the Employer shall be assessed a penalty in the amount of \$2,070 for every new hire for an Entry Level Position improperly withheld from the First Source Hiring process.

(l) Sugar-Sweetened Beverage Prohibition. Permittee agrees that it will not sell, provide, or otherwise distribute Sugar-Sweetened Beverages, as defined by San Francisco Administrative Code Chapter 101, as part of its performance of this Permit.

(m) Prevailing Wage. Permittee agrees that any person performing labor in connection with the Property that is a “public work” as defined under San Francisco Administrative Code Section 6.22(E) or California Labor Code Section 1720 et seq. (which includes certain construction, alteration, demolition, installation, repair, carpet laying, or refuse hauling work if paid for in whole or part out of public funds) shall be paid not less than the highest prevailing rate of wages consistent with the requirements of Section 6.22(E) of the San Francisco Administrative Code, and shall be subject to the same hours and working conditions, and shall receive the same benefits as in each case are provided for similar work performed in San Francisco County. Permittee shall include in any contract for such work a requirement that all persons performing labor under such contract shall be paid not less than the highest prevailing rate of wages for the labor so performed. Permittee shall require any contractor to provide, and shall deliver to City upon request, certified payroll reports with respect to all persons performing such labor on or about the Property.

(n) Contractor Vaccination Requirements. Permittee acknowledges that it has read the requirements of the 38th Supplement to Mayoral Proclamation Declaring the Existence of a Local Emergency (“Emergency Declaration”), dated February 25, 2020, and the Contractor

Vaccination Policy for City Contractors issued by the City Administrator (“Contractor Vaccination Policy”), as those documents may be amended from time to time. A copy of the Contractor Vaccination Policy can be found at: <https://sf.gov/confirm-vaccine-status-your-employees-and-subcontractors>. Any undefined, initially-capitalized term used in this Section has the meaning given to that term in the Contractor Vaccination Policy.

A Contract as defined in the Emergency Declaration is an agreement between the City and any other entity or individual and any subcontract under such agreement, where Covered Employees of the contractor or subcontractor work in-person with City employees at a facility owned, leased, or controlled by the City. A Contract includes such agreements currently in place or entered into during the term of the Emergency Declaration. A Contract does not include an agreement with a state or federal governmental entity or agreements that does not involve the City paying or receiving funds.

In accordance with the Emergency Declaration, if this Permit is (or becomes) a Contract as defined in the Contractor Vaccination Policy, Permittee agrees that:

(1) Permittee shall ensure it complies with the requirements of the Contractor Vaccination Policy pertaining to Covered Employees, as they are defined under the Emergency Declaration and the Contractor Vaccination Policy, and insure such Covered Employees are fully vaccinated for COVID-19 or obtain an exemption based on medical or religious grounds; and

(2) If Permittee grants Covered Employees an exemption based on medical or religious grounds, Permittee will promptly notify City by completing and submitting the Covered Employees Granted Exemptions Form (“Exemptions Form”), which can be found at <https://sf.gov/confirm-vaccine-status-your-employees-and-subcontractors> (navigate to “Exemptions” to download the form).

## 21. REQUIRING HEALTH BENEFITS FOR COVERED EMPLOYEES.

Unless exempt, Permittee agrees to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance (“HCAO”), as set forth in San Francisco Administrative Code Chapter 12Q (“Chapter 12Q”), including the implementing regulations as the same may be amended or updated from time to time. The provisions of Chapter 12Q are incorporated herein by reference and made a part of this Permit as though fully set forth herein. The text of the HCAO is currently available on the web at [www.sfgov.org](http://www.sfgov.org). Capitalized terms used in this Section and not defined in this Permit shall have the meanings assigned to such terms in Chapter 12Q.

(a) For each Covered Employee Permittee shall provide the appropriate health benefit set forth in Section 12Q.3.

(b) Notwithstanding the above, if Permittee meets the requirements of a “small business” by the City pursuant to Section 12Q.3(g) of the HCAO, it shall have no obligation to provide the Health Care Accountability Components set forth in Section 12Q.3(a), (b), or (c) to its Covered Employees.

(c) Permittee understands and agrees that the failure to comply with the requirements of the HCAO shall constitute a material breach by Permittee of this Permit.

(d) If, within thirty (30) days after receiving written notice of a breach of this Permit for violating the HCAO, Permittee fails to cure such breach or, if such breach cannot reasonably be cured within such 30-day period. Permittee fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, the City shall have the

remedies set forth in Section 12Q.5(f)(1-5). Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to the City.

(e) Any Work Contract regarding services to be performed in, on, or around the Property entered into by Permittee shall require Permittee's Agents, as applicable, to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in Chapter 12Q. Permittee shall notify the City Purchasing Department when it enters into such a Work Contract and shall certify to the City Purchasing Department that it has notified Permittee's Agents of the obligations under the HCAO and has imposed the requirements of the HCAO on Permittee's Agents through written agreement with the applicable Permittee's Agent. Permittee shall be responsible for ensuring compliance with the HCAO for each of Permittee's Agents performing services in, on, or around the Property. If any of Permittee's Agents fails to comply, the City or City may pursue the remedies set forth in Section 12Q.5 of the Administrative Code against Permittee based on Permittee's Agents failure to comply, provided that the City Contracting Department has first provided Permittee with notice and an opportunity to cure the violation.

(f) Permittee shall not discharge, reprimand, penalize, reduce the compensation of, or otherwise discriminate against, any employee for notifying the City of any issue relating to the HCAO, for opposing any practice proscribed by the HCAO, for participating in any proceedings related to the HCAO, or for seeking to assert or enforce any rights under the HCAO by any lawful means.

(g) Permittee represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the requirements of the HCAO.

(h) Permittee shall keep itself informed of the requirements of the HCAO, as they may change from time to time.

(i) Upon request, Permittee shall provide reports to the City in accordance with any reporting standards promulgated by the City under the HCAO, including reports on Permittee's Agents.

(j) Within five (5) business days of any request, Permittee shall provide the City with access to pertinent records relating to any Permittee's compliance with the HCAO. In addition, the City and its agents may conduct random audits of Permittee at any time during the Term. Permittee agrees to cooperate with City in connection with any such audit.

(k) If a Permittee's Agent is exempt from the HCAO because the amount payable to such Permittee's Agent under all of its contracts with the City or relating to City-owned property is less than \$25,000 (or \$50,000 for nonprofits) in that fiscal year, but such Permittee's Agent later enters into one or more agreements with the City or relating to City-owned property that cause the payments to such Permittee's Agent to equal or exceed \$75,000 in that fiscal year, then all of such Permittee's Agent's contracts with the City and relating to City-owned property shall be thereafter subject to the HCAO. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements to equal or exceed \$75,000 in the fiscal year.

## 22. GENERALLY APPLICABLE PROVISIONS.

(a) This Permit may be amended or modified only by a writing signed by City and Permittee. (b) No waiver by any party of any of the provisions of this Permit will be effective unless in writing and signed by an officer or other authorized representative, and only to the extent expressly provided in the written waiver. (c) All approvals and determinations of City requested, required, or permitted under this Permit may be made in the sole and absolute discretion of the SFMTA's

Chief Financial Officer or other authorized City official. (d) This instrument (including the exhibit(s) attached to this Permit) contains the entire agreement between the parties and all prior written or oral negotiations, discussions, understandings and agreements are merged into this Permit. (e) The section and other headings of this Permit are for convenience of reference only and will be disregarded in the interpretation of this Permit. (f) Time is of the essence. (g) This Permit will be governed by California law and the City's Charter. (h) If Permittee consists of more than one person then the obligations of each person will be joint and several. (i) Permittee may not record this Permit or any memorandum hereof. (j) Subject to the prohibition against assignments or other transfers by Permittee under this Permit, this Permit will be binding on and inure to the benefit of the parties and their respective heirs, representatives, successors, and assigns. (k) If City sells or otherwise conveys the property where the Property is located, then this Permit will automatically be revoked. (l) All exhibits attached to this Permit are incorporated by reference. References to Articles, Sections and Exhibits refer to this Permit unless otherwise stated. (m) This Permit may be executed in one or more counterparts, each of which shall be an original but all of which together shall be deemed to constitute a single agreement. A signature delivered on any counterpart by facsimile or other electronic means shall for all purposes be deemed to be an original signature to this Permit. (n) The word "include(s)" means "include(s) without limitation" and "include(s) but not limited to," and the word "including" means "including without limitation" and "including but not limited to" as the case may be.

23. SEVERABILITY.

Except as is otherwise specifically provided for in this Permit, invalidation of any provision of this Permit, or of its application to any person, by judgment or court order, shall not affect any other provision of this Permit or its application to any other person or circumstance, and the remaining portions of this Permit shall continue in full force and effect, unless enforcement of this Permit as invalidated would be unreasonable or grossly inequitable under all of the circumstances or would frustrate the purposes of this Permit.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, City and Permittee execute this Permit at San Francisco, California, as of the date set forth above.

PERMITTEE:

CITY: CITY AND COUNTY OF SAN FRANCISCO, a  
municipal corporation, operating by and through the San  
Francisco Municipal Transportation Agency

By: \_\_\_\_\_

Jeffrey Tumlin  
Director of Transportation

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

APPROVED AS TO FORM:

DAVID CHIU, City Attorney

By: \_\_\_\_\_  
Carol Wong  
Deputy City Attorney

EXHIBIT A  
Description of Property

EXHIBIT B

[Addenda to be attached]

EXHIBIT C

List of Permittee's Agents

1.



## APPENDIX M

### CITY CONTRACTING REQUIREMENTS

The following requirements must be incorporated into the Transaction Documents unless waived by City:

1. **Contracting Requirements.** In addition to the City requirements described in Section 24 (City Requirements) of the Predevelopment Agreement, the following City requirements will need to be incorporated in the relevant Transaction Documents and apply to the Principal Project Company and all its subcontractors, together with any other applicable City contract requirements that are in effect when the Transaction Documents are signed. The following summary is for Lead Developer's convenience only; the Principal Project Company will be obligated to become familiar with all applicable requirements.

a. Tobacco and Alcohol Products Advertising Ban. Principal Project Developer acknowledges and agrees that no advertising of cigarettes, tobacco products, or alcoholic beverages is allowed on any real property owned by or under the control of the City. This prohibition includes the placement of the name of a company producing, selling or distributing cigarettes, tobacco products, or alcoholic beverages or the name of any cigarette, tobacco product, or alcoholic beverages in any promotion of any event or product. This prohibition does not apply to any advertisement sponsored by a state, local, nonprofit, or other entity designed to: (a) communicate the health hazards of cigarettes and tobacco products or alcoholic beverages; (b) encourage people not to smoke or to stop smoking, or not to drink alcohol or to stop drinking alcohol; or (c) provide or publicize drug or alcohol treatment or rehabilitation services.

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

c. Drug-Free Workplace. Principal Project Developer acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1988 (41 U.S.C. §§ 8101 et seq.), the unlawful manufacture, distribution, possession or use of a controlled substance is prohibited on City property.

d. Food Service Waste Reduction Ordinance. Principal Project Developer agrees to comply fully with and be bound by the Food Service Waste Reduction Ordinance (San Francisco Environment Code Chapter 16), including implementing guidelines and rules. Principal Project Developer agrees that if it breaches this provision, the City will suffer actual damages that will be impractical or extremely difficult to determine; further, Principal Project Developer agrees that the sums of \$100 in liquidated damages for the first breach, \$200 in liquidated damages for the second breach in the same year, and \$500 in liquidated damages for subsequent breaches in the same year is an estimate of the damage that the City will incur based on a violation,

established in light of the circumstances existing at the time this Agreement was made. These amounts will not be considered a penalty, but rather agreed monetary damages sustained by the City because of Principal Project Developer's failure to comply with this provision.

e. Sugar Sweetened Beverages and Packaged Water. Principal Project Developer agrees that it will not sell, provide, or otherwise distribute Sugar-Sweetened Beverages, as defined by San Francisco Administrative Code Chapter 101, as part of its performance of this Agreement. Principal Project Developer agrees that it shall not sell, provide, or otherwise distribute Packaged Water, as defined by San Francisco Environment Code Chapter 24, as part of its performance of this Agreement.

f. Contractor Vaccination Requirements. Principal Project Developer acknowledges that it has read the requirements of the 38th Supplement to Mayoral Proclamation Declaring the Existence of a Local Emergency ("Emergency Declaration"), dated February 25, 2020, and the Contractor Vaccination Policy for City Contractors issued by the City Administrator ("Contractor Vaccination Policy"), as those documents may be amended from time to time. A copy of the Contractor Vaccination Policy can be found at: <https://sf.gov/confirm-vaccine-status-your-employees-and-subcontractors>. Any undefined, initially-capitalized term used in this Section has the meaning given to that term in the Contractor Vaccination Policy.

A Contract as defined in the Emergency Declaration is an agreement between the City and any other entity or individual and any subcontract under such agreement, where Covered Employees of the contractor or subcontractor work in-person with City employees at a facility owned, leased, or controlled by the City. A Contract includes such agreements currently in place or entered into during the term of the Emergency Declaration. A Contract does not include an agreement with a state or federal governmental entity or agreements that does not involve the City paying or receiving funds.

In accordance with the Emergency Declaration, if a Transaction Document is (or becomes) a Contract as defined in the Contractor Vaccination Policy, Principal Project Developer agrees that:

(1) Principal Project Developer shall ensure it complies with the requirements of the Contractor Vaccination Policy pertaining to Covered Employees, as they are defined under the Emergency Declaration and the Contractor Vaccination Policy, and insure such Covered Employees are fully vaccinated for COVID-19 or obtain an exemption based on medical or religious grounds; and

(2) If Principal Project Developer grants Covered Employees an exemption based on medical or religious grounds, Principal Project Developer will promptly notify City by completing and submitting the Covered Employees Granted Exemptions Form ("Exemptions Form"), which can be found at <https://sf.gov/confirm-vaccine-status-your-employees-and-subcontractors> (navigate to "Exemptions" to download the form).

2. **LBE Plan.** The Transaction Documents shall incorporate the requirements of the LBE Plan.

3. **SFMTA Surveillance Technology Policy.** The applicable Transaction Documents must require compliance with the SFMTA's Surveillance Technology Policy, adopted under San Francisco Administrative Code Chapter 19B. A copy of the SFMTA's Surveillance Technology Policy must be attached as an exhibit to the applicable Transaction Documents.

4. **Construction Requirements.** The Project Agreement must include mutually agreeable protocols for coordination and reporting to the City Project Manager during the construction of

the Facility, including project meetings, field offices for City's on-site representatives, and an executive level partnership program appropriate based on the scope and size of the Facility.

5. **Clean Construction.** Principal Project Developer agrees to comply fully with and be bound by the Clean Construction requirements set forth in Section 6.25 of the San Francisco Administrative Code and Chapter 25 of the Environment Code. The provisions of Section 6.25 and Chapter 25 will be incorporated in the Project Agreement by reference. Principal Project Developer may seek waivers from the Clean Construction requirements as set forth in Chapter 25 of the Environment Code. By entering into the Project Agreement, Principal Project Developer and City agree that if Principal Project Developer uses off-road equipment and/or off-road engines in violation of the Clean Construction requirements set forth in Section 6.25 of the Administrative Code and Chapter 25 of the Environment Code, the City will suffer actual damages that will be impractical or extremely difficult to determine. Accordingly, Principal Project Developer and the City agree that Principal Project Developer shall pay the City the amount of \$100 per day per each piece of off-road equipment and each off-road engine used to complete work on the Project in violation of the Clean Construction requirements. Such amount shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Principal Project Developer's failure to comply with the Clean Construction requirements.

6. **Housing and Commercial Component Insurance.** After the earlier to occur of Substantial Completion of the Housing and Commercial Component or the Principal Project Company assuming possession of the Housing and Commercial Component, the Principal Project Company must comply with the following minimum insurance coverage requirements with respect to the Housing and Commercial Component, and any other insurance requirements mutually approved by the Parties, with respect to claims for injuries to persons or damage to property that may arise from or in connection with the performance of any Housing and Commercial Component work by the Principal Project Company, its agents, representatives, employees or subcontractors and its use and occupancy of the Housing and Commercial Component.

6.1. Required Insurance Coverage. Principal Project Company, at its sole cost and expense, shall maintain, or cause to be maintained the following insurance:

(a) General Liability Insurance. Comprehensive or commercial general liability insurance, with limits not less than \$2,000,000 each occurrence combined single limit for bodily injury and property damage, including coverages for contractual liability, independent contractors, broad form property damage, personal injury, liquor liability, products and completed operations, fire damage and legal liability with limits not less than Two Hundred Fifty Thousand Dollars (\$250,000), and explosion, collapse and underground (XCU) coverage during any period in which Principal Project Company is conducting any activity on or Alteration or Improvement to the Housing and Commercial Component with risk of explosion, collapse, or underground hazards. This policy must also cover non-owned and for-hire vehicles and all mobile equipment or unlicensed vehicles, such as forklifts.

(b) Automobile Liability Insurance. Comprehensive or business automobile liability insurance with limits not less than \$1,000,000 each occurrence combined single limit for bodily injury and property damage, including coverages for owned and hired vehicles and for employer's non-ownership liability, which insurance shall be required if any automobiles or any other motor vehicles are operated in connection with any activity at the Housing and Commercial Component.

(c) Workers' Compensation; Employer's Liability. Worker's Compensation Insurance, with Employer's Liability limit not less than One Million Dollars (\$1,000,000.00) for each accident, injury or illness, on employees eligible for each.

(d) Construction Activities. At all times during any period of construction of improvements or alterations:

(i) Principal Project Company shall require its contractor to maintain (a) commercial general liability insurance with limits of not less than Five Million Dollars (\$5,000,000) combined single limit for bodily injury and property damage (including personal injury and death), and contractor's protective liability; and products and completed operations coverage in an amount not less than Five Hundred Thousand Dollars (\$500,000) per incident, Ten Million Dollars (\$10,000,000) in the aggregate; (b) comprehensive automobile liability insurance with a policy limit of not less than One Million Dollars (\$1,000,000) each accident for bodily injury and property damage, providing coverage at least as broad as the Insurance Services Office (ISO) Business Auto Coverage form covering Automobile Liability, "any auto", and insuring against all loss in connection with the ownership, maintenance and operation of automotive equipment that is owned, hired or non-owned; (c) worker's compensation with statutory limits and employer's liability insurance with limits of not less than One Hundred Thousand Dollars (\$100,000) per accident, Five Hundred Thousand Dollars (\$500,000) aggregate disease coverage and One Hundred Thousand Dollars (\$100,000) disease coverage per employee. Principal Project Company shall cause its agents (other than its contractor) to carry such insurance as shall be reasonably approved by the City's Risk Manager taking into account the nature and scope of the work and industry custom and practice.

(ii) Principal Project Company shall carry "Builder's All Risk" insurance on a form reasonably approved by City, in the amount of one hundred percent (100%) of the completed value of all new construction, insuring all new construction, including all materials and equipment incorporated in, on or about the Housing and Commercial Component, and in transit or storage off-site, that are or will be part of the permanent Improvements, against "all risk" and "special form" hazards.

(e) Boiler and Machinery Insurance. Principal Project Company shall maintain boiler and machinery insurance covering damage to or loss or destruction of machinery and equipment located on the Housing and Commercial Component that is used by Principal Project Company for heating, ventilating, air-conditioning, power generation and similar purposes, in an amount not less than one hundred percent (100%) of the actual replacement value of such machinery and equipment.

(g) Professional Liability. Principal Project Company shall require all providers of professional services, including architectural, design, engineering, geotechnical, and environmental professionals under contract with Principal Project Company for any construction at the Housing and Commercial Component to maintain professional liability (errors or omissions) insurance, with limits not less than \$2,000,000 for architects and \$1,000,000 for any other professionals for each claim and \$4,000,000 annual aggregate limit for architects and \$2,000,000 annual aggregate for any other professionals with respect to all professional services provided to Principal Project Company therefor.

(h) Other Coverage. Not more often than every year and upon not less than sixty (60) days prior written notice, City may require Principal Project Company to increase the insurance limits set forth above or to provide other coverage and/or different coverage amounts as may be required by Applicable Law, the City's Risk Manager or as is generally required by owners of buildings similar in size, character, age and location as the Housing and Commercial Component with respect to risks comparable to those associated with its use.

6.2. Claims-Made Policies. If any of the insurance required in Section 6.1 (Required Insurance Coverage) of this Appendix is provided under a claims-made form of policy, Principal Project Company shall maintain such coverage continuously throughout the Term and without

lapse for a period of three (3) years beyond the termination of this Housing Term, to the effect that should occurrences during the Housing Term give rise to claims made after termination of the Housing Term, such claims shall be covered by such claims-made policies.

6.3. Annual Aggregate Limits. If any of the insurance required in Section 6.1 (Required Insurance Coverage) of this Appendix is provided under a form of coverage which includes an annual aggregate limit or provides that claims investigation or legal defense costs be included in such annual aggregate limit, such annual aggregate limit shall be double the occurrence limits specified herein.

6.4. Payment of Premiums. Principal Project Company shall pay the premiums for maintaining all required insurance.

6.5. Waiver of Subrogation Rights. Notwithstanding anything to the contrary contained herein, City and Principal Project Company (each a "Waiving Party") each hereby waives any right of recovery against the other party for any loss or damage sustained by such other party with respect to the Housing and Commercial Component or any portion thereof or the contents of the same or any operation therein, whether or not such loss is caused by the fault or negligence of such other party, to the extent such loss or damage is covered by insurance which is required to be purchased by the Waiving Party under the applicable Transaction Document or is actually covered by insurance obtained by the Waiving Party. Each Waiving Party agrees to cause its insurers to issue appropriate waiver of subrogation rights endorsements to all policies relating to the Housing and Commercial Component; provided, the failure to obtain any such endorsement shall not affect the above waiver.

6.6. General Insurance Matters.

(a) All liability insurance policies required to be maintained by Principal Project Company hereunder shall contain a cross-liability clause, shall name as additional insureds by written endorsement the "City And County Of San Francisco and its officers, directors, employees and agents," shall be primary and non-contributory to any other insurance available to the additional insureds with respect to other claims, and shall provide that such insurance applies separately to each insured against whom complaint is made or suit is brought except with respect to the limits of the company's liability.

(b) Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions in excess of \$50,000 must be declared to and approved by City's Risk Manager. In the event deductibles or self-insured retentions are in excess of \$50,000, at the option of City's Risk Manager, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City and its commissioners, members, officers, agents, and employees; or the Principal Project Company shall procure a financial guarantee satisfactory to the City's Risk Manager guaranteeing payment of losses and related investigations, claim administration and defense expenses.

(c) All insurance policies required to be maintained by Principal Project Company hereunder shall be issued by an insurance company or companies reasonably acceptable to City with an AM Best rating of not less than A-VIII and authorized to do business in the State of California.

(d) All insurance policies required to be maintained by Principal Project Company hereunder shall be endorsed to provide for thirty (30) days prior written notice of cancellation for any reason, intended non-renewal, or reduction in coverage to Principal Project Company and City.

(e) Principal Project Company shall deliver to City certificates of insurance, additional insured policy endorsements and waiver of subrogation endorsements in a form satisfactory to and at the direction of Port, such as hard copy documentation or use of an internet-based insurance compliance tracking systems such as EXIGIS, evidencing the coverages required herein, together with evidence of payment of premiums, on or before the Commencement Date, and upon renewal of each policy not less than thirty (30) days before expiration of the term of the policy. If City is using an internet-based insurance compliance tracking system, Principal Project Company's broker shall complete the insurance questionnaire and submit all required documentation. Principal Project Company shall, upon City's request, promptly furnish City with a complete copy of any insurance policy required hereunder.

## APPENDIX N

### LIST OF REFERENCE DOCUMENTS

This Appendix is intended solely to identify Reference Documents provided or made available to the Lead Developer during the procurement process. Notwithstanding the inclusion of this Appendix in the Agreement, except as set forth in Section 21.2 (*Disclaimer and Acknowledgement*), the Reference Documents remain Reference Documents and are not part of the Agreement or binding or subject to reliance by Lead Developer and, to the extent used by Lead Developer, such usage shall be at Lead Developer's sole risk.

Reference Documents include:

- Document 1: Reference Design Concept
- Document 2: Geotechnical Report
- Document 3: Phase II Environmental Site Assessment Report
- Document 4: Topographic and ALTA surveys
- Document 5: Existing Facility Drawings
- Document 6: Hazardous Materials Documents
- Document 7: SF Planning Letter dated May 22, 2020
- Document 8: CEQA Project Application dated November 19, 2019
- Document 9: CEQA Notice of Preparation dated August 19, 2020
- Document 10: CEQA Draft Environmental Impact Report
- Document 11: Street Design Review Team Review Letter dated June 12, 2020
- Document 12: 65% Design Package for MME Expansion Project (not for construction)
- Document 13: SFMTA Zero Emission Facility and Fleet Transition Plan
- Document 14: Department of Building Inspection Form GS6: San Francisco Green Building Submittal Form for Municipal Projects
- Document 15: SFMTA's Current Potrero Yard Modernization Project Public Outreach and Engagement Program
- Document 16: CEQA Noise and Vibration Assessment Methodology Report
- Document 17: CEQA Pedestrian Wind Study
- Document 18: CEQA Historic Resource Evaluation
- Document 19: CEQA Shadow Analysis Report
- Document 20: CEQA SWCA Contract and Amendments

Document 21: Proposed Site Plan Right-of-Way

Document 22: Draft Bid Set for the MME Expansion Project

Document 23: Sample Provisions for FTA Requirements for Procurement and Design-Build Contracts



## **APPENDIX O**

### **LIST OF DESIGN SUBCONSULTANTS**

1. Integral Group
2. Nabih Youssef Associates Structural Engineers
3. KPFF Consulting Engineers
4. Code Consultants, Inc.
5. TEECOM
6. Y.A. Studio