

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: Finance and Information Technology

BRIEF DESCRIPTION:

Authorizing the Director of Transportation to execute the Predevelopment Agreement for the Potrero Yard Modernization Project, with a term that will not exceed 568 days, a potential termination payment that will not exceed \$9,990,000, and if approved by the Board of Supervisors, a potential continuation payment of \$4,000,000.



SUMMARY:

- The Potrero Yard Modernization Project (Project) will replace the existing Potrero Yard with a new facility (Facility) comprised of a modern bus storage and maintenance component (Bus Yard Component) and, if feasible, a multi-family housing and commercial component (Housing Component).
- A Request for Qualifications (RFQ) for a developer to design, build, and finance the Facility, operate the Housing Component, and maintain certain Facility infrastructure elements was issued on August 21, 2020; three teams were short-listed. A Request for Proposals from the three short-listed teams was released on April 9, 2021 (RFP), and all three short-listed teams submitted timely proposals.
- If the SFMTA selects a preferred proposer (Lead Developer) through the RFP process, the SFMTA intends to enter the Predevelopment Agreement (PDA) with the Lead Developer for the Project's predevelopment phase. The PDA specifies the required predevelopment activities and can be terminated at any time by the SFMTA. If the PDA terminates under certain circumstances, the SFMTA must make a termination payment that will not exceed \$9,990,000. In addition, if the Lead Developer achieves a floating entitlement milestone and the SFMTA, in its sole discretion, elects to issue a notice to proceed to Lead Developer for the PDA work, the SFMTA must make a \$4,000,000 continuation payment that requires prior authorization from the Board of Supervisors under Section 9.118 of the San Francisco Charter.
- To comply with the Project schedule and RFP commitments, SFMTA staff is seeking the approval of the SFMTA Board of Directors to the form of PDA before selecting a Lead Developer, rather than seeking approval of the final version of the PDA after that Lead Developer selection. After selecting the Lead Developer, the form of agreement presented to the SFMTA Board of Directors would be modified to include project details and commitments from the Lead Developer's proposal, all in consultation with the City Attorney's Office and without materially increasing the SFMTA's obligations or liabilities or materially decreasing the SFMTA's benefits.

ENCLOSURES:

1. SFMTAB Resolution
2. Form of the Potrero Yard Modernization Project Predevelopment Agreement

APPROVALS:

	DATE
DIRECTOR 	<u>February 9, 2022</u>
SECRETARY 	<u>February 9, 2022</u>

ASSIGNED SFMTAB CALENDAR DATE: February 15, 2022

PURPOSE

Authorizing the Director of Transportation to execute the Predevelopment Agreement for the Potrero Yard Modernization Project, with a term that will not exceed 568 days, a potential termination payment that will not exceed \$9,990,000, and if approved by the Board of Supervisors, a potential continuation payment of \$4,000,000.

STRATEGIC PLAN GOALS AND TRANSIT FIRST POLICY PRINCIPLES

This action is consistent with the following goals in the SFMTA Strategic Plan, by efficiently providing the SFMTA with a new electric bus maintenance facility and modernizing maintenance technologies. Specifically, this action will deliver on the following goals:

- Goal 5: Deliver reliable and equitable transportation services.
- Goal 6: Eliminate pollution and greenhouse gas emissions by increasing use of transit, walking and bicycling.
- Goal 8: Deliver quality projects on-time and on-budget.
- Goal 9: Fix things before they break, and modernize systems and infrastructure.
- Goal 10: Position the agency for financial success.

The SFMTA will further the following Transit First Policy Principles by initiating the delivery of a major new bus maintenance and storage facility:

1. To ensure quality of life and economic health in San Francisco, the primary objective of the transportation system must be the safe and efficient movement of people and goods.
2. Public transit, including taxis and vanpools, is an economically and environmentally sound alternative to transportation by individual automobiles. Within San Francisco, travel by public transit, by bicycle and on foot must be an attractive alternative to travel by private automobile.
8. New transportation investment should be allocated to meet the demand for public transit generated by new public and private commercial and residential developments.
9. The ability of the City and County to reduce traffic congestion depends on the adequacy of regional public transportation. The City and County shall promote the use of regional mass transit and the continued development of an integrated, reliable, regional public transportation system.
10. The City and County shall encourage innovative solutions to meet public transportation needs wherever possible and where the provision of such service will not adversely affect the service provided by the Municipal Railway.

DESCRIPTION

Project Background

The Potrero Yard Modernization Project (Project) will replace the Potrero Yard's obsolete maintenance building and bus yard in the Mission District with a facility (Facility) that has a modern and efficient trolley and battery-electric bus maintenance and storage component (Bus Yard Component). The SFMTA would use the Bus Yard Component to store and perform routine

maintenance on trolley buses and future zero-emission electric busses, serve as a new consolidated site for Muni Operator Training and Muni Street Operations, and provide open, naturally lit, and well-ventilated working conditions for employees. It will ensure resiliency to climate change and natural disasters and improve transit service by reducing vehicle breakdowns, increasing on-time performance, and reducing passenger overcrowding. The Project is the SFMTA's first major capital undertaking in the Building Progress Program's *Yard Modernization Program*. The development of this major project reflects significant lessons learned over time in the delivery of capital projects within the SFMTA and City and County of San Francisco (City). As an example, as a matter of practice, regular cost estimates are done as are schedule revisions to manage scope and schedule. Staff currently estimates the cost to construct the Bus Yard Component will be approximately \$400 – \$450 million, with construction starting in 2024 and being completed by 2027. When completed, the Bus Yard Component will be a beacon of the SFMTA's commitment to workspace improvements for its employees.

A key component of the Building Progress Program is to maximize the use of SFMTA properties through a joint-development model. Joint-development allows the SFMTA to support major City policy initiatives and provide the SFMTA opportunities for sustainable revenue generation for transit and other transportation services. Consistent with the City's Public Land for Housing initiative, the SFMTA is pursuing housing as a complementary joint development at the Project site if proven feasible. Successful coordination is a key component to delivering such a complex project and program successfully. As part of the Building Progress Program, a multi-departmental Memorandum of Understanding (MOU) was signed in May 2020, creating a complete citywide team led by the SFMTA in partnership with the San Francisco Planning Department, the Mayor's Office of Housing and Community Development, the Office of Economic and Workforce Development and Department of Public Works. Based on internal analyses and an extensive public outreach program, those City departments and the SFMTA have determined that housing may be a feasible and compatible use at the site and proposes that multi-family housing with commercial space be a principal component of the Project (Housing Component). The SFMTA's preliminary Project analysis includes a Housing Component with up to 575 residential units (50% of which would be affordable) on the site.

The cost to construct and operate the Housing Component is currently unknown, but those costs are to be financed from non-SFMTA sources. The SFMTA is incurring various predevelopment costs to facilitate the Housing Component, such as staff time, City Attorney's Office time, Planning Department time, and outside consultant and outside counsel time and studies. The SFMTA might also be required to make payments for deliverables required to the Bus Yard Component and the Housing Component, as stated in the Predevelopment Agreement (PDA). If the Housing Component successfully receives all funding needed to commence construction of the entire Housing Component, which is to be funded with non-SFMTA funds, the SFMTA will be reimbursed for those costs. If the Housing Component does not receive all the needed funding, the SFMTA will not be reimbursed for all of those costs.

The SFMTA's expenditures in connection with the Housing Component are consistent with the City's Transit First Policy because the Housing Component would be integrated with the Bus Yard Component (a transit facility), would have no private parking for residents, and would therefore encourage future residents to use public transit, bicycles, and walking as alternatives to travel by private automobile. If successful, this type joint development could serve as a model for future transportation investments that generate demand for public transit within the City and further the

SFMTA's Charter mandate to manage the City's transportation system to help the City meet its goals for quality of life, environmental sustainability, and economic growth.

Joint Development Delivery Method

Due to the Project's multiple components and objectives, the SFMTA brought legislation to the SFMTA Board of Directors (SFMTA Board) and Board of Supervisors to utilize a joint development procurement method for the Project. On April 7, 2020, the SFMTA Board of Directors approved Resolution 200407-035, authorizing the use of a joint development procurement method for the Project and authorizing the Director of Transportation to seek approval from the Board of Supervisors for a Project-specific ordinance to implement that procurement method for the Project. On March 16, 2021, the Board of Supervisors adopted Ordinance 38-21 to approve a joint development delivery method and a best-value selection of the developer for the Project and exempt various Project agreements from certain San Francisco Administrative Code requirements that are inconsistent with the joint development delivery method. Ordinance No. 38-21 was signed by the Mayor and became effective on April 25, 2021.

Using this joint development delivery method, the Project will first have a private partner (Lead Developer) with the full responsibility and financial liability for performing Project predevelopment work during the term of the PDA (PDA Term). During the PDA Term, the Lead Developer and the SFMTA would also negotiate the terms of the agreement(s) for the delivery of the Project (Project Agreement). The Project Agreement(s) would cover the final design and construction of the Facility, the operation of the Housing Component, and the maintenance of the infrastructure shared by the Bus Facility Component and the Housing Component (Common Infrastructure) and any other Facility infrastructure identified by the SFMTA (Additional Infrastructure).

The Project Agreement(s) would be a long-term contractual arrangement, with a joint development partner created by the Lead Developer being responsible for managing contractors (e.g., design-build contractors and maintenance contractors), successfully delivering the Project, and maintaining the Common Infrastructure and the Additional Infrastructure (Infrastructure Facility Maintenance), and coordinating the delivery of the Housing Component. If any of the Housing Component must be delivered by another party for financing purposes, the joint development partner would ensure that the SFMTA bears no risk arising from multiple parties delivering the Project. The SFMTA would continue to own the Project site and the Bus Yard Component, while the joint development partner would have the right to deliver, operate and own the Housing Component during the term of the applicable agreement (e.g., an air rights lease). The joint development partner would be responsible for ensuring the adequate integration and joint operation of the Bus Yard Component and Housing Component and the quality and durability of construction methods and equipment design related to the Facility's building structure and major building systems.

Project Procurement Process

A Request for Qualifications (RFQ) was issued on August 21, 2020; three teams were short-listed and invited to participate in a Request for Proposals for the Project, which was released on April 9, 2021 (RFP). The three short-listed teams are Potrero Mission Community Partners (led by John Laing Group and Edgemoor Infrastructure & Real Estate), Potrero Neighborhood Collective (led by Plenary Group), Potrero Yard Community Partners (led by Fengate Asset Management, Emerald Fund, and American Triple I Partners). RFP proposals were due December 30, 2021, and all three

short-listed teams submitted timely proposals.

During the nine-month RFP process, the three teams worked on their technical conceptual drawings and met regularly with the SFMTA in a series of one-on-one meetings. Each meeting session was divided into a technical and a commercial-financial segment. During the technical meetings, the three teams discussed their land use plan and design approach for the Bus Yard Component, among other topics. In the commercial-financial meetings, the three teams and the SFMTA negotiated the terms of the PDA and discussed the teams' approaches for the financing-commercial structure for the Facility. With a three-way negotiation, the SFMTA aimed to leverage the competitive tension of the procurement to ensure that the City's interests were preserved in the form of the PDA.

The form of the PDA was included in the final RFP and is included as Enclosure 2. The form includes placeholders to be completed with Project details and commitments in a preferred proposer's proposal (e.g., the proposed public benefits and the proposed Housing Component program). By submitting an RFP proposal, each proposer was required to commit to execute the form of PDA, as modified to include the Project details and commitments in its proposal, if selected by the SFMTA.

If the SFMTA selects a preferred proposer through the RFP process, the execution version of the PDA (the form of the PDA modified to include Project details and commitments in a preferred proposer's proposal) should be executed as soon as possible after selection to meet the April 30, 2027 deadline for substantial completion of the Bus Yard Component and its related Common Infrastructure. If staff requests approval of the SFMTA Board to the execution version of the PDA after selecting a preferred proposer, it would delay the execution of the PDA. The RFP also stated that staff would request the SFMTA Board's authorization for the Director of Transportation to execute the PDA during the RFP selection process. Accordingly, the SFMTA staff seeks authority for the Director of Transportation to execute the execution version of PDA, after modifying the form of the PDA presented to the SFMTA Board to include Project details and commitments from the preferred proposer's proposal, as selected through the process provided in the RFP. The Director of Transportation will work in consultation with the City Attorney's Office in making those modifications, and the modifications will not materially increase the SFMTA's obligations or liabilities or materially decrease the SFMTA's benefits under the PDA.

FORM OF PREDEVELOPMENT AGREEMENT

The PDA will govern the Project's predevelopment phase, with the Lead Developer performing predevelopment activities that must occur for construction to begin in the spring of 2024. The Lead Developer would fund its predevelopment activities during the PDA Term. It is customary industry practice to have a predevelopment agreement for this type of joint development delivery method. The list below summarizes some of the major PDA provisions that may be of particular interest to SFMTA Board members. The complete form of the PDA is attached to this Calendar Item.

1. Predevelopment Approach

During the PDA Term, the City and Lead Developer will work collaboratively to develop the Project so construction of the Facility can begin by the spring of 2024. The PDA governs the Lead Developer's development of schematic designs, financing plans, Infrastructure Facility Maintenance plans, the pursuit of Project entitlements, and the procurement of contractors to design and build the

Bus Yard Component and perform the Infrastructure Facility Maintenance. It also governs the parties' negotiations to develop the terms of the Project Agreement(s). The SFMTA will not bear any integration risk between the physical and operational components of the Facility. Unless otherwise agreed to by the SFMTA, the Project must conform to certain technical requirements included in the PDA and the Lead Developer's RFP proposal.

2. Fixed Budget Limit

The Project budget is capped by a limit (Fixed Budget Limit) proposed by the Lead Developer in its RFP proposal. The Fixed Budget Limit is the maximum anticipated sum of (i) the design and construction costs for the Bus Yard Component, (ii) the SFMTA's pro rata share of the design and construction costs for the Common Infrastructure, (iii) the SFMTA's pro rata share of the Infrastructure Facility Maintenance costs, and (iv) the Lead Developer's predevelopment costs. The PDA sets forth the circumstances in which the Fixed Budget Limit can be adjusted, including for SFMTA changes to the Project (including changes to its technical requirements), unknown conditions, and certain changes to applicable law.

The PDA also includes guidelines for the budget allowances included in the Lead Developer's RFP proposal for escalation and insurance costs and certain items requiring further design or development, emerging technology, or iterative designs. These budget allowances and their pricing will be refined during the PDA Term. The updated cost of construction escalation and the insurance will be permitted modifications to the Fixed Budget Limit. If City elects to include the other allowance items in the Project, the Fixed Budget Limit will be increased to reflect their additional cost. Adherence to the Fixed Budget Limit is expected throughout the PDA Term, with incentives and requirements to that effect.

3. Term and Performance Milestones

Unless terminated earlier, the PDA Term will expire 568 days after its commencement or the earlier execution of a Project Agreement(s). Appendix B-1 to the PDA lists three PDA phases of work, with certain performance milestones (Performance Milestones) and dates for completing those Performance Milestones. If those predevelopment activities are successfully and timely completed, construction of the Bus Yard Component would commence in the spring of 2024 and be substantially completed by April 30, 2027. Each PDA phase can only proceed after City issues, in its sole discretion, a Notice to Proceed (NTP) for that phase. If City issues NTP 1 for Phase 1, it would occur after the PDA is signed and Lead Developer satisfies certain administrative requirements. If City issues NTP 2 for Phase 2, it would occur after City approves the 50% schematic design drawings and Project plans submitted by Lead Developer. If City issues NTP 3, it would occur after City approves the 100% schematic design drawings, design-build contractor procurement short-listing, and form of design-build contractor and facility maintenance contractor RFPs submitted by Lead Developer.

In addition, Appendix B-1 outlines a floating Performance Milestone for Phase 2 (Phase 2 Floating Milestone). The Phase 2 Floating Milestone occurs if there is final certification of the environmental impact report for the Project under CEQA and final adoption of the special use district, conditional use authorization, General Plan Referral, and related General Plan amendments needed for the Project. If the Phase 2 Floating Milestone occurs, Lead Developer's PDA obligations will suspend unless the SFMTA elects, in its sole discretion, to issue a notice for the Lead Developer to continue

the PDA work (Continuation Notice). Issuing the Continuation Notice would require the SFMTA to pay the Lead Developer \$4,000,000 (Continuation Payment) in recognition of achieving this important milestone. Achieving the Phase 2 Floating Milestone increases the value of the Project site, as the SFMTA would have key entitlements for the Bus Yard Component and the Housing Component, and is critical to the timely completion of the Project. The Lead Developer will also incur substantial predevelopment costs by the Phase 2 Floating Milestone, some of which would be borne by the SFMTA if it had to perform the Lead Developer's work in achieving the Phase 2 Floating Milestone. The SFMTA obtained an appraisal for the future Housing Component on September 24, 2021, which includes the value of the Housing Component if (i) the Project has received all entitlements and (ii) there are no lawsuits challenging those entitlements or any such lawsuits have been finally resolved in the City's favor. After reviewing the appraisal and analyzing the stage of entitlements and potential for lawsuits at the Phase 2 Floating Milestone, SFMTA staff have determined that the amount of the Continuation Payment is commercially reasonable.

Under Section 9.118 of the San Francisco Charter, the SFMTA cannot make the Continuation Payment without the prior approval from the Board of Supervisors, so it will not issue the Continuation Notice without first obtaining that approval from the Board of Supervisors. If the SFMTA issues the Continuation Notice, the Lead Developer's PDA obligations would resume under the same terms and structure. If the SFMTA does not elect to issue the Continuation Notice and the Lead Developer does not agree to remove the SFMTA's obligation to make the Continuation Payment, the PDA would terminate and the SFMTA would make the termination payment described below.

4. Site Due Diligence and Design Development

The PDA requires that Lead Developer conduct its own due diligence investigations of the Project site to assess its physical, geological, and environmental conditions, subject to an access agreement between the Lead Developer and the SFMTA. The form of the access agreement is Appendix L to the PDA.

The PDA also requires Lead Developer to commence schematic design and engineering of the Project once it completes its Project site due diligence. As required in PDA Appendix B-1, the Lead Developer must complete 100% schematic design drawings during the PDA Term. PDA Appendix B-2 sets forth the requirements for all design deliverables to be produced by the Lead Developer during the PDA Term.

5. Asset Management Program and Infrastructure Facility Maintenance

The Project would include the joint development partner performing the Infrastructure Facility Maintenance after the Bus Yard Component is substantially completed. During the PDA Term, the Lead Developer must submit to the SFMTA its Asset Management Program and finalize the scope of work and performance requirements for the Infrastructure Facility Maintenance and the Housing Component property management. The Asset Management Program must be completed before the Lead Developer procures the Project's design-build contractor and Infrastructure Facility Maintenance contractor. It will define the interface among (i) the SFMTA's operations and maintenance activities within the Bus Yard Component, (ii) Infrastructure Facility Maintenance, and (iii) the Housing Component property management.

6. Housing Component, Feasibility, Financing, and Changes

Each RFP proposals must outline the proposer's proposed program for the Housing Component, with no less than 50% of the residential units being affordable. The Housing Component program proposed by the Lead Developer in its RFP proposal (Proposed Housing) will be contingent on the Lead Developer obtaining the necessary financing and entitlements. The Lead Developer will be responsible for pursuing the financing and entitlements, verifying the feasibility of the Proposed Housing, and performing all other predevelopment activities for the Proposed Housing. These activities will be pursued under a Housing Component development plan submitted by the Lead Developer for the SFMTA's review early in the PDA Term. The PDA includes a process for Proposed Housing changes by the SFMTA or the Lead Developer, eligible reasons for considering those changes, and assigning the risk of design cost increases needed for the Bus Yard Component and Common Infrastructure due to those changes.

7. Contractor Procurement and Final Price

During Phase 2 of the PDA, the Lead Developer must issue a request for qualification for the Bus Yard Component and Common Infrastructure design-build and Infrastructure Facility Maintenance contracts. During PDA Phase 3, the Lead Developer must issue a request for proposals for those contracts and present the pricing of the submitted bids to the SFMTA once received. This pricing will then be compared to the anticipated costs of those contracts given in the Fixed Budget Limit (as adjusted under the PDA, e.g., for insurance and escalation). If the pricing for those contracts is lower than as anticipated in the Fixed Budget Limit, then the SFMTA will receive 70% of the value of that reduced pricing. If the contract pricing is higher than as anticipated in the Fixed Budget Limit, the Lead Developer and the SFMTA will negotiate in good faith on how to bring the contract pricing down to the amounts anticipated in the Fixed Budget Limit. If those negotiations are not successful, the SFMTA can elect to terminate the PDA, accept the higher contract price, or reprocure the contracts. If accepted by the SFMTA, the Bus Yard Component and Common Infrastructure design-build and Infrastructure Facility Maintenance contract pricing will be used to calculate the SFMTA's final price for the Infrastructure Facility Maintenance and the design and construction of the Bus Yard Component and its share of the Common Infrastructure.

8. Project Agreement(s) and Approvals

As stated above, the parties will negotiate the terms of the Project Agreement(s) and other agreements needed for the delivery of the Project during the PDA Term. The Project Agreement(s) must include the terms of a preliminary term sheet, the form of which was included in the Project RFP and submitted with the Lead Developer's RFP proposal (Preliminary Term Sheet), and the terms of a Housing Component term sheet developed during the PDA Term. Given the cost and length of the Project Agreement(s), it must be approved by both the SFMTA Board and Board of Supervisors. The SFMTA will seek approval of the Project Agreement(s) from the SFMTA Board at the end of the PDA Term if the Project Agreement(s) negotiations and other predevelopment activities are successfully completed.

9. Termination Provisions and City's Right to Work Product

Consistent with typical City contract provisions, the SFMTA maintains the right to terminate the PDA for convenience at any time. If the PDA terminates for any reason other than a Lead Developer

default or the parties' execution of a Project Agreement(s), the SFMTA must make the termination payment described in the PDA. The termination payment amount increases in each PDA Phase, and is subject to the Lead Developer's qualified costs for performing the PDA work required for that PDA Phase. At no time will the termination payment exceed \$9,990,000.

If there is any termination of the PDA, the Lead Developer must deliver all the materials it prepared under the PDA to the SFMTA and assign the right to use those materials to the SFMTA. Any termination payment made to the Lead Developer under the PDA will be less than the value of the work materials the Lead Developer delivers to the SFMTA under the PDA.

10. Guaranty and Default

Under certain circumstances, the Lead Developer must provide a third-party guaranty for the performance of Lead Developer's PDA obligations. That guaranty must remain in effect, or replaced with another guaranty approved by the SFMTA, throughout the PDA Term.

The PDA describes various events of default by the parties. Lead Developer defaults include a failure to timely achieve any of the Performance Milestones or perform its other PDA obligations (subject to applicable cure procedures), changes to the Lead Developer's team without prior City consent, material misrepresentations, willful misconduct, fraud, and failure to comply or perform under associated agreements. SFMTA defaults include failure to timely perform its PDA obligations (subject to applicable cure procedures), insolvency, or material misrepresentations.

STAKEHOLDER ENGAGEMENT

Since the launch of the Building Progress Program in 2017, the SFMTA has led an extensive community outreach effort for the Project. Major outreach activities have included numerous community events and open houses, tours of Potrero Yard, regular meetings of the Potrero Yard Working Group, and grassroots outreach to individual residents and community organizations.

Five major public events were held 2018-2021, including the SFMTA hosting a major community workshop in the summer of 2020 that allowed the community to weigh in on the values and principles to be memorialized in the RFQ and RFP to communicate to potential joint development partners the SFMTA's expectations for the Project and to align those expectations, to the extent feasible, with the community's expectations for the Project.

The SFMTA received extensive feedback from the community on numerous aspects of the Project, and this feedback was reflected in the project application submitted to the Planning Department in November 2019 to initiate environmental review, to develop the RFQ and RFP, including the local business enterprises (LBEs). Outreach activities focused on the conceptual design of the Project (e.g., the size of the bus facility, number and affordability of the housing units). A virtual meeting in July 2021 provided feedback to developer questions. Outreach tabling events were at the Potrero Hill Festival on October 16, and at Sunday Streets/Phoenix Day on October 17, 2021.

Paralleling the community outreach effort has been a continued, extensive in-reach effort. The SFMTA continues to coordinate closely with elected officials and partner City agencies (Planning, Public Works, Office of Economic and Workforce Development, Mayor's Office of Housing and Community Development) as the Project shifts toward procurement of a development partner. The

SFMTA will continue dialog with staff at Potrero Yard and with labor to answer questions about the project and solicit feedback to inform the substance of the RFQ and RFP. Potrero yard tours (which are very popular) are restarting in December and January.

In addition, the Project has been presented in a variety of public hearing settings to date, where formal public comment has been received and document. This includes a February 29, 2021 meeting of the San Francisco County Transportation Authority (SFCTA) to allocate \$5,773,403 in funding for the Project, and a May 13, 2021 informational hearing at the Planning Commission, in addition to the other public hearings described elsewhere in this Calendar Item.

ALTERNATIVES CONSIDERED

An alternative to the PDA is the SFMTA going directly to a Project Agreement(s). That would require the SFMTA to develop the Project to the level needed to issue an RFQ and RFP for the Project Agreement at its own cost and without input from the developer team that would actually deliver the Project. That input is key in addressing design, schedule, financing, and funding issues such as, but not limited to, the cost-efficient design of the Bus Yard Component, the market and financial feasibility of the Housing Component (including the number and type of housing units), and the functional integration of the Housing Component with the Bus Yard Component. Without a selected developer team's input on these critical aspects, an RFQ and RFP for the Project might not generate sufficient bids from qualified development teams. It could also increase the SFMTA's costs for the Project.

FUNDING IMPACT

The PDA includes two provisions that would result in direct payments to the Lead Developer:

1. Termination Payment: If the PDA terminates for any reason other than a Lead Developer default or execution of a Project Agreement(s), the SFMTA must make a termination payment to the Lead Developer. The termination payment amount is determined by the PDA Phase in which the PDA terminates and the Lead Developer's costs to provide the deliverables required for that PDA Phase, but in no event will the amount exceed \$9,990,000.
2. Continuation Payment: If the Phase 2 Floating Milestone occurs and the SFMTA elects, in its sole discretion, to issue the Continuation Notice, the SFMTA must make the Continuation Payment. The SFMTA cannot make the Continuation Payment without the prior approval of the Board of Supervisors under City Charter Section 9.118. Accordingly, the SFMTA will not issue a Continuation Notice without first receiving that approval for the Continuation Payment. SFMTA staff will notify the SFMTA Board if they request approval for the Continuation Payment from the Board of Supervisors.

In addition to the potential for direct payments to the Lead Developer, the SFMTA will also be incurring significant internal costs for staff, Planning and City Attorney's Office time and outside counsel's and consultants' costs to advance the Project during the PDA Term. Current project activities (including any termination or continuation payments that may be payable to the Lead Developer) are currently funded through a mix of transportation sales taxes and SFMTA revenues appropriated by the SFMTA Board of Directors for facility capital projects. The funding for this overall project takes a "pay-go" approach, in which only immediate project phases are funded with the limited resources available for facility capital projects, while concurrent advocacy for additional capital funds occurs for future phases.

ENVIRONMENTAL REVIEW

Environmental review for implementation of the Project is well underway. On June 30, 2021, the Project's Draft Environmental Impact Report (DEIR) was published by the Planning Department. The DEIR was reviewed by the Historic Preservation Commission on August 4, 2021, and by the Planning Commission on August 26, 2021. The DEIR public comment period closed on August 31, 2021. The SFMTA anticipates bringing the Environmental Impact Report to the Planning Commission for approval in 2022, after integrating the Lead Developer's RFP proposal, responding to all comments received to the DEIR, and otherwise complying with all relevant CEQA Guidelines.

On January 25, 2022, the SFMTA, under authority delegated by the Planning Department, determined that the Potrero Yard Modernization Project Predevelopment Agreement is not a "project" under the California Environmental Quality Act (CEQA) pursuant to Title 14 of the California Code of Regulations Sections 15060(c) and 15378(b).

A copy of the CEQA determination is on file with the Secretary to the SFMTA Board of Directors and is incorporated herein by reference.

OTHER APPROVALS RECEIVED OR STILL REQUIRED

If the SFMTA wishes, in its sole discretion, to issue a Continuation Notice to the Lead Developer, the SFMTA will need the prior approval of the Board of Supervisors to make the Continuation Payment that must be made after issuing the Continuation Notice.

The City Attorney's Office has reviewed this calendar item.

RECOMMENDATION

Staff recommends authorizing the SFMTA Director of Transportation to execute the Predevelopment Agreement for the Potrero Yard Modernization Project, with a term that will not exceed 568 days, a potential termination payment that will not exceed \$9,990,000, and if approved by the Board of Supervisors, a potential continuation payment of \$4,000,000.

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

WHEREAS, The Potrero Yard Modernization Project (Project) includes the simultaneous development and construction of a facility (Facility) with a modern bus storage and maintenance component (Bus Yard Component) and, if feasible, a multi-family housing and commercial component (Housing Component); and,

WHEREAS, The San Francisco Municipal Transportation Agency (SFMTA) will deliver the Bus Yard Component under its Building Progress Program and, if feasible, pursue the Housing Component consistent with the citywide Public Land for Housing initiative, which encourages joint development opportunities for housing on public sites; and,

WHEREAS, Based on the Project's public and private features, staff have determined it is appropriate and in the City's best interest to deliver the Project utilizing a joint development procurement method; and,

WHEREAS, The joint development solution provides for a single point-of-responsibility for managing project complexity and contractors (e.g., design-build contractors, maintenance contactors for private housing development), financing, and successfully delivering the Project; and,

WHEREAS, The SFMTA and San Francisco Public Works (SFPW) partnered to procure a developer to design, build, and finance the Facility, operate the Housing Component, and maintain certain Facility infrastructure elements; and,

WHEREAS, A Request for Qualifications for the Project was issued on August 21, 2020, and three of the responding teams (Potrero Mission Community Partners, Potrero Neighborhood Collective, and Potrero Yard Community Partners) were short-listed; and,

WHEREAS, A Request for Proposals for the three short-listed teams was released on April 9, 2021 (RFP), with proposals due December 30, 2021, and all three short-listed teams submitting timely proposals; and,

WHEREAS, On April 7, 2020, the SFMTA Board approved Resolution 200407-035, authorizing the SFMTA to use a joint development procurement method to deliver the Project and seek approval from the Board of Supervisors (BOS) for that method; and,

WHEREAS, On March 16, 2021, the BOS adopted Ordinance 38-21 to approve a joint development delivery method and a best-value selection of the developer for the Project and exempted various Project agreements from certain San Francisco Administrative Code requirements that are inconsistent with the joint development delivery method, with the ordinance being signed by the Mayor and effective on April 25, 2021; and,

WHEREAS, In November 2019, the SFMTA submitted a project application for the Project to the San Francisco Planning Department (Planning Department) to initiate environmental review of the Project under the California Environmental Quality Act (CEQA); and,

WHEREAS, The Project's Draft Environmental Impact Report (DEIR) was published by the Planning Department on June 30, 2021, reviewed by the Historic Preservation Commission on August 4, 2021, and reviewed by the Planning Commission on August 26, 2021, and the public comment period closed on August 31, 2021; and,

WHEREAS, The SFMTA anticipates bringing the Environmental Impact Report to the Planning Commission for approval in 2022, after integrating Project details from the Lead Developer's RFP proposal, responding to all comments received to the DEIR, and otherwise complying with all relevant CEQA Guidelines; and,

WHEREAS, If the SFMTA selects a preferred proposer (Lead Developer) through the RFP process, the SFMTA intends to enter a Predevelopment Agreement (PDA) with the Lead Developer for the Project's predevelopment phase; and,

WHEREAS, The PDA sets the terms for the parties' negotiation of the future agreement(s) for the delivery of the Project, outlines the Project predevelopment activities to be performed by the Lead Developer, and can be terminated at any time by the SFMTA; and,

WHEREAS, The SFMTA can terminate the PDA at any time for convenience, and if the PDA terminates for any reason other than the Lead Developer's default or the parties' execution of an agreement(s) for the delivery of the Project, the PDA includes a termination payment to the Lead Developer in the amount described in the form of PDA presented to the SFMTA Board, which shall not exceed \$9,990,000; and,

WHEREAS, If there is final certification of the environmental impact report for the Project under CEQA and final adoption of the special use district, conditional use authorization, General Plan Referral, and related General Plan amendments needed for the Project, the Lead Developer's PDA obligations will suspend unless the SFMTA elects, in its sole discretion, to issue a notice for the Lead Developer to continue the PDA work (Continuation Notice); and,

WHEREAS, If the SFMTA issues the Continuation Notice, it must pay the Lead Developer a continuation payment of \$4,000,000 (Continuation Payment); and,

WHEREAS, The SFMTA cannot make the Continuation Payment without the prior approval from the Board of Supervisors under Section 9.118 of the San Francisco Charter, so the SFMTA will not issue the Continuation Notice without first obtaining the prior approval for the Continuation Payment from the Board of Supervisors; and,

WHEREAS, If the SFMTA selects the Lead Developer, the form of the PDA presented to the SFMTA Board will be modified to include Project details and commitments in the Lead Developer's proposal, all in consultation with the City Attorney's Office and without materially increasing the SFMTA's obligations or liabilities or materially decreasing the SFMTA's benefits; and,

WHEREAS, The final PDA should be executed as soon as possible after selection to meet the April 30, 2027 deadline for substantial completion of the Bus Yard Component and its related Common Infrastructure, and if staff requests approval of the SFMTA Board to the final version of the PDA after selecting the Lead Developer and preparing that final version, it would delay the execution of the PDA; and,

WHEREAS, The RFP stated that staff would request the SFMTA Board's authorization for the Director of Transportation to execute the PDA during the RFP selection process; and,

WHEREAS, On January 25, 2022, the SFMTA, under authority delegated by the Planning Department, determined that the Potrero Yard Modernization Project Predevelopment Agreement is not a "project" under the California Environmental Quality Act (CEQA) pursuant to Title 14 of the California Code of Regulations Sections 15060(c) and 15378(b); and,

WHEREAS, A copy of the CEQA determination is on file with the Secretary to the SFMTA Board of Directors and is incorporated herein by reference; and,

RESOLVED, That the SFMTA Board of Directors authorizes the Director of Transportation to execute the Predevelopment Agreement for the Potrero Yard Modernization Project for a term that will not exceed 568 days, a potential termination payment that will not exceed \$9,990,000, and if approved by the Board of Supervisors, a potential continuation payment of \$4,000,000; and,

FURTHER RESOLVED, That the SFMTA Board of Directors authorizes the Director of Transportation to modify the form of agreement presented to the SFMTA Board of Directors to include project details and commitments from the Lead Developer's proposal, all in consultation with the City Attorney's Office and without materially increasing the SFMTA's obligations or liabilities or materially decreasing the SFMTA's benefits; and, be it

FURTHER RESOLVED, That the SFMTA Board of Directors authorizes the Director of Transportation to seek approval for the Continuation Payment from the Board of Supervisors at the appropriate time.

I certify that the foregoing resolution was adopted by the San Francisco Municipal Transportation Agency Board of Directors at its meeting of February 15, 2022.

Secretary to the Board of Directors
San Francisco Municipal Transportation Agency

PREDEVELOPMENT AGREEMENT

by and between

THE CITY AND COUNTY OF SAN FRANCISCO
acting by and through the
SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY

and

[_____]

Potrero Yard Modernization Project

_____, 2022

TABLE OF CONTENTS

	<u>Page</u>
PREDEVELOPMENT AGREEMENT	1
RECITALS	1
AGREEMENT	2
1.	DEFINITIONS
.....	2
2.	PREDEVELOPMENT GUIDELINES
.....	13
2.1. Predevelopment Approach	13
2.2. Incorporation of Elements of RFP and Proposal.....	13
2.3. Prior Costs and Predevelopment Costs	14
2.4. Risk Allocation	15
2.5. Fixed Budget Limit; Adjustments; Allowances; Submittals.....	15
2.6. Allocation of Common Infrastructure Costs	17
2.7. Diligent and Good Faith Efforts.....	18
2.8. Standard of Care.....	18
2.9. Suspension of Obligations	18
2.10. Exclusive Negotiations; City’s Reserved Rights	18
2.11. Proprietary or Confidential Information.	19
3.	TERM; PERFORMANCE DATES
.....	20
3.1. PDA Term; Predevelopment Period Extensions	20
3.2. Performance Milestones.....	20
3.3. Unavoidable Delays and Regulatory Appeal Delays.	21
4.	PDA PHASES; NOTICES TO PROCEED
.....	22
4.1. Performance	22
4.2. Notices to Proceed; Decision Not to Proceed	22
4.3. Acceptance of Work.....	23
5.	TRANSACTION DOCUMENTS
.....	24
5.1. Negotiating Principles.....	24
5.3. Approval of Project Agreement and Other Transaction Documents	26
6.	PREDEVELOPMENT WORK
.....	26
6.1. Statement of Work	26
6.2. PDA Phases.....	26
6.3. Due Diligence Investigation.....	27
6.4. Compliance with Plans.....	27

6.5. Design Development.....	27
6.6. Asset Management Program	28
6.7. Energy Management Program	28
6.8. Project Financing	29
6.9. HCC Predevelopment Work	29
6.10. Local Business Enterprise Plan.....	33
6.11. Design-Build Contract	33
6.12. Infrastructure Facility Maintenance	34
6.13. IFM Contract.....	34
6.14. Interface Agreements and Direct Agreements	34
6.15. Pricing and Fixed Budget Limit; Determining the Final Price	35
6.16. Early Works	36
6.17. Formation of Principal Project Company	37
6.18. Utilities.....	37
6.19. Construction Permits.....	37
6.20. CEQA.....	37
6.21. Regulatory Approvals	38
6.22. Correction of Defective Work Materials.....	41
6.23. Guaranty.....	42
7.	PREDEVELOPMENT MANAGEMENT
7.1. Development Team.....	42
7.2. Key Personnel; Organization	42
7.3. Project Directors and Project Managers.....	43
7.4. Communication.....	43
7.5. Cost Reports and Audits.	43
7.6. Community Outreach and Public Relations.....	44
7.7. Monthly and Quarterly Report.....	47
7.8. Weekly Meetings	47
7.9. Data Room	47
7.10. Assignment of Work Materials	47
8.	CITY PREDEVELOPMENT OBLIGATIONS
8.1. Design and Plan Development.....	47
8.2. Cooperation in Developing the Transaction Documents	48
8.3. Cooperation in Financing Efforts.....	48
8.4. Housing and Commercial Component Feasibility Analysis and Financing.....	48
8.5. Design-Build Contract	48
8.6. Asset Management Program	48

8.7. Energy Management Program	48
8.8. IFM Contract.....	48
8.9. Early Works	48
8.10. General Regulatory Approval Cooperation	48
9. CHANGES TO THE PROJECT	49
9.1. Infrastructure Facility or Infrastructure Facility Maintenance Changes Proposed by Lead Developer 49	
9.2. HCC Change	50
9.3. Changes Proposed by City.	51
10. RECORDS	52
10.1. Definition of Material Adverse Change	52
10.2. Material Adverse Change in Financial Position.....	53
10.3. Future Performance.....	53
11. CITY RIGHTS TO WORK MATERIALS	53
11.1. City Property	53
11.2. Works for Hire	53
12. NO REPRESENTATION OR WARRANTY OF PROJECT VIABILITY	53
13. FINAL ACTION SUBJECT TO ENVIRONMENTAL REVIEW	54
14. COMMERCIAL CLOSE	54
14.1. Achieving Commercial Close	54
14.2. Flexibility for Separate Commercial Closings	55
15. PROHIBITED ACTIONS	55
15.1. Prohibited Payments	55
15.2. No Entry	55
15.3. Submitting False Claims	55
16. TERMINATION	55
16.1. Termination for Convenience	55
16.2. Terminating Event.....	55
16.3. Termination Payments	56
16.4. Termination Notice; Effect of Termination	57
16.5. City's Rights Following Termination	57
16.6. Assignment of Work Materials	58

17.	INSURANCE	58
17.1. Required Coverage During PDA Term.....		58
17.2. Endorsements.....		59
17.3. Other Insurance Requirements.....		59
18.	ASSIGNMENT AND CHANGES IN OWNERSHIP OF LEAD DEVELOPER	60
18.1. Restrictions on Assignment		60
18.2. Restrictions on Changes in Ownership of Lead Developer		60
19.	DEFAULT	60
19.1. LD Event of Default.....		60
19.2. City Event of Default		61
20.	REMEDIES	61
20.1. City’s Remedies.....		61
20.2. Lead Developer’s Remedies		62
21.	INDEMNITY; DISCLAIMERS; LIMITATION OF LIABILITY	62
21.1. Lead Developer’s Duty to Indemnify		62
21.2. Disclaimer and Acknowledgement.		63
21.3. Limitation of Liability.....		63
22.	REPRESENTATIONS AND WARRANTIES	64
22.1. Lead Developer Representations and Warranties		64
22.2. City Representations and Warranties.		65
22.3. Survival.....		66
23.	NOTICES.	66
24.	CITY REQUIREMENTS	67
24.1. Nondiscrimination in City Contracts and Benefits Ordinance.....		67
24.2. Requiring Health Benefits for Covered Employees.....		67
24.3. Minimum Compensation Ordinance.....		68
24.4. Prevailing Rate of Wages and Working Conditions.		68
24.5. Local Hire		69
24.6. First Source Hiring; SFMTA Trainee Hiring Program.		70
24.7. Prohibition on Use of Public Funds for Political Activity		71
24.8. Consideration of Salary History.....		72
24.9. Consideration of Criminal History in Hiring and Employment Decisions.		72

24.10.	Resource Efficiency Requirements	72
24.11.	MacBride Principles Northern Ireland	72
24.12.	Notification of Limitations on Contributions	72
24.13.	Sunshine Ordinance	73
24.14.	Conflicts of Interest	73
24.15.	Certification of Funds	73
24.16.	Art Commission Design Review; Art Enrichment Allocation	73
25.	DISPUTE RESOLUTION PROCEDURES	73
25.1.	General	73
25.2.	Claims	74
25.3.	City Response to Lead Developer’s Claim	74
25.4.	Informal Dispute Resolution	74
25.5.	Mediation	74
25.6.	Continuing Performance	75
26.	MISCELLANEOUS	75
26.1.	Compliance with Law	75
26.2.	California Law	75
26.3.	Entire Agreement	75
26.4.	Amendments	75
26.5.	Severability	75
26.6.	No Party Drafter; Captions	75
26.7.	Interpretation	75
26.8.	Waiver	76
26.9.	No Brokers	76
26.10.	Time is of the Essence	76
26.11.	No Recording	76
26.12.	Notification of Legal Requests	76
26.13.	Joint and Several Liability	76

26.14.	Relationship of the Parties
	76	
26.15.	Independent Contractor
	76	
26.16.	Federal Requirements
	77	

APPENDICES

- Appendix A: Description of the Project Site
- Appendix B-1: Performance Milestones
- Appendix B-2: Project Management, Design Deliverables, Software, and Document Control Requirements
- Appendix C: Proposal Commitments [*To be developed based on Proposal*]
- Appendix D: Project Objectives
- Appendix E: Technical Requirements [*RFP Volume III to be attached*]
- Appendix F: Preliminary Term Sheet [*To be AD Form O of the Proposal, signed by Lead Developer but otherwise unchanged from latest version released by City before Proposal Due Date*]
- Appendix G: Financial Proposal [*Volume 3 of Proposal to be attached*]
 - Attachment 1: SFMTA Trainee Hiring Program [*To be attached from Proposal*]
 - Attachment 2: First Source Hiring Program [*To be attached based on Proposal*]
- Appendix H: Technical Proposal [*Volume 2 of Proposal to be attached*]
- Appendix I: Development Team and Key Personnel [*AD Form K of Proposal to be attached*]
- Appendix J: Form of Guaranty
- Appendix K: Federal Transit Administration Requirements for Procurement Contracts and Design/Build Contracts
- Appendix L: Access Agreement
- Appendix M: City Contracting Requirements
- Appendix N: List of Reference Documents

PREDEVELOPMENT AGREEMENT

This Predevelopment Agreement (this “**Agreement**”) dated for reference purposes only as of _____, 2021, is by and between the **CITY AND COUNTY OF SAN FRANCISCO** (“**City**”), a municipal corporation acting by and through the **SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY** (“**SFMTA**”), and _____, a _____ [include details reflecting Lead Developer identity and structure] (“**Lead Developer**”). City and Lead Developer are also each referred to as a “**Party**” and together referred to as the “**Parties**” below.

RECITALS

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

B. The Project Site is currently improved with a two-story structure used for electric trolley bus parking, operations, and maintenance services and an open trolley bus storage yard, which do not have the capacity to meet current needs, expected future needs, or modern safety and maintenance standards. City policy also promotes using public lands to build affordable housing to the greatest extent possible.

C. On August 21, 2020, San Francisco Public Works issued a Request for Qualifications on behalf of the SFMTA (together with all its addenda, the “**RFQ**”) to invite interested parties to submit a statement of qualifications to design, build, finance and maintain the Infrastructure Facility (as defined in Section 1) at the Project Site and design, build, finance, operate and maintain the Housing and Commercial Component (as defined in Section 1) at the Project Site.

D. City determined Lead Developer and two other respondents to the RFQ were the three most qualified respondents to the RFQ and invited those three respondents to respond to a Request for Proposals for the development of the Project, which was issued by City on April 9, 2021 (the “**Initial RFP**”). The Initial RFP and all addenda to the Initial RFP shall be collectively referred to in this Agreement as the “**RFP**”.

E. On _____, 2021, Lead Developer submitted its response to the RFP (the “**Proposal**”) and on _____, 2022, was selected by City as the preferred respondent with the best-value proposal to the RFP.

F. Lead Developer and City wish to enter into this Agreement to provide for terms and conditions of the following predevelopment activities needed for timely delivery of the Project (as defined in Section 1): (i) negotiating and finalizing agreements that are necessary for the Project, (ii) preparing and obtaining design documents, due diligence materials, and other development materials and analyses, (iii) preparing the analysis for any early works to prepare the Project Site for the Project during the PDA Term and if approved by City, performing that early work, (iv) developing the commercial and financing structure for the Project and negotiating and finalizing the related financing documents, (v) procuring a design-build contract for the construction of the Infrastructure Facility, (vi) procuring a facility maintenance contract for certain elements of the Infrastructure Facility, and (vii) any other predevelopment activities necessary to develop the Project and Project Documents to timely reach Commercial Close (as defined in Section 1 below) and IF Financial Close and Housing Financial Close (each as defined in Section 1 below).

G. This Agreement addresses predevelopment activities only and does not commit City to any definite course of action with respect to approval of the Project or any portion of the Project. City will not consider approval of the Project until the City has completed environmental review with respect to the Project in compliance with the CEQA (as defined in Section 1 below) and City’s CEQA procedures, as set forth in San Francisco Administrative Code Chapter 31. Accordingly, notwithstanding this Agreement, City and any other public agencies with jurisdiction over any part of the Project each shall have the absolute discretion to (a) require modifications to the Project and/or implementation of specific measures to mitigate significant adverse environmental impacts; (b) select feasible alternatives that avoid significant adverse impacts of the Project, including the “no project” alternative; (c) reject all or part of the Project if the economic and social benefits of the Project do not outweigh otherwise unavoidable significant adverse impacts of the Project; (d) approve the Project upon a finding that the economic and social benefits of the Project outweigh otherwise unavoidable significant adverse environmental impact of the Project; and (e) deny the Project.

AGREEMENT

1. DEFINITIONS

1.1. “Access Agreement” is defined in Section 6.3.

1.2. “Additional HCC Materials” is defined in Section 6.9(h).

1.3. “Affiliate” means any of the following: (a) any Equity Member; (b) any Person that directly or indirectly through one or more intermediaries controls, or is controlled by, or is under common control with Lead Developer or any Equity Member; and (c) any Person owned in whole or in part by (i) Lead Developer, (ii) any Equity Member, or (iii) any Affiliate of Lead Developer under clause (b) of this definition, whether the ownership interest is direct or indirect, beneficial or of record, provided that ownership of less than 10% of the equity interest in a Person shall not give rise to Affiliate status. For the purpose of this definition, “control” means the power to direct the management of a Person, whether through voting, nomination, or other selection rights, by contract, through family relationship, or by other means.

1.4. “Affordable Housing Developer” means _____.

1.5. “Affordable Units” means the affordable units in the Proposed HCC, which are comprised of [*add description of number, type and affordability rates of the Housing and Commercial affordable units from the Technical Proposal*], subject to any modification pursuant to Section 9.2 or Section 9.3.

1.6. “Agreement” means this Predevelopment Agreement, including all appendices and attachments, as such agreement may be modified from time to time.

1.7. “Allowance” means any of the items identified in FS Form D of the Financial Proposal.

1.8. “Applicable Law” means all federal, state, local, and administrative laws, ordinances, resolutions, regulations, requirements, proclamations, orders, or decrees of any municipal, county, state, or federal government or other governmental or regulatory authority, board of fire underwriters, or any directive or occupancy certificate issued under any law by any public officer or officers acting in their regulatory capacity, in each case having the force of law and applicable to either of the Parties, the Project or any element of the Project, or the Project Site or any portion of the Project Site.

1.9. “Area Median Income” or “AMI” means median income as published annually by the San Francisco Mayor’s Office of Housing and Community Development for the City and County of San Francisco, derived in part from the income limits and area median income determined by United States Department of Housing and Urban Development for the San Francisco area, adjusted solely for household size, but not high housing cost area.

1.10. “Asset Management Program” means a plan that describes all the management, engineering, repairs and maintenance, and other activities needed to provide a best-value level of service for the Facility as a whole during its operational life-cycle, and allocates responsibility for those activities between the Principal Project Company, the Housing Project Company, and City during the Infrastructure Facility Term and the Housing Term.

1.11. “Availability Payment” means the payments to be made by City to the Principal Project Company during the Infrastructure Facility Term in consideration for the Principal Project Company’s services under the Project Agreement. The amount and timing of each Availability Payment will be established in the Project Agreement.

1.12. “Board of Supervisors” means the Board of Supervisors of the City and County of San Francisco.

1.13. “Business Day” means any day that is not a Saturday or Sunday, a City public holiday, a State of California public holiday, or a federal public holiday.

1.14. “Bus Yard Component” means the Facility’s transit component, which (a) will include the spaces needed for City’s operation and maintenance activities at the Facility after Substantial Completion of the Infrastructure Facility, (b) must meet the Bus Yard Component criteria in the Technical Requirements except as otherwise approved by City in writing, which approval shall be at its sole discretion, and (c) will not be used for the Common Infrastructure.

1.15. “CEQA” is defined in Section 13.

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

(a) a change in possession of the power to direct or control the management of Lead Developer or a material aspect of its business due solely to bona fide open market transactions in securities effected on a recognized public stock exchange, including such transactions involving an initial public offering;

(b) an upstream reorganization or transfer of indirect interests in Lead Developer so long as no change occurs in the entity with ultimate power to direct or control or cause the direction or control of the management of Lead Developer;

(c) a change in possession of the power to direct or control the management of Lead Developer or a material aspect of its business due solely to a bona fide transaction involving a beneficial interest in the ultimate parent organization of an Equity Member (but not if the Equity Member is the ultimate parent organization) if the references, experience or financial statements of the ultimate parent organization were not considered or evaluated in the statement of qualifications or proposal, provided, however, that this exception shall not apply if at the time of the transaction the transferee is suspended or debarred from bidding, proposing or contracting with the City or any federal or State department or agency, or is subject to a suspension or debarment proceeding;

(d) an Equity Transfer, where the transferring Equity Member and the transferee are under the same ultimate parent organization ownership, management and control before and after the transfer; or

(e) a transfer of interests (i) between managed funds that are under common ownership, management or control or (ii) by an Equity Member to a fund, investment vehicle or other entity managed by or under common control of such Equity Member, except, in each case, a change in the management or control of a fund, investment vehicle or other entity, as applicable, that manages or controls; and

(f) the exercise of minority veto or voting rights (whether pursuant to applicable Law, by Lead Developer's organizational documents or by related member or shareholder agreements or similar agreements) over major business decisions of Lead Developer, provided that if such minority veto or voting rights are exercised pursuant to shareholder or similar agreements, City received copies of such agreements on or before the date of the Agreement.

1.17. "City" is defined in the Preamble.

1.18. "City Agents" means, collectively, employees, officers, members, managers, directors, agents, contractors, subcontractors, and consultants of City.

1.19. "City Event of Default" is defined in Section 19.2.

1.20. "City Predevelopment Cost" is defined in Section 2.3(c).

1.21. "City Project Director" is defined in Section 7.3(b).

1.22. "City Project Manager" is defined in Section 7.3(b).

1.23. "City Proposed Change" is defined in Section 9.3(a).

1.24. "claims" means all claims, demands, rights, and causes of action.

1.25. "Commencement Date" means the date that City delivers Notice to Proceed #1 to Lead Developer under Section 4.2(a).

1.26. "Commercial Close" means the concurrent, full execution and delivery of both the Project Agreement and the HCC Agreement.

1.27. "Common Infrastructure" means the physical infrastructure component of the Facility that is shared by the Bus Yard Component and the Housing and Commercial Component and meets the Common Infrastructure criteria in the Technical Requirements except as otherwise approved by City in writing, which approval shall be at its sole discretion.

1.28. "Common Infrastructure Costs" is defined in Section 2.6.

- 1.29. “**Conference/Media Summary**” is defined in Section 7.6(i).
- 1.30. “**Covered Services**” is defined in Section 24.4(a).
- 1.31. “**Design Deliverables**” is defined in Appendix B-2.
- 1.32. “**Design-Build Contract**” is defined in Section 6.11.
- 1.33. “**Development Team Member**” and “**Development Team**” are defined in Section 7.1.
- 1.34. “**Director of Transportation**” means the SFMTA’s Director of Transportation.
- 1.35. “**Discontinuation Notice**” is defined in Section 4.2(c).
- 1.36. “**Dispute**” means any dispute, disagreement or controversy between City and Lead Developer concerning their respective rights and obligations under the Agreement, including concerning any claim, alleged breach or failure to perform and remedies.
- 1.37. “**Draft EIR**” is defined in Section 6.20(a).
- 1.38. “**Early Works**” means, to the extent approved by City, any physical work required at the Project Site, or off-site utility work, or physical work associated with relocating the Potrero Division bus fleet and all relevant operations out of the Project Site, during the PDA Term to enable Substantial Completion of the Infrastructure Facility by the Outside Delivery Date.
- 1.39. “**Early Works Agreement**” means an agreement entered into by City and Lead Developer for the performance of Early Works by Lead Developer during the PDA Term.
- 1.40. “**Effective Date**” means the date the Director of Transportation executes this Agreement.
- 1.41. “**EIR**” means the Environmental Impact Report for the Project, including the Draft EIR, public and agency comments on the Draft EIR received during the review process, a list of people and organizations that submitted comments, responses from the lead agency to the comments received, and any revisions of the Draft EIR.
- 1.42. “**Energy Management Program**” is defined in Section 6.7.
- 1.43. “**Equity Member**” means a Person that directly holds a legal and beneficial interest in Lead Developer.
- 1.44. “**Equity Transfer**” means any assignment, mortgage, encumbrance, hypothecation, conveyance, sale, or other transfer of equity interest in Lead Developer.
- 1.45. “**Extension Notice**” is defined in Section 3.3(c).
- 1.46. “**Extension Request**” is defined in Section 3.1.
- 1.47. “**Facility**” means the Bus Yard Component, Housing and Commercial Component, and Common Infrastructure, collectively.

1.48. “**Final Price**” is defined in the “Final Price and Cost Savings Form” in Attachment 4 of Appendix B-2).

1.49. “**Finance Plan**” is defined in Section 6.8.

1.50. “**Financial Proposal**” means Volume 3 to the Proposal, which is attached as Appendix G.

1.51. “**Fixed Budget Limit**” is defined in Section 2.5(a).

1.52. “**Floating Milestone Date**” is defined in Section 3.2(b).

1.53. “**General Regulatory Approvals**” is defined in Section 6.21(b).

1.54. “**Guarantor**” means each Person providing a Guaranty as described in Section 6.23. As of the Effective Date, the Guarantor is _____ [if any guarantor was identified in the SOQ and/or Proposal, or if a guarantor is required by City pursuant to Section 3.14 of the ITP, add name the name of the guarantor, obtain a fully executed guaranty in the form set forth in Appendix J; revise as needed if there are multiple guarantors; delete this definition and all Guarantor references if none].

1.55. “**Guaranty**” means each guaranty executed by a Guarantor guaranteeing some or all of the obligations of Lead Developer under the Agreement.

1.56. “**HCAO**” is defined in Section 24.2.

1.57. “**HCC Agreement**” means the agreement between City and the Housing Project Company, which would be signed at the HCC Commercial Close, pursuant to which City will grant to the Housing Project Company a long-term real property interest in certain premises for the development of the Housing and Commercial Component.

1.58. “**HCC Change**” is defined in Section 9.2(a).

1.59. “**HCC Change Request**” is defined in Section 9.2(b).

1.60. “**HCC Commercial Close**” means the full execution and delivery of the HCC Agreement.

1.61. “**HCC Financial Close**” means the full execution and delivery of the HCC Financing Documents, either at or after HCC Commercial Close, where all conditions to the effectiveness of the HCC Agreement and Housing Financing Documents have been satisfied so that the Housing Project Company is sufficiently funded to commence construction of the Housing and Commercial Component.

1.62. “**HCC Financing Documents**” means all documents to be executed by the Housing Project Company) to finance the Housing and Commercial Component.

1.63. “**HCC Interface Requirements**” is defined in Section 6.9(a).

1.64. “**HCC Term Sheet**” is defined in Section 6.9(d).

1.65. “**HCC Transaction Documents**” mean, collectively, the HCC Term Sheet, the HCC Agreement, and any other documents to be executed by City and the Housing Project Company with respect to the Project.

1.66. “Housing and Commercial Component” means the Facility’s housing and commercial component, which would include the commercial space, the housing units and their associated support spaces (e.g., lobbies, vertical and horizontal circulation, storage, open space, rooms for building systems, offices for property management and residential services, and resident amenities such as laundry and community rooms) that are not used for the Bus Yard Component or the Common Infrastructure.

1.67. “Housing Developer” means _____.

1.68. “Housing Project Company” means the special-purpose entity for which the original Equity Members (being the Equity Members *as of the date* of execution of this Agreement) have the power to direct the management of that entity, whether through voting, nomination, or other selection rights, by contract, or by other means (unless otherwise agreed to by City in its sole discretion), that will deliver, operate and maintain the Housing and Commercial Component pursuant to the HCC Agreement.

1.69. “Housing Term” means the period during which a Housing Project Company has the right and obligation to maintain and operate the Housing and Commercial Component.

1.70. “IF Commercial Close” means the full execution and delivery of the Project Agreement.

1.71. “IF Financial Close” means the full execution and delivery of the IF Financing Documents, either at or after IF Commercial Close, where all conditions to the effectiveness of the Project Agreement and IF Financing Documents have been satisfied so that the Principal Project Company is sufficiently funded to commence construction of the Infrastructure Facility.

1.72. “IF Financing Documents” means all documents to be executed by the Principal Project Company to finance the Infrastructure Facility.

1.73. “IF Transaction Documents” mean, collectively, the Project Agreement, and any other documents to be executed by City and the Principal Project Company with respect to the Project.

1.74. “IFM Contract” is defined in Section 6.13.

1.75. “Indemnified Parties” is defined in Section 21.1.

1.76. “Infrastructure Facility” means the Bus Yard Component and the Common Infrastructure, collectively.

1.77. “Infrastructure Facility Maintenance” means all management, engineering, repairs and maintenance, renewals and replacement, and other ancillary services required at all times for the Infrastructure Facility to allow for the ongoing operations and maintenance activities needed at the Facility and to meet the service requirements specified in the Asset Management Program and the handback requirements at the end of the Infrastructure Facility Term.

1.78. “Infrastructure Facility Term” means the 30-year period during which the Principal Project Company must provide the Infrastructure Facility Maintenance under the Project Agreement.

1.79. “LBE Plan” is defined in Section 6.10.

- 1.80.** “LD Change Request” is defined in Section 9.1(c).
- 1.81.** “LD Event of Default” is defined in Section 19.1.
- 1.82.** “LD Media Contact” is defined in Section 7.6(d).
- 1.83.** “LD Outreach Plan” is defined in Section 7.6(c).
- 1.84.** “LD Predevelopment Cost” is defined in Section 2.3(d).
- 1.85.** “LD Project Director” is defined in Section 7.3.
- 1.86.** “LD Project Manager” is defined in Section 7.3.
- 1.87.** “LD Proposed Change” is defined in Section 9.1(a).
- 1.88.** “Lead Developer” is defined in the Preamble.
- 1.89.** “Lead Developer Agents” means, collectively, Lead Developer’s employees, officers, members, managers, directors, agents, contractors, subcontractors, consultants, members, Affiliates, and Development Team Members.
- 1.90.** “Lead Developer Related Entities” means:
- (a) Lead Developer;
 - (b) Lead Developer Agents;
 - (c) any Guarantor;
 - (d) any other persons or entities performing any of the Work;
 - (e) any other persons or entities for whom Lead Developer may be legally or contractually responsible; and
 - (f) the employees, agents, officers, directors, representatives, consultants, successors and assigns of any of the foregoing.
- 1.91.** “Losses” means, collectively, any loss, expense, cost, compensation, damages (including foreseeable consequential damages), attorneys’ fees, claims, demands, liens, obligations, injuries, liability, interest, penalties, fines, lawsuits and other proceedings, judgments, awards, or liabilities of any kind, known or unknown, contingent or otherwise, equitable relief, mandamus relief, specific performance, or any other relief.
- 1.92.** “Mediation” is defined in Section 25.5(a).
- 1.93.** “Mediation Request” is defined in Section 25.5(a).
- 1.94.** “MMRP” means any Mitigation Monitoring and Reporting Program for the Project adopted by the Planning Commission in certifying the EIR.
- 1.95.** “MOHCD” means the San Francisco Mayor’s Office of Housing and Community Development.

1.96. “**Muni Metro East**” or “**MME**” means the City property that comprises portions of Blocks 4297, 4298, 4299, 4300, 4310, and 4313, and is bounded by 25th, Illinois, Cesar Chavez, and Maryland Streets.

1.97. “**Notice of Acceptance**” means the notice described in Section 4.3(c).

1.98. “**Notice to Proceed**” is defined in Section 4.1.

1.99. “**Outside Delivery Date**” means April 30, 2027.

1.100. “**PCIC**” means the percentage of Common Infrastructure cost allocated to City, which will be [●]%, as set forth in FS Form B of the Financial Proposal, as may be further adjusted pursuant to the version of FS Form B submitted by Lead Developer at Performance Milestone 15 and Performance Milestone 27A if approved, respectively, by City at Performance Milestone 16 and Performance Milestone 28.

1.101. “**PCIC(Dis)**” means the discount to the PCIC(Max) described in FS Form B of the Financial Proposal.

1.102. “**PCIC(Max)**” means the percentage of Common Infrastructure cost allocated to City as stated in Form FS B of the Financial Proposal, which is based on (i) the gross square feet of floor area of the Bus Yard Component divided by (ii) the gross square feet of floor area of the Bus Yard Component and the Housing and Commercial Component. Such percentage may be further adjusted pursuant to the version of FS Form B submitted by Lead Developer at Performance Milestone 15 and Performance Milestone 27A if approved, respectively, by City at Performance Milestone 16 and Performance Milestone 28.

1.103. “**PCIH**” means the percentage of Common Infrastructure cost allocated to the Housing and Commercial Component, which will be [●]%, as set forth in FS Form B of the Financial Proposal. Such percentage may be further adjusted pursuant to the version of FS Form B submitted by Lead Developer at Performance Milestone 15 and Performance Milestone 27A if approved, respectively, by City at Performance Milestone 16 and Performance Milestone 28.

1.104. “**PDA Management Plan**” means a plan that covers Lead Developer’s management of the Work, which will be based on the preliminary plan included in the Technical Proposal and to be finalized as described in Appendix B-2.

1.105. “**PDA Phase**” and “**PDA Phases**” are defined in Section 4.1.

1.106. “**PDA Term**” is defined in Section 3.1.

1.107. “**Performance Date**” means the date for the performance of a Performance Milestones, as set forth in Appendix B-1.

1.108. “**Performance Extension**” is defined in Section 3.3(c).

1.109. “**Performance Milestones**” is defined in Section 3.2(a).

1.110. “**Person**” means any individual, corporation, joint venture, limited liability company, company, voluntary association, partnership, trust, unincorporated organization, governmental entity, or other entity.

1.111. “**Phase 2 Floating Milestone**” is defined in Section 3.2(b).

1.112. “Planning Commission” means the San Francisco Planning Commission.

1.113. “Planning Department” means the San Francisco Planning Department.

1.114. “Predevelopment Period” means the five hundred sixty-eight (568) consecutive day period that commences on the Commencement Date, as may be extended by in accordance with Section 3.1.

1.115. “Preliminary Term Sheet” is the term sheet attached as Appendix F.

1.116. “Premises” is defined in Section 6.9(d).

1.117. “Press Matters” is defined in Section 7.6(h).

1.118. “Press Release” is defined in Section 7.6(h).

1.119. “Prevailing Rate of Wages” shall have the meaning given in Section 6.22(e) of the San Francisco Administrative Code.

1.120.

1.121. “Principal Project Company” means the Lead Developer or a special-purpose entity in which Lead Developer is the only party with the power to direct the management of that entity, whether through voting, nomination, or other selection rights, by contract, or by other means, that enters into the Project Agreement with City for delivery of the Infrastructure Facility and maintenance of certain elements thereof.

1.122. “Project” means development, design, construction, and financing of the Facility at the Project Site, the Infrastructure Facility Maintenance, and the Property Management.

1.123. “Project Agreement” means the agreement between City and the Principal Project Company for delivery of the Infrastructure Facility, which would be signed at IF Commercial Close.

1.124. “Project Documents” mean, collectively, the Transaction Documents, , the IF Financing Documents, the HCC Financing Documents, the Design-Build Contract, the IFM Contract, and any other documents to be executed by the Principal Project Company, the Housing Project Company, any Design-Build Contract contractor, the IFM Contract contractor, or any other third party providing either services, funding, or financing with respect to the Project, the performance of the Principal Project Company’s obligations under the Project Agreement, the performance of the Housing Project Company’s obligations under the HCC Agreement, or the independent function of the Bus Yard Component and the Housing and Commercial Component.

1.125. “Project Management Deliverables” is defined in Appendix B-2.

1.126. “Project Objectives” are set forth in Appendix D.

1.127. “Project Schedule” is defined in Section 6.2.

1.128. “Project Site” is defined in Recital A.

1.129. “Property Management” means the management, leasing, rent collection, tenant services and relations, engineering, repairs and maintenance, renewals and replacement, and

other ancillary services required for operating the of the Housing and Commercial Component in compliance with Applicable Law and keeping it in a good operating condition during the Housing Term.

1.130. “Proposal” means the response to the RFP submitted by Lead Developer to City on [●], 2021. Portions of the Proposal are included in the Agreement at Appendix C (Proposal Commitments), Appendix G (Financial Proposal), Appendix H (Technical Proposal), Appendix I (Development Team and Key Personnel), and including Attachment 1 (SFMTA Trainee Hiring Program) and Attachment 2 (First Source Hiring Program) of Appendices G and H.

1.131. “Proposed HCC” is defined in Section 6.9.

1.132. “Public Records Act” means the Public Records Act in California Government Code Section 6250 *et seq.*

1.133. “Qualified Out-of-Pocket Costs” means the costs incurred by Lead Developer, including demonstrated internal costs, to prepare the Work Materials and procure the Design-Build Contract and IFM Contract, which costs must not be increased by any dollar or percentage amount representing added profit, fee, or administrative or other charge but can include the actual financing costs incurred by Lead Developer during the PDA Term from loans or lines of equity extended by any third party financial institutions, or Affiliates provided the Affiliate provides rates competitive with third party financial institutions, to finance the Work Materials and the procurement of the Design-Build Contract and IFM Contract, and which must have been documented by Lead Developer in compliance with this Agreement. The following costs shall not be included as Qualified Out-of-Pocket Costs: (a) HCC costs (except those specifically incurred in connection with Work Materials identified in Appendix B-1 and Appendix B-2; (b) the internal financing costs incurred by any of the Development Team Members; or (c) the costs of any Additional HCC Materials .

1.134. “Reference Documents” means the materials described in Appendix N.

1.135. “Regulatory Agency” is defined in Section 6.21(c).

1.136. “Regulatory Appeal Delay” is defined in Section 3.3(b).

1.137. “Regulatory Approval” is defined in Section 6.21.

1.138. “Regulatory Approval Strategy” is defined in Section 6.21(b).

1.139. “Regulatory Change” is defined in Section 9.1(a).

1.140. “releases” is defined in Section 21.2.

1.141. “RFP” is defined in Recital D.

1.142. “SFMTA” means the San Francisco Municipal Transportation Agency.

1.143. “SFMTA Board” means the San Francisco Municipal Transportation Agency Board of Directors.

1.144. “SFMTA Media Contact” is defined in Section 7.6(d).

1.145. “SFMTA Public Outreach and Engagement Program” is defined in Section 7.6(a).

1.146. “SFPW” means San Francisco Public Works.

1.147. “Short-Listed Proposers” means _____.

1.148. “Substantial Completion” means (a) in the case of Early Works, when construction is completed in accordance with the requirements of the applicable Early Works Agreement and the Early Works can be utilized for its intended purpose; (b) in the case of the Housing and Commercial Component, when (i) construction is completed in accordance with the requirements of the HCC Agreement and the Housing and Commercial Component can be utilized for its intended purpose, (ii) a certificate of temporary occupancy is issued for the Housing and Commercial Component, and (iii) tenants are able to move into the Housing and Commercial Component; and (c) in the case of the Infrastructure Facility, when (i) construction is completed in accordance with the requirements of the Project Agreement and the Infrastructure Facility can be utilized for its intended purpose, (ii) a certificate of temporary occupancy is issued for the Bus Yard Component, and (iii) the Bus Yard Component is in a condition of full operational functionality to allow the SFMTA’s transit operations to relocate to the Bus Yard Component.

1.149. “Sunshine Ordinance” means the San Francisco Sunshine Ordinance in Chapter 67 of the San Francisco Administrative Code.

1.150. “Technical Proposal” means Volume 2 to the Proposal, which is attached as Appendix H.

1.151. “Technical Requirements” means the requirements set forth in Appendix E, as may be modified in writing by City during the PDA Term.

1.152. “Terminating Event” is defined in Section 16.2.

1.153. “Termination” is defined in Section 16.2.

1.154. “Termination Notice” is defined in Section 16.4.

1.155. “Termination Payment” is defined in Section 16.3.

1.156. “Transaction Documents” mean, collectively, the IF Transaction Documents and the HCC Transaction Documents.

1.157. “Unavoidable Delay” is defined in Section 3.3(a).

1.158. “Work” means all work, services and activities to be performed, furnished, provided, or undertaken by or on behalf of Lead Developer under this Agreement, including but not limited to the activities in Appendix B-1 and Appendix B-2.

1.159. “Work Materials” means all studies, analyses, models, applications, reports, permits, plans, drawings, designs, drawings, specifications, blueprints, studies, memoranda, computation sheets, pro-forma assumptions, financial methodologies, computer files and media, or other documents, original works of authorship and similar work product, whether in digital or any other format, generated by or for the Lead Developer in performing the Work.

1.160. “Work Product Payment” is defined in Section 16.3(a).

2. PREDEVELOPMENT GUIDELINES

2.1. Predevelopment Approach. During the PDA Term, each Party will diligently and collaboratively work to develop the Project, with City performing its obligations as described in Section 8 below, and Lead Developer performing all other predevelopment activities required to allow for IF Financial Close no later than April 30, 2024, and Substantial Completion of the Infrastructure Facility within the Fixed Budget Limit no later than the Outside Delivery Date, and timely Substantial Completion of the Housing and Commercial Component. The commercial and financing structure for the Project shall not expose City to any interface or integration risk relating to the Project's physical and operational components, or resulting from the use, if specifically permitted by this Agreement, of multiple entities and contracts to deliver the Project. Lead Developer's predevelopment activities shall fulfill the Project's objectives set forth in Appendix D ("**Project Objectives**") and conform to the Technical Requirements and the requirements of this Agreement.

2.2. Incorporation of Elements of RFP and Proposal.

(a) The Technical Requirements and Project Objectives, which comprised a portion of the RFP, and portions of the Proposal are attached to and incorporated in this Agreement, provided that:

(i) if there is any conflict between the Technical Requirements or the Project Objectives and the body of this Agreement, then the terms of the body of this Agreement shall govern;

(ii) if there is any conflict between Appendix B-1, Appendix B-2 or the Technical Requirements and the Project Objectives, then Appendix B-1, Appendix B-2 and the Technical Requirements shall govern; and

(iii) if there is any conflict among the portions of the Proposal attached to and incorporated into this Agreement and the body of this Agreement, Appendix B-1, Appendix B-2, the Technical Requirements or the Project Objectives, then the body of this Agreement, Appendix B-1, Appendix B-2, the Technical Requirements and the Project Objectives shall govern, except as otherwise approved by City in writing, which approval shall be at City's sole discretion, and provided that if City determines, in its sole discretion, that the Proposal contains a provision that is more beneficial to City than is specified elsewhere in this Agreement, then that provision shall take precedence.

(b) Lead Developer acknowledges City's execution of this Agreement with portions of the Proposal attached to and incorporated in this Agreement as appendices shall not in and of itself serve as City's approval to any variance between the Proposal and any aspect of this Agreement.

(c) City will not be responsible for any errors, omissions, inaccuracies or incomplete statements in the Proposal, and the incorporation of the Technical Proposal and the Financial Proposal in this Agreement does not constitute any statement or determination as to their compliance with the Technical Requirements or the Project Objectives.

(d) With the exception of the Fixed Budget Limit, the LD Predevelopment Cost, the PCIC, PCIC(Max), PCIC(Dis), and the PCIH, the Parties acknowledge that the financing assumptions for the Infrastructure Facility and the Housing and Commercial Component included in the Financial Proposal are indicative in nature and subject to development during the PDA Term.

(e) City's interim or final answers to the questions or requests for clarifications (RFCs) posed during the Proposal process for this Agreement shall in no event be deemed part of the Agreement and shall not be relevant in interpreting the Agreement except and solely to the extent as they may clarify provisions otherwise considered ambiguous by City, in its sole discretion. Except to the

extent incorporated into this Agreement in accordance with Section 2.2(a), the RFP shall not be relevant in interpreting this Agreement.

(f) *[Notwithstanding anything to the contrary in this Agreement, City conditionally approved the alternative to the Technical Requirements described in _____ of the Proposal (the “Alternative Technical Concept”) on the following conditions (collectively, the “ATC Conditions”): (i) Lead Developer must obtain all General Regulatory Approvals and any other approvals required for the Alternative Technical Concept, (ii) the Alternative Technical Concept must be consistent with the Project description in the Draft EIR, subject to the review and findings of the Planning Department, (iii) the Alternative Technical Concept must comply with the requirements of this Agreement and be consistent with Technical Requirements and Project Objectives, except as otherwise approved by City in writing, which approval shall be at its sole discretion, (iv) Lead Developer must be able to implement the Alternative Technical Concept within the Fixed Budget Limit, and (v) [_____ (add any conditions specified during RFP process)]. Lead Developer is authorized to pursue the Alternative Technical Concept for the Project as long as Lead Developer is able to comply with all of the ATC Conditions. If City reasonably determines any of the ATC Conditions will not be timely met to allow IF Financial Close by April 30, 2024, and Substantial Completion of the Infrastructure Facility by the Outside Delivery Date, then as soon as City makes that determination, City has the right to require Lead Developer to perform the Work without the Alternative Technical Concept and to pursue the delivery of the Project in compliance with all the Technical Requirements, without being entitled to any increase in the Fixed Budget Limit or the LD Predevelopment Cost, any extension to the Outside Delivery Date, or any payment or other relief.]*

2.3. Prior Costs and Predevelopment Costs. Before the Effective Date, City, Lead Developer and the Lead Developer Agents devoted time, effort, and financial resources with respect to the Project. City performed due diligence, submitted and pursued certain Regulatory Approval applications, and issued the RFQ and the RFP, and Lead Developer submitted a statement of qualifications in response to the RFQ and submitted the Proposal in response to the RFP. The Parties also anticipate that during the PDA Term, City, the City Agents, Lead Developer, and the Lead Developer Agents will devote substantial time, effort, and financial resources as required in this Agreement. The Parties are willing to engage in these PDA Term activities subject to the terms and conditions set forth in this Agreement. Each Party shall bear its own costs; provided, however, that if any Commercial Close occurs, the applicable Transaction Documents will require the Principal Project Company and the Housing Project Company, as applicable, to reimburse the Parties as set forth in this Section 2.3.

(a) City’s Prior Cost. None of the costs incurred by City with respect to the Project prior to the Effective Date will be reimbursed to City.

(b) Lead Developer Prior Cost. None of the costs incurred by Lead Developer or any of the Lead Developer Agents with respect to the Project prior to the Effective Date will be recovered as a direct reimbursement.

(c) City Predevelopment Cost. The “**Reporting Date**” means the ____ Business Day before the Commercial Close, and the “**City Predevelopment Cost**” means City’s direct and indirect costs related to the development of the Project and its obligations under this Agreement and any Early Works Agreements between the Effective Date and the Reporting Date. On the Reporting Date, City will notify Lead Developer of the total amount of the City Predevelopment Cost as of the Reporting Date. At the HCC Financial Close, the Housing Project Company will be required to reimburse City by an amount equal to the City Predevelopment Cost multiplied by the PCIH, which will be allocated to the Housing and Commercial Component. At City’s election, at the IF Financial Close, the Principal Project Company will be required to reimburse City by an amount equal to the City Predevelopment Cost multiplied by the PCIC, which will be allocated to the Bus Yard Component.

(d) LD Predevelopment Cost. During the PDA Term, Lead Developer will bear its direct and indirect costs related to the development of the Project and its obligations under this Agreement at its sole cost (the “**LD Predevelopment Cost**”); provided, however, that at the IF Financial Close, the Principal Project Company will be required to reimburse Lead Developer by an amount equal to the LD Predevelopment Cost (as described in FS Form A5 of the Financial Proposal and as adjusted through the PDA Term as specified in this Agreement) minus the amount of the Continuation Payment, and allocate the amount equal to the LD Predevelopment Cost multiplied by the PCIH to the Housing and Commercial Component and allocate an amount equal to the LD Predevelopment Cost multiplied by the PCIC to the Bus Yard Component.

2.4. Risk Allocation.

(a) Preliminary Term Sheet; HCC Term Sheet. The risks assigned to each Party with respect to designing, building, and financing the Infrastructure Facility, the long-term Infrastructure Facility Maintenance, and the physical and operational interface and integration of Infrastructure Facility and the Housing and Commercial Component, are described in the Preliminary Term Sheet. The Preliminary Term Sheet will be the basis for allocating Project risks in the Project Agreement and any other applicable IF Transaction Documents. The HCC Term Sheet will be the basis for allocating Project risks in the HCC Agreement.

(b) Integration and Interface Risks. While Lead Developer may form a Principal Project Company to develop the Infrastructure Facility, and a separate Housing Project Company to develop the Housing and Commercial Component, and may procure a design-build contractor for the Infrastructure Facility and a different design-build contractor for the Housing and Commercial Component, all risks relating to the physical and operational interface and integration of the various elements of the Facility, and all risks arising from the use, if specifically permitted by this Agreement, of multiple entities and contracts to deliver the Project, shall be allocated to Lead Developer, the Principal Project Company and the Housing Project Company under the Project Agreement and the HCC Agreement and under no circumstances shall City bear any such risks.

2.5. Fixed Budget Limit; Adjustments; Allowances; Submittals.

(a) Fixed Budget Limit. Lead Developer has committed to a maximum amount for the design and construction costs and Infrastructure Facility Maintenance costs of the Infrastructure Facility, together with the LD Predevelopment Cost, as specified in FS Form A7 of the Financial Proposal (the “**Fixed Budget Limit**”). The Fixed Budget Limit is subject to adjustment from the Commencement Date through to Performance Milestone 27A in accordance with Section 2.5(b), (c), (d) and (e). City will exercise reasonable effort to provide notice of changes prior to Performance Milestone 27A.

(b) Increases to Fixed Budget Limit. The Fixed Budget Limit may be increased to account for increases in the design and construction costs or the Infrastructure Facility Maintenance costs of the Infrastructure Facility, and to account for increases in the LD Predevelopment Cost due only to increased design costs related to the Infrastructure Facility incurred during the PDA Term, due to the following only:

(i) City Proposed Change. City amends the Agreement through a City Proposed Change under Section 9.3, including any City Proposed Change to the Technical Requirements to add any additional scope item Allowance described in FS Form D, other than Allowances relating to escalation or insurance;

(ii) LD Proposed Change. City accepts an LD Proposed Change due to:

A. A change in Applicable Law that occurs within the period commencing 30 days before the Proposal Due Date and ending at Performance Milestone 27A;

B. Project Site conditions revealed through Lead Developer's due diligence investigation of the Project Site differ materially from the conditions disclosed in the Reference Documents; or

C. The Planning Commission, the SFMTA Board, or the Board of Supervisors imposes Regulatory Approval conditions on the Infrastructure Facility or Infrastructure Facility Maintenance.

(iii) LBE Changes. LBE Plan requirements that differ from the assumed LBE percentage goals and objectives stated in Technical Submittal 28 of the Technical Proposal, provided that Lead Developer must reasonably demonstrate the increased costs caused by the differing LBE Plan requirements, using the same qualitative and quantitative methodologies that were used to calculate the costs of the LBE percentage goals and objectives described in Technical Submittal 28.

(iv) Changes to PCIC. The PCIC changes due to a change in the actual gross square footage of the Bus Yard Component or the Housing and Commercial Component from that anticipated in the Technical Proposal and Financial Proposal.

(c) No Other Increases to Fixed Budget Limit. The Fixed Budget Limit will not be adjusted to reflect any increases in the cost to design and build the Infrastructure Facility or to perform the Infrastructure Facility Maintenance, except as specified in Section 2.5(b), unless City provides its consent, in City's sole discretion.

(d) Reductions to Fixed Budget Limit. City anticipate that, as the Work progresses, the design and construction costs and the Infrastructure Facility Maintenance costs of the Infrastructure Facility, and consequently the Fixed Budget Limit, will trend downward from the Fixed Budget Limit set forth in the FS Form A7 of the Financial Proposal. In addition, the Fixed Budget Limit will be reduced to account for reductions in the design and construction costs, or the Infrastructure Facility Maintenance costs, of the Infrastructure Facility, arising from changes to the Project made prior to Performance Milestone 27A, including due to: (i) City Proposed Changes, (ii) LD Proposed Changes accepted by the City, (iii) LBE Plan requirements differing from the LBE assumptions given in Technical Submittal 28 of the Technical Proposal, and (iv) PCIC changes due to a change in the actual gross square footage of the Bus Yard Component or the Housing and Commercial Component from that anticipated in the Technical Proposal and Financial Proposal.

(e) Submittals, and Process for Adjustments to Fixed Budget Limit.

(i) Fixed Budget Limit Forms. At Performance Milestone 15 and Performance Milestone 27A, Lead Developer must submit updated versions of FS Forms A1, A2, A3, A4, A5, A7 and A8 and FS Form B to the Financial Proposal, a full and detailed cost estimate in accordance with Attachment 2 to Appendix B-2, a summary schedule in accordance with Appendix B-2 and in the same format as Appendix H, and a risk register in accordance with Appendix B-2. Such updated versions will reflect the following:

A. The updated costs to design and build the Infrastructure Facility and provide the Infrastructure Facility Maintenance, including any changes in costs to the extent arising from the circumstances described in Section 2.5(b) and Section 2.5(d), and updates to the LD Predevelopment Cost, if any, as expressly permitted by this Agreement; and

B. Any change in the actual gross square footage of the Bus Yard Component or the Housing and Commercial Component.

(ii) If the materials submitted pursuant to Section 2.5(e)(i) at Performance Milestone 15 and Performance Milestone 27A are approved by City and show any change in the cost to design and

build the Infrastructure Facility or perform the Infrastructure Facility Maintenance due to any of the matters described in Section 2.5(b) or Section 2.5(d), or any change to the LD Predevelopment Cost expressly permitted by this Agreement, or any change to the actual gross square footage of the Bus Yard Component or the Housing and Commercial Component from that anticipated in the Technical Proposal and Financial Proposal, the Fixed Budget Limit will be modified accordingly at Performance Milestone 16 and at Performance Milestone 28 to be the amount shown in the updated version of FS Form A7 submitted by Lead Developer at Performance Milestone 27A.

(f) Allowances Cost Estimates.

(i) Updates to Form D. At Performance Milestone 15 and Performance Milestone 27A, Lead Developer must submit updated versions of FS Form D to the Financial Proposal and cost estimates in the same format as Attachment 2 to Appendix B-2. The updated information for the Allowance cost estimates shall also be clearly identified in each submission of the Design Deliverables to City (draft and final), as shown in Appendix B-1. The updated version of FS Form D submitted at Performance Milestone 15 must include an explanation for any differences from the Allowance amounts set forth in FS Form D of the Financial Proposal. The updated version of FS Form D submitted at Performance Milestone 27A must include an explanation for any differences from the Allowance amounts set forth in FS Form D submitted at Performance Milestone 15. If any Allowance prices exceed the applicable Allowance amounts in FS Form D of the Financial Proposal, Lead Developer shall propose design strategies and changes to the relevant scope(s) and/or technical requirement(s) to bring them back within the Allowance amounts stated in FS Form D of the Financial Proposal.

(ii) Insurance. At Performance Milestone 15 and Performance Milestone 27A Lead Developer must submit, at item (g) in Part I and item (c) in Part III of FS Form D, its reasonable estimate of the cost of the insurance that will be required for the design and construction of the Infrastructure Facility and the Infrastructure Facility Maintenance, respectively (the “Required Insurance”). If the Principal Project Company will self-perform the Infrastructure Facility Maintenance, then at Performance Milestone 32, Lead Developer must submit to City an updated version of FS Form D submitted at Performance Milestone 27A, with the only change being to item (c) in Part III of FS Form D showing the actual cost of the Required Insurance for the Infrastructure Facility Maintenance.

(iii) Escalation. At Performance Milestone 15 and Performance Milestone 27A, Lead Developer must submit, at item (h) in Part I of FS Form D, updated escalation amounts based on a 3.6% escalation rate with an assumed mid-point of construction of October 31, 2025.

(g) Sum of Fixed Budget Limit, Insurance, Escalation. At Performance Milestone 15 and Performance Milestone 27A, Lead Developer must submit FS Form A8 setting forth the sum of the updated Fixed Budget Limit, plus insurance costs, plus the escalation amount.

2.6. Allocation of Common Infrastructure Costs. “**Common Infrastructure Costs**” means the total costs (including those costs incurred during the PDA Term) to design and build the Common Infrastructure and perform the Infrastructure Facility Maintenance with respect to the Common Infrastructure. The percentage of Common Infrastructure Costs that will be allocated to City under the Transaction Documents (“**PCIC**”) is stated in the FS Form B of the Financial Proposal (the “**Original FS Form B**”); provided, however, that if the gross square footage of the Bus Yard Component or the Housing and Commercial Component changes from the gross square footage set forth in the Technical Proposal and Financial Proposal, the PCIC(Max) and the PCIC shown in the Original FS Form B will be adjusted accordingly at Performance Milestone 27A. In calculating any PCIC adjustment at Performance Milestone 27A, there shall be no change in the PCIC(Dis) from that described in Original FS Form B, except that if as a result of an HCC Change pursuant Section 9.2 the Project is modified to only be comprised of the Bus Yard Component, then the PCIC(Dis) shall be zero.

City will compensate the Principal Project Company for delivering the Infrastructure Facility and performing the Infrastructure Facility Maintenance, adjusted by the PCIC, via an industry-standard, performance-based regime of Availability Payments during the Infrastructure Facility Term. The Housing Project Company will pay for its share of the annual cost of Infrastructure Facility Maintenance, based on the PCIH, starting on Substantial Completion of the Infrastructure Facility or on such other date as mutually agreed by the Parties. and every year thereafter for the Housing Term.

2.7. Diligent and Good Faith Efforts. Subject to each Party's termination rights under the terms of this Agreement, each Party agrees to diligently and in good faith pursue to completion all of its respective obligations under this Agreement during the PDA Term. Lead Developer agrees to commit the financial and personnel resources reasonably required to fulfill its obligations under this Agreement, and pay all costs it incurs to fulfill its obligations under this Agreement. City agrees to commit the personnel resources reasonably required to fulfill its obligations under this Agreement.

2.8. Standard of Care. Each Party agrees to perform, and to cause its Agents to perform, its obligations under this Agreement in accordance with accepted standards of professional practice that are applicable to other projects of similar size and complexity in the San Francisco Bay Area. This standard of care shall apply to and define all professional obligations provided by licensed professionals for any of the Work Materials.

2.9. Suspension of Obligations. If a Party cannot timely satisfy any obligation under this Agreement solely because the other Party's failure to timely comply with its obligations under this Agreement, the affected obligation of the first Party will be suspended until the other Party performs the unperformed obligation that is precluding or preventing the first Party's performance, with a corresponding extension to the Performance Date for any Performance Milestone the first Party is precluded or prevented from timely performing solely due to the other Party's failure. The first Party must continue to perform all of its other obligations under this Agreement to the extent they are not precluded or prevented by other Party's failure.

2.10. Exclusive Negotiations; City's Reserved Rights. City will not solicit or consider any other proposals or negotiate with any other party with respect to developing or using the Project Site without Lead Developer's consent; provided, however, that City reserves the right, in its sole discretion but subject to Section 9.3, to take or not take, any or all of the following actions at any time:

(a) Enter into agreements for the use, occupancy, maintenance or repair of all or any portion of the Project Site as long as they do not prevent Lead Developer from conducting due diligence investigations of the Project Site that are reasonably needed for the Project, permanently alter the condition of the Project Site, and expire or are terminable by City without penalty, cost or expense to Lead Developer before Commercial Close. Lead Developer acknowledges the Project site is being used for transit operations and it will need to schedule its due diligence activities in a manner that does not unreasonably interfere with those operations.

(b) Waive, extend or conditionally extend the time to complete the various Performance Milestones by the applicable dates set forth in Appendix B-1 attached hereto (the "**Performance Dates**"), subject to the requirements of Section 3.2 with regard to extending any of the Performance Milestones beyond the Predevelopment Period.

(c) Expand or contract the scope of the Project by altering the Technical Requirements to respond to new information, community, regulatory or environmental issues, or opportunities to reduce costs to City or to enhance community benefits.

In addition, if negotiations with Lead Developer under this Agreement are unsuccessful or do not lead to approval of the Transaction Documents by the Director of Transportation or, as applicable, the SFMTA Board, the Board of Supervisors, or any other City commission or board within the PDA Term, City has the right to negotiate with another developer for the development of the Project Site, to elect not to pursue any project at the Project Site, or to undertake other efforts with the Project Site including pursuing a new procurement or issuing a new request for proposals. Lead Developer agrees that if this Agreement terminates on its own terms, City shall have the right to elect to negotiate with another Short-Listed Proposer or to reprocur the Project.

2.11. Proprietary or Confidential Information.

(a) Lead Developer Information. The Parties enter into this Agreement with the understanding that in the course of the negotiations City may require that Lead Developer provide certain information that is proprietary. Such information may be necessary for City to verify financial, operational or trade secret information that is relevant to the negotiations of the Transaction Documents that will serve the public interest and the economic feasibility of the Project. Lead Developer will provide such information, and with respect to such information Lead Developer reasonably designates as confidential trade secret or proprietary information, Lead Developer will clearly identify, in writing and with specificity, the materials it believes to be confidential trade secret or proprietary information and the provision of the Public Records Act and the Sunshine Ordinance that it believes to provide an exemption to disclosure (the “**LD Confidential Information**”). City shall not publicly disclose LD Confidential Information without Lead Developer’s consent except to the extent City is compelled to make such a disclosure under Applicable Law. Lead Developer acknowledges that regardless of its determination that any information or materials are confidential trade secret or proprietary information, City must make its own determination of whether the LD Confidential Information or other information or materials are confidential trade secret or proprietary or are subject to disclosure under existing law.

City agrees to notify Lead Developer of any public records request that involves LD Confidential Information. Lead Developer agrees to bear all the costs of any litigation that is filed to determine the applicability of the public records law to documents submitted by Lead Developer and designated as LD Confidential Information under this Section. Lead Developer acknowledges that the drafts of the Transaction Documents and other Work Materials during negotiations and other correspondence between Lead Developer and City may be public records.

(b) City Information. Lead Developer understands and agrees that, in the performance of the Work or in contemplation thereof, Lead Developer may have access to private or confidential information that may be owned or controlled by City (“**City Confidential Information**”). The City Confidential Information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to City. Lead Developer shall exercise the same standard of care to protect the City Confidential Information as a reasonably prudent developer would use to protect its own proprietary data.

Lead Developer agrees to hold any City Confidential Information it receives from or creates under this Agreement in strictest confidence and used only in the performance of the Work. Lead Developer shall not use or disclose any City Confidential Information or other City data it receives under this Agreement (“**City Data**”) except as permitted or required by the Agreement or as otherwise authorized in writing by City. Any work using, or sharing or storage of, City Confidential Information outside the United States is subject to prior written authorization by City. Access to City Confidential Information must be strictly controlled and limited to Key Personnel on a need-to-know basis only. Lead Developer is provided a limited non-exclusive license to use the City Data or Confidential Information solely for performing the Work and not for Lead Developer’s own purposes or later use. Nothing herein shall be construed to confer any license or right to the City Data or City Confidential Information, by

implication, estoppel or otherwise, under copyright or other intellectual property rights, to any third party. Unauthorized use of City Data or City Confidential Information by Lead Developer, the Lead Developer Agents or other third parties is prohibited. For purpose of this requirement, the phrase “unauthorized use” means the data mining or processing of data, stored or transmitted by the service, for commercial purposes, advertising or advertising-related purposes, or for any purpose other than security or service delivery analysis that is not explicitly authorized.

On any termination of this Agreement (unless this Agreement is terminated due to the full execution of the Project Agreement) or at City’s request, Lead Developer shall, within forty-eight (48) hours, return all City Confidential Information which includes all original media. Once Lead Developer has received written confirmation from City that all the City Confidential Information has been successfully transferred to City, Lead Developer shall within ten (10) Business Days purge all the City Confidential Information from its servers, any hosted environment Lead Developer has used in performance of this Agreement, work stations that were used to process the data or for production of the data, and any other work files stored by Lead Developer in whatever medium. Lead Developer shall provide City with written certification that such purge occurred within five (5) Business Days of the purge.

3. TERM; PERFORMANCE DATES

3.1. PDA Term; Predevelopment Period Extensions. The term of this Agreement (the “**PDA Term**”) will commence on the Effective Date and will expire on the earlier date (the “**Expiration Date**”) to occur of the Commercial Close and the expiration of the Predevelopment Period, subject to earlier termination as provided in this Agreement. The Parties obligations under this Agreement will terminate on the termination of this Agreement, subject to any obligations that expressly survive such termination.

The Predevelopment Period can only be extended with the written consent of both Parties, which consent shall not be unreasonably withheld, conditioned or delayed; provided, however, that a non-requesting Party has the sole discretion to withhold or condition its consent to the other Party’s Predevelopment Period extension request if the requesting Party is in default of its obligations under this Agreement at the time of submitting the extension request. A Party requesting a Predevelopment Period extension shall do so by delivering written notice of that extension request (an “**Extension Request**”) to the other Party. The non-requesting Party must respond in writing to an Extension Request within ten (10) Business Days of receiving of an Extension Request. If the non-requesting Party withholds its consent to an Extension Request, the requesting Party has the right to request a meeting of the Parties to discuss the matter by delivering a written meeting request to the non-requesting Party within ten (10) Business Days of receiving the non-requesting Party’s written notice of withholding its consent to the Extension Request. If the requesting Party timely delivers the meeting request to the non-requesting Party, the Parties must meet to discuss the Extension Request at a mutually-agreeable time within ten (10) Business Days of the non-requesting Party’s receipt of the meeting request. If the non-requesting Party does not agree to the Extension Request after that meeting, the Predevelopment Period will not be extended pursuant to that Extension Request.

3.2. Performance Milestones.

(a) **Compliance.** Each of the performance milestones (“**Performance Milestones**”) are described in the attached Appendix B-1, which also establishes the dates for completing the Performance Milestones. The Parties established the Performance Milestones to ensure that the Commercial Close occurs on or before the expiration of the Predevelopment Period, the Substantial

Completion of the Infrastructure Facility occurs no later than the Outside Delivery Date, and the Substantial Completion of the Housing and Commercial Component timely occurs. During the PDA Term, subject to City's delivery of the applicable Notice to Proceed to Lead Developer pursuant to Article 4, the Lead Developer agrees to diligently pursue to completion the Performance Milestones in the manner and by the Performance Dates described in attached Appendix B-1. "Performance Milestones" shall include any additional Performance Milestones specified by the Parties in writing and "Performance Dates" shall include the performance dates mutually established by the Parties for those additional Performance Milestones.

Lead Developer's compliance with the Performance Milestones by the applicable Performance Dates shall not alter or reduce its obligations to comply with any other provision of this Agreement. The Performance Milestones shown in the attached Appendix B-1 can be changed by the mutual agreement of Lead Developer and City. It is anticipated that the PDA Management Plan could contain additional Performance Milestones and Performance Dates and propose other changes to Appendix B-1, all without increasing the LD Predevelopment Cost or changing the Predevelopment Period.

(b) Phase 2 Floating Milestone. The Performance Milestones include a "**Phase 2 Floating Milestone**", which will be achieved upon the last to occur of the following (the "**Floating Milestone Date**"): (i) the Planning Commission has certified the EIR and approved, or recommended to the Board of Supervisors for approval as applicable, the special use district, conditional use authorization, General Plan Referral, and related General Plan amendments (the "Phase 2 Entitlements") needed to construct and operate the Facility as stated in the Draft EIR project description or as otherwise mutually agreed to by the Parties; (ii) if the Planning Commission certification of the EIR is appealed, the Board of Supervisors, in its sole discretion, has adopted findings to affirm the Planning Commission's certification of the EIR; (iii) the Board of Supervisors has, in its sole discretion and as applicable, adopted legislation and findings to approve any Phase 2 Entitlements that require the approval of the Board of Supervisors to be effective, and (iv) the approvals and legislation described in the foregoing (i) through (iii) are effective.

3.3. Unavoidable Delays and Regulatory Appeal Delays.

(a) Unavoidable Delay. "**Unavoidable Delays**" means delays in the timely completion of a Performance Milestone by reason of enemy action, civil commotion, epidemics, pandemics, and related governmental orders and requirements (and private sector responses to comply with those orders and requirements), strikes, lockouts or other labor disputes, protests, riots, demonstrations, acts of God, or by any other similar reason without the fault and beyond the reasonable control of the Party meeting that Performance Milestone. Unavoidable Delays shall not include any Regulatory Appeal Delay or any delays under any Early Works Agreement.

(b) Regulatory Appeal Delay. "**Regulatory Appeal Delay**" means any delays arising from a proceeding or administrative appeal before any court, tribunal, or other judicial, adjudicative, or legislative decision-making body that challenges the validity of any Regulatory Approval if the pendency of the proceeding or appeal is reasonably likely to prevent the Parties from timely entering into the Transaction Documents. A Regulatory Appeal Delay includes litigation related to the approval of any of the Transaction Documents by the SFMTA Board or, as applicable, the Board of Supervisors, or any other City commission or board. Regulatory Appeal Delays exclude any action or proceeding brought by any Lead Developer Affiliate or their Affiliates, any Lead Developer Agents, or any other third party assisted directly or indirectly by Lead Developer.

(c) Performance Extension. If Lead Developer is unable to timely satisfy any Performance Milestone because of an Unavoidable Delay or a Regulatory Appeal Delay, except as otherwise described below, Lead Developer can extend the period for completing that Performance Milestone (a "**Performance Extension**") by giving notice to City (the "**Extension Notice**") within five

(5) Business Days of Lead Developer first learning of that Unavoidable Delay or Regulatory Appeal Delay. The Extension Notice must describe the Unavoidable Delay or Regulatory Appeal Delay, as applicable, describe how it immediately affects the timely performance of Lead Developer's obligations under the applicable Performance Milestone, and provide Lead Developer's good faith estimate of the dates by which it will be able to satisfy the affected Performance Milestone(s) immediately affected by that Unavoidable Delay or Regulatory Appeal Delay, as applicable, provided that the estimate shall not extend the Performance Date for completing any of Performance Milestones beyond the Predevelopment Period (as may be extended by the Parties pursuant to Section 3.1).

If Lead Developer delivers an Extension Notice to City, the Performance Dates for Lead Developer's satisfaction of the Performance Milestones affected by the Unavoidable Delay or Regulatory Appeal Delay described in the Extension Notice will be extended to the dates specified in the Extension Notice (but no later than the expiration of the Predevelopment Period as may be extended pursuant to Section 3.1) unless Lead Developer delivers an Extension Notice to City and any of the following applies:

(i) On or before the tenth (10th) day following City's receipt of the Extension Notice, City notifies Lead Developer in writing that there is no basis for a Performance Extension under the criteria set forth in this Section for a Performance Extension; or

(ii) A Terminating Event has occurred.

Except for the changes in the Performance Dates for the Performance Milestones affected by an Unavoidable Delay or Regulatory Appeal Delay (which shall not be extended beyond the Predevelopment Period), all other terms and conditions of the Agreement will remain in full force and effect during a Performance Extension. Any Party that is unable to timely achieve any Performance Milestone it is required to meet due to an Unavoidable Delay or Regulatory Appeal Delay must proceed with due diligence to resolve the matters causing the Unavoidable Delay Event or Regulatory Appeal Delay to the extent reasonably possible and, once resolved, to use commercially reasonable efforts to achieve the affected Performance Milestone as soon as possible.

4. PDA PHASES; NOTICES TO PROCEED

4.1. Performance. Lead Developer shall perform, and cause the Lead Developer Agents, as applicable, to perform, the Work in compliance with all the terms and conditions of this Agreement. The Work is to be performed in the three phases (each, a "**PDA Phase**") described in the attached Appendix B-1, with each PDA Phase only commencing if City, in its sole discretion, issues a written notice to proceed (a "**Notice to Proceed**") to Lead Developer for that PDA Phase. Lead Developer is not authorized to perform Work for any PDA Phase until City delivers a Notice to Proceed to Lead Developer for that PDA Phase. In addition, if the Floating Milestone Date occurs, Lead Developer is not authorized to perform any further PDA Phase 2 Work after the Floating Milestone Date unless City delivers a Notice to Proceed for the remaining PDA Phase 2 Work. Notwithstanding anything to the contrary in the two preceding sentences, Lead Developer may elect to perform Work for a PDA Phase before receiving a Notice to Proceed for that PDA Phase, or before receiving a Notice to Proceed for the remaining PDA Phase 2 Work after the Floating Milestone Date occurs, at the risk of not receiving any Termination Payment for that Work if City terminates this Agreement before delivering the applicable Notice to Proceed to Lead Developer.

4.2. Notices to Proceed; Decision Not to Proceed

(a) Notice to Proceed #1. City will deliver Notice to Proceed #1 of Appendix B-1 to Lead Developer within five (5) Business Days of the last to occur of (i) the full execution and delivery of

this Agreement, (ii) the full execution and delivery of the Guaranty; (iii) Lead Developer's delivery of the evidence of insurance required in Article 17 and any other materials reasonably required by City, and (iv) Lead Developer becoming a City vendor with a valid business tax registration number from the Business Tax Division of the San Francisco Tax Collector.

(b) Additional Notices to Proceed. City can elect, in its sole discretion, to issue to Lead Developer a Notice to Proceed #2 as described in Appendix B-1 for PDA Phase 2 after City has issued a Notice of Acceptance with respect to PDA Phase 1, subject to any suspension of the PDA Phase 2 Work pursuant to Section 4.2(d). City can elect, in its sole discretion, to issue to Lead Developer a Notice to Proceed #3 as described in Appendix B-1 for PDA Phase 3 after City has issued a Notice of Acceptance with respect to PDA Phase 2. The issuance of any Notice to Proceed shall not be deemed to excuse the continued compliance with the requirements for the issuance of any prior Notice to Proceed.

(c) Decision Not to Proceed. City has the sole discretion in determining whether to issue a Notice to Proceed for any of the PDA Phases. If City decides not to proceed with a PDA Phase, it must provide written notice of that decision to Lead Developer (a "**Discontinuation Notice**"), after which this Agreement will terminate in accordance with Article 16. Within fifteen (15) Business Days of receiving a Discontinuation Notice, Lead Developer will deliver all Work Materials that is in the possession of Lead Developer or the Lead Developer Agents and was not previously delivered to City.

(d) Suspension of PDA Phase 2; Continuation Payment.

(i) If the Floating Milestone Date occurs, then Lead Developer's obligation and authorization to perform the PDA Phase 2 Work shall automatically be suspended as of the Floating Milestone Date unless City elects, in its sole discretion, to issue a Notice to Proceed for the continuation of the PDA Phase 2 Work (a "Continuation Notice"). Within 45 Business Days of issuing a Continuation Notice, City shall make a payment of Four Million Dollars (\$4,000,000) (the "Continuation Payment") to Lead Developer in exchange for an executed release from Lead Developer satisfactory in form and substance to City. The executed release from Lead Developer shall release, waive, and discharge City and City Agents of and from all liabilities, obligations, claims, and demands whatsoever arising out of or under this Agreement for Work during the period beginning on the Effective Date and ending on the Floating Milestone Date. City's ability to issue the Continuation Notice is contingent on obtaining the authorizations described in Section 4.2(d)(ii).

(ii) City's payment of the Continuation Payment requires the prior authorization of both the SFMTA Board and the Board of Supervisors, each acting in their respective sole discretion.

(iii) If the Floating Milestone Date occurs and City obtains the authorizations described in Section 4.2(d)(ii), but does not elect to issue the Continuation Notice on or before the 30th day after the Floating Milestone Date (the "Outside Suspension Date"), then City must provide a Discontinuation Notice to Lead Developer within ___ Business Days after the Outside Suspension Date, after which this Agreement will terminate in accordance with Article 16.

(iv) If the Floating Milestone Date occurs but City does not obtain the authorizations described in Section 4.2(d)(ii) by the Outside Suspension Date, the Parties can mutually agree in writing to permit City to issue the Continuation Notice without any City obligation to make the Continuation Payment.

4.3. Acceptance of Work.

(a) Acceptance Request. Within five (5) Business Days of determining all the Work for a PDA Phase has been fully completed, including the delivery of the required Work Materials for that PDA Phase, Lead Developer will submit a written request (each, an "**Acceptance Request**") for

Acceptance of the PDA Phase specifying that the Work for that PDA Phase is completed and the date that Work was completed to City.

(b) Notice of Incompleteness. Within fourteen (14) Business Days of receiving an Acceptance Request, if City determines that the Work for the applicable PDA Phase is not complete or if additional information is required to determine if Acceptance should be granted, City must notify Lead Developer in writing of any outstanding Work that must be completed at no cost to City and any other outstanding issues (each, a “**Notice of Incompleteness**”). Lead Developer must promptly cure the deficiencies identified in the Notice of Incompleteness and submit a new Acceptance Request for that PDA Phase. The procedure in this subsection (b) shall be repeated until City is satisfied that all Work required for that PDA Phase has been completed in accordance with this Agreement and no further requirements must be met.

(c) Notice of Acceptance. City will issue a Notice of Acceptance for the Work in a PDA Phase if it has received an Acceptance Request for that PDA Phase and determines, in its sole discretion, that the Work for that PDA Phase is complete and the following conditions are met:

(i) Lead Developer has provided a certification that the Work for the applicable PDA Phase has been completed;

(ii) Lead Developer has delivered and City has, if applicable, approved in writing all Work Materials required for that PDA Phase under this Agreement;

(iii) Lead Developer has provided a signed statement under penalty of perjury and in form acceptable to City that all other debts and claims of all applicable Lead Developer Agents and suppliers relating to the Work for that PDA Phase and prior PDA Phases have been paid or settled and provided evidence that any Agents or suppliers that created the Work Materials have consented to those Work Materials being assigned to City if this Agreement terminates for any reason other than Commercial Close; and

(iv) All of Lead Developer’s other obligations relating to that PDA Phase have been satisfied in full or waived in writing by City.

5. TRANSACTION DOCUMENTS

5.1. Negotiating Principles.

(a) Coordination in Responses. Lead Developer shall ensure each draft of a Project Document, or each response to a draft Project Document, that Lead Developer delivers to City for review under this Agreement has been internally reviewed by the appropriate Lead Developer parties. City shall ensure each draft of a Project Document, or each response to a draft Project Document, that City delivers to Lead Developer for review has been internally reviewed by the appropriate City parties acting with respect to City’s rights and obligations under this Agreement.

(b) Good Faith Efforts. The Preliminary Term Sheet provides some of the terms to be incorporated in the Project Agreement and, as applicable, the other IF Transaction Documents except to the extent the Parties mutually agree to modify any of those terms. Section 6.9(d) provides some of the terms to be incorporated in the HCC Agreement and, as applicable, the other HCC Transaction Documents except to the extent the Parties mutually agree to modify any of those terms. City reserves the right, in its sole discretion, to modify the Preliminary Term Sheet (either through a revised Preliminary Term Sheet or through development of the Project Agreement) to reflect Proposal, the commercial/financial structure that is developed during the PDA Term and for impacts to the terms of the Preliminary Term Sheet arising out of the commercial/financial structure of the Housing and Commercial Component. If and to the extent that City does decide to modify this the Preliminary Term Sheet (either

through a revised Preliminary Term Sheet or through development of the Project Agreement), City will collaborate with Lead Developer on the modified terms. During the PDA Term, City and Lead Developer will each use commercially reasonable good faith efforts to negotiate the terms of the Transaction Documents. The obligation to negotiate in good faith requires the Parties to communicate with each other with respect to those issues for which agreement has not been reached, and in such communication to follow reasonable negotiation procedures, including meetings, telephone, virtual meetings, and correspondence.

(c) Meeting Schedule. The Parties must establish a schedule for weekly meetings, and for providing and reviewing various drafts of the Project Agreement, the HCC Term Sheet, and the other Transaction Documents. This schedule must reflect the Performance Dates for submitting the Project Agreement, the HCC Term Sheet and other Transaction Documents to the SFMTA Board for consideration, and the Outside Delivery Date. Lead Developer shall submit its proposed schedule to City by Performance Milestone 2. If the Parties cannot mutually agree on that schedule on or before by Performance Milestone 5 or any later date approved by City in writing, City can terminate this Agreement.

(d) Conformity. The Transaction Documents must conform to the Preliminary Term Sheet, the HCC Term Sheet requirements set forth in Section 6.9(d), the Technical Proposal, and the Financial Proposal, except to the extent the Parties mutually agree to revise them, and meet the requirements of this Agreement. The Transaction Documents must be mutually satisfactory to City and Lead Developer, and approved as to form by the Office of the City Attorney.

(e) Subject to Approvals. The negotiated form of each Transaction Document shall be subject to the completion of CEQA review and the Planning Commission's certification of the EIR, the Parties' successful negotiation of the final terms of all of the Transaction Documents (subject to an approved HCC Change pursuant to Section 9.2 to remove the Housing and Commercial Component), and approval of the negotiated Transaction Documents by the SFMTA Board and, as applicable, the Board of Supervisors and any other City board or commission, each acting in its sole discretion.

5.2. Transaction Documents.

(a) City will submit drafts of the Project Agreement and the HCC Agreement to Lead Developer by the applicable Performance Date specified in the Performance Milestones. City prepare the first drafts of all other Transaction Documents unless otherwise mutually agreed by the parties.

(b) If the Performance Milestones do not specify a Performance Date for delivering a specific Transaction Document (an "**Unspecified Document**"), City shall deliver the initial draft of that Unspecified Document by the date mutually, if any, selected by the Parties. If the Parties do not agree on a specific date, City will deliver the draft to Lead Developer by Performance Milestone 19.

(c) Each draft Transaction Document must incorporate the following to the extent applicable to that Transaction Document: (i) the Technical Requirements, (ii) the Project Objectives, (iii) the requirements of Section 6.5(c), Section 7.1, Section 7.2, and Section 15.1, (iv) the LBE Plan, (v) the Asset Management Program and Energy Management Program, (vi) the Fixed Budget Limit and the updated preliminary financial model for the design and delivery of the Infrastructure Facility and performance of the Infrastructure Facility Maintenance for the Infrastructure Facility submitted at Performance Milestone 32, (vii) require Substantial Completion of the Infrastructure Facility by the Outside Delivery Date, (viii) require that the Project be consistent with the Project description in the EIR and require the Principal Project Company to comply with and implement the MMRP, and (ix) the requirements listed in the attached Appendix M.

(d) As long as a Party complies with its obligations to negotiate in good faith under Section 5.1, timely submits the drafts of each Transaction Document it is required to submit to the other Party by the applicable Performance Date, timely provides its comments to the drafts of each Transaction Document submitted by the other Party by the applicable Performance Date, and for each draft Transaction Document incorporates or otherwise conforms the matters described in the foregoing sentence to the extent applicable, that Party will not be in default of its obligations under this Agreement by reason of the Parties' failure to mutually agree to the final form of any Transaction Document.

5.3. Approval of Project Agreement and Other Transaction Documents. The Parties acknowledge that the SFMTA Board and Board of Supervisors will, and other City boards or commissions may, need to approve the Project Agreement negotiated under this Agreement, and their approval may be required for the other Transaction Documents. Lead Developer understands and agrees that although the SFMTA is a department of the City, City staff and executives have no authority or influence over the SFMTA Board, the Board of Supervisors, or other City boards or commissions for approval of any Transaction Documents. Accordingly, there is no guarantee or a presumption that any Transaction Document negotiated by the Parties under this Agreement will be approved by the SFMTA Board, the Board of Supervisors or, if applicable, any other City board or commission. City's sole obligation under this Agreement with respect to the approval of the Transaction Documents shall be to negotiate in good faith with Lead Developer, review Lead Developer's timely submittals in good faith, provide any comments it is required to deliver to Lead Developer by the applicable Performance Date, and present and recommend any final negotiated Transaction Documents that are in the forms approved by the City Project Director and the LD Project Director to the SFMTA Board and the Board of Supervisors (and if applicable, any other City boards or commissions) for their review and consideration, acting in their respective sole discretion.

6. PREDEVELOPMENT WORK

6.1. Statement of Work.

(a) During the PDA Term, Lead Developer must conduct all predevelopment activities needed to (i) develop the Project in compliance with this Agreement and the PDA Management Plan approved by the City, (ii) reach Commercial Close before the expiration of the Predevelopment Period, (iii) reach IF Financial Close by April 30, 2024, (iv) reach Substantial Completion of the Infrastructure Facility in compliance with the requirements of this Agreement by the Outside Delivery Date, and (v) reach timely Substantial Completion of the Housing and Commercial Component in order to avoid delaying Substantial Completion of the Infrastructure Facility beyond the Outside Delivery Date and adversely impacting the SFMTA's operations at or use of the Bus Yard Component. Such activities include, but are not limited to, the predevelopment obligations described in this Article.

(b) As part of City's rights under Section 9.3, City may elect to change the Technical Requirements to include any or all of the additional scope item Allowances described in FS Form D, other than Allowances relating to escalation or insurance. Accordingly, Lead Developer shall also develop the scopes and technical requirements of the Allowances, using its best efforts to deliver each Allowance within the applicable cost estimate for that Allowance in FS Form D of the Financial Proposal.

6.2. PDA Phases. Lead Developer will deliver the Project Management Deliverables and Design Deliverables to City in the three phases described in the attached Appendix B-1 (each a "**PDA Phase**" and collectively, the "**PDA Phases**"). Lead Developer must timely deliver the Project Management Deliverables and Design Deliverables by the dates specified for them in the attached Appendix B-1 (as may be modified by Section 3.2), and prepare the other Work Materials in compliance with the PDA Management Plan schedule ("**Project Schedule**"). Any change in the initial Project Schedule from the schedule originally included in the Financial Proposal, and any change to the Project Schedule, will require written approval from the City.

6.3. Due Diligence Investigation. If City delivers Notice to Proceed #1 to Lead Developer, Lead Developer must duly execute and deliver to City the access agreement attached as Appendix L (“**Access Agreement**”) for its due diligence investigations at the Project Site, either by providing the number of original signed copies requested by City or signing the Access Agreement through DocuSign, under a multifactor authentication process initiated by City. City must duly execute the Access Agreement by the tenth (10th) Business Day immediately following its receipt of the Access Agreement executed by Lead Developer. Lead Developer and City will use the form of Access Agreement for any other due diligence activities proposed by Lead Developer at the Project Site that are not included in the first Access Agreement executed by the Parties.

Lead Developer must complete all due diligence that is reasonably needed to determine if the Project Site is appropriate for the Project in consideration of the Preliminary Term Sheet, the Fixed Budget Limit, and the other requirements specified in this Agreement. Such due diligence shall include the site due diligence investigations set forth in Appendix B-2, and shall include, but not be limited to, determining (i) the quality, nature, adequacy and physical condition of the Project Site, including all aspects of the existing improvements, the physical, geological and environmental condition of the Project Site (including soils and any groundwater), and the presence or absence of any hazardous materials in, on, under or about the Project Site, (ii) all title matters affecting the Project Site, (iii) the Applicable Law and private or public covenants, conditions and restrictions relating to the Project Site and its legal status, including, without limitation, the compliance of the Project Site or its operation, (iv) taxes, assessments, use permit requirements relating to the Project Site and the Project, and (iv) all other matters of material significance affecting the Project Site. Lead Developer shall submit the scope of its proposed due diligence investigation of the Project Site and the final reports, analyses, and materials it prepares and receives regarding the conditions described in (i) and (ii) of this paragraph to City by the applicable Performance Dates specified in the Performance Milestones.

All entries by Lead Developer or the Lead Developer Agents onto the Project Site to perform any testing, inspections, or other investigations will be made only at mutually agreeable times and pursuant to the terms and conditions of the Access Agreement. As specified in the Access Agreement, Lead Developer acknowledges the Project Site has active high voltage overhead lines and special clearance procedures and authorizations will be necessary before Lead Developer or the Lead Developer Agents can commence certain due diligence activities at the Project Site. Lead Developer is responsible for scheduling sufficient time to comply with these procedures and obtain these authorizations in order to timely commence and complete its due diligence investigations at the Project Site.

6.4. Compliance with Plans. The PDA Management Plan and the other plans described in Appendix B-2 must guide Lead Developer’s predevelopment activities and obligations for the Project during the PDA Term. If the PDA Management Plan and those other plans are approved by City through the process described in Appendix B-2, Lead Developer must promptly follow and comply with each of the processes and requirements described in them.

6.5. Design Development.

(a) Compliance of Design Deliverables. Every Design Deliverable must comply with the Technical Requirements and the requirements of Appendix B-2, regardless of any conflicts between the Technical Requirements and the Technical Concept Design submitted as part of the Proposal, unless City approves of any variance in writing, which approval will be in its sole discretion. Every Design Deliverable must maintain the Fixed Budget Limit. Lead Developer is solely responsible for

ensuring the Design Deliverables and all other Project design work performed by or for Lead Developer during the PDA Term complies with Applicable Law and the requirements and procedures of this Agreement. Lead Developer bears the risk of any of the Design Deliverables being incorrect or incomplete due to an incomplete and/or incorrect review, examination or investigation of the Project Site or its existing improvements as long as City gives Lead Developer adequate access to the Project Site for its due diligence investigations, subject to the limitations specified in Section 6.3 and the Access Agreement.

(b) Design Deliverable Analyses. In developing each Design Deliverable, Lead Developer must comply with the following:

(i) Incorporate and make design changes as needed to comply with the Technical Requirements without exceeding the Fixed Budget Limit.

(ii) Evaluate changes to the design that are directly related to material changes to the Technical Requirements implemented pursuant to Article 9. Lead Developer shall provide City with a cost and schedule impact analysis for each proposed material change to the Technical Requirements and a determination if these would increase or decrease the Fixed Budget Limit. As stated in Section 9.2, City retains sole discretion to propose, accept, or reject any changes to the Technical Requirements.

(iii) Evaluate development of the Allowance items and provide City with a full and detailed cost estimate in accordance with Attachment 2 to Appendix B-2, summary schedule in accordance with Appendix B-2 and in the same format as Appendix H, and risk register in accordance with Appendix B-2 relative to their corresponding cost estimates provided by Lead Developer in FS Form D of the Financial Proposal and a determination if these would increase or decrease the Fixed Budget Limit.

(c) Project Agreement. The Project Agreement must include substantially the same design submittal and review procedures and requirements for each subsequent design deliverable to be submitted by the Principal Project Company to City after Commercial Close, and shall follow the content and format requirements that shall be agreed by Lead Developer and City during the PDA Term. The Project Agreement design deliverables must comply with these design submittal and review requirements as stated in Appendix B-2 before they are submitted to City, acting in its regulatory capacity, for any site permit or construction permit.

6.6. Asset Management Program. Lead Developer must timely refine and finalize the scope of the Infrastructure Facility Maintenance and develop the Asset Management Program, as required in the PDA Management Plan and the attached Appendix B-2, all of which are subject to City's prior approval and must be performed in consultation with City. The Asset Management Program must be used by Lead Developer for the competitive bidding process for the Design-Build Contract and IFM Contract. As of Commercial Close, the implementation of the Asset Management Program will be part of the Principal Project Company's responsibilities under the Project Agreement during the Project's construction period and the Infrastructure Facility Term.

6.7. Energy Management Program. Lead Developer must develop an energy management program for the Facility ("**Energy Management Program**") in accordance with the requirements set forth in Appendix B-2 and in consultation with City. The Energy Management Program shall be consistent with good industry practice, Applicable Law, applicable standards and specifications. The Energy Management Program must be used by Lead Developer for the competitive bidding process for the Design-Build Contract and IFM Contract, all as part of the Asset Management Plan. As of the IF Commercial Close, the implementation of the Energy Management Program will be part of the Principal Project Company's responsibilities under the Project Agreement through the construction of the Infrastructure Facility and the Infrastructure Facility Term,s.

6.8. Project Financing. Lead Developer must competitively procure and obtain sufficient debt financing for the development and timely delivery of the Project consistent with the Financial Proposal and in compliance with the Financing Management Plan described in the attached Appendix B-2, if approved by City; provided that if a Lead Developer's finance plan for the Infrastructure Facility and the Housing and Commercial Component is approved by the City at Performance Milestone 34, Lead Developer must then competitively procure and obtain the debt financing described in that City-approved finance plan (the "**Finance Plan**").

6.9. HCC Predevelopment Work. Lead Developer must use commercially reasonable, good faith efforts to perform all predevelopment activities needed to timely develop, design, finance, fund, construct, operate and maintain the Housing and Commercial Component as described in the Technical Proposal (the "**Proposed HCC**"), as may be modified pursuant to Section 9.2. Such predevelopment activities include, but are not limited to, the activities described in this Section.

(a) HCC Interface Requirements. The Housing and Commercial Component must meet the following requirements (the "**HCC Interface Requirements**"):

(i) the Housing and Commercial Component must timely fund its share of the Common Infrastructure design, construction, operation and maintenance costs (based on PCIH);

(ii) the development, financing and construction of the Housing and Commercial Component must not delay the Substantial Completion of the Infrastructure Facility, which must occur by April 30, 2027; and

(iii) the construction of the Housing and Commercial Component must not interfere with or put at risk the Bus Yard Component or its transit operations, as determined by City. The following Housing and Commercial Component construction activities are examples of activities that City currently expects would interfere with or impede the SFMTA's transit operations after Substantial Completion of the Infrastructure Facility, however, City will reasonably consider any Lead Developer solutions to prevent such activities from interfering with or impeding SFMTA's transit operations:

A. Overhead hoisting of structural members, building equipment or construction materials;

B. Any disturbance or temporary obstruction of building access for individuals or SFMTA vehicles as a result of Housing and Commercial Component construction or staging of equipment or materials (a written request may be made to City for an exception at least six months in advance of any such proposed activity taking place, which City will review and respond in writing, in its sole discretion);

C. Any damage to the Infrastructure Facility resulting from ongoing Housing and Commercial Component construction; and

D. Any changes to the Infrastructure Facility building or systems or disturbance to active Infrastructure Facility building operations or building systems, as a result of Housing and Commercial Component design integration.

(b) HCC Development Plan. At the meeting described in Performance Milestone 1F, Lead Developer shall present its draft plan for (i) verifying feasibility and constructability of the Proposed HCC or any other housing that meets the Technical Requirements, (ii) securing Regulatory Approvals and financing for the Proposed HCC, and (iii) constructing and achieving Substantial Completion of the Proposed HCC in a manner that meets the HCC Interface Requirements; and (iii) performing the feasibility and financing analysis described in Section 6.9(g). The plan is subject to the review and

approval of City and the plan, if approved by City, will be the “**HCC Development Plan**”. The HCC Development Plan must include the HCC Schedule and the HCC Term Sheet and Lead Developer’s proposed collaborative approach to work with City to achieve the Proposed HCC in compliance with the HCC Interface Requirements. Lead Developer shall provide its draft HCC Term Sheet to City no later than thirty (30) days after the meeting described in Performance Milestone 1F.

(c) HCC Schedule. The “**HCC Schedule**” will be a schedule that provides the key Proposed HCC milestones and their timing, including but not limited to (i) the Parties’ review, negotiation and completion of the HCC Development Plan, the HCC Term Sheet, the HCC Agreement, and any other Transaction Documents required for the development, design, financing, construction, operation and maintenance of the Housing and Commercial Component, (ii) the dates for securing the needed Regulatory Approvals and financing, and (iii) the construction stages and milestones related to the Proposed HCC through its Substantial Completion, together with the anticipated Substantial Completion of the Infrastructure Facility. The HCC Schedule will also be used by the City to assist it with ensuring the development, financing, design and construction, of the Housing and Commercial Work will meet the HCC Interface Requirements and to help City plan for and manage its corresponding activities. The Lead Developer shall update and submit the HCC Schedule at regular intervals and, at a minimum, at Performance Milestones 16 and 28.

(d) HCC Term Sheet. The “**HCC Term Sheet**” will outline the key terms of the HCC Agreement, which must conform with the relevant provisions of the Proposal (unless otherwise agreed to or modified under Section 9.2 or through the final design process and approved by City) and the Technical Requirements. The HCC Term Sheet will be non-binding and conditioned on the completion of CEQA review and the Planning Commission’s certification of the EIR, the Parties’ successful negotiation of the Transaction Documents and, and approval of the negotiated Transaction Documents by the SFMTA Board and, as applicable, the Board of Supervisors and any other City boards or commissions, each acting in its sole discretion. Except as otherwise mutually agreed by the Parties, the HCC Term Sheet must reflect the Proposal, comply with the Project Objectives and the Technical Requirements for the Housing and Commercial Component, and address the following terms related to the Housing and Commercial Component:

- (i) A description of the real property interest in the parcel(s) (“**Premises**”) to be transferred to the Housing Project Company, which City will continue to own in fee;
- (ii) The approved activities at the Premises;
- (iii) A description of the Proposed HCC, including a summary of its size, layout, proposed buildings, and the private and public open spaces;
- (iv) The details of each building, including that building’s number of affordable residential units and any market rate units listed by bedroom type and Average Median Income tier, the proposed rent and tenant income level restrictions and utility allowances for the affordable residential units, the minimum and average size of residential units by bedroom type, the affirmative marketing strategy, tenant preferences, resident services plan, and management plan, the proposed location and square footage of commercial and other space, and the financing strategy for constructing and operating the commercial space and the affordable and any market rate residential units;
- (v) The public benefit program, the transportation demand management plan if required under the SFMTA’s Transportation Demand Management Program, or if a transportation demand plan is not required, the approach to facilitating public transit use by residents or other users of the Housing and Commercial Component, and the program of public right of way improvements;
- (vi) The proposed efforts to achieve labor harmony;
- (vii) A description of the needed Regulatory Approvals and the anticipated timing for applying for and securing those Regulatory Approvals;

(viii) A description of the anticipated financing and tax credits, including the timing that financing would be available, the timing of any application for financing and any applicable tax credits, the additional approvals needed for that financing or tax credits, and the relative availability of that financing or tax credits;

(ix) The proposed form of the HCC Agreement to grant the Housing Project Company a long-term real property interest in the Premises, the commencement and expiration of that interest, any conditions precedent to the commencement of that interest, and proposed payments equal to the value of that interest to City after the applicable Housing Project Company recover the Housing and Commercial Component development costs, and the anticipated timing for recovery of those development costs;

(x) The conditions precedent to the execution of the HCC Agreement, HCC Financial Close, and the commencement of the HCC Term;

(xi) City participation in any transfer that results in the Housing Project Company (or any of its subtenants or assignees) receiving proceeds after deducting its costs of financing, developing, design, construction and improvement of the Premises and the transaction costs for that transfer (but excluding the lease or sublease of individual residential or commercial units) and calculation and allocation of cost savings resulting from any refinancing of the Housing and Commercial Component construction costs, if any;

(xii) The method of paying the Housing and Commercial Component share of the Common Infrastructure costs, which will be based on the PCIH, and security for such payment, including the method for paying such costs between Substantial Completion of the Infrastructure Facility and any later Substantial Completion of any portion of the HCC;

(xiii) The security for financial close of any funding to be used to finance any market-rate building to be constructed at the Premises;

(xiv) Commercially reasonable standard mortgagee protection provisions, to the extent any lender will take a security interest in any real property interest of the Premises or ownership interest in the Housing and Commercial Component improvements at the Premises;

(xv) Insurance requirements and the Parties' respective rights and obligations with respect to damage and destruction;

(xvi) A description of capital reserves, security deposit, financing security, and the forms of payment and performance bonds;

(xvii) The sole responsibility and cost of the Housing Project Company (or its assignee) for designing, financing, building, operating, and maintaining the Premises and Housing and Commercial Component during the Housing Term and paying (or obtaining any available abatements) all property taxes and assessments levied against or related to the Housing and Commercial Component during the Housing Term;

(xviii) Housing Project Company's obligations with respect to (A) the environmental condition of the Premises and any hazardous materials released at the Premises and (B) the environmental condition of the Common Infrastructure and any hazardous materials released at the Common Infrastructure, which shall be based on the PCIH;

(xix) Restrictions on assignment, subletting and other transfers of the HCC Agreement or the Housing Project Company's interest, including any restrictions on equity transfers of change of control of the Housing Project Company, which shall require that until such time as the Housing

and Commercial Component achieves Substantial Completion, the original Equity Members (being the Equity Members as of the date of execution of this Agreement) shall have the power to direct the management of the Housing Project Company, whether through voting, nomination, or other selection rights, by contract, or by other means, unless otherwise agreed to by City in its sole discretion;

(xx) Housing Project Company's obligation to ensure that, as of the date for Substantial Completion of the Housing and Commercial Component, it shall be free of defects, including design defects, errors and omissions, except as may be set out in the Housing and Commercial Component punch list (which shall be fully resolved as of final acceptance of the Housing and Commercial Component);

(xxi) Remedies for defaults, including mortgagee protection rights of lenders and any termination rights for City;

(xxii) The surrender condition of the Premises, including all improvements then located on the Premises, and any application of reserve funds and transfer of occupants' security deposits at the end of the Housing Term;

(xxiii) Any other fundamental terms, including any applicable stakeholder input, that will serve as a basis for negotiating the HCC Agreement.

(e) Execution of HCC Term Sheet. If the Parties mutually agree to a final version of the HCC Term Sheet by the date specified for that agreement in the HCC Schedule, Lead Developer will execute the HCC Term Sheet. If City elects to submit the HCC Term Sheet to the SFMTA Board or any other City body, Lead Developer must attend any meetings held by the SFMTA Board and, if applicable, any other City body considering the HCC Term Sheet. Lead Developer must also be prepared, at City's request, to provide supporting materials and present the HCC Term Sheet and Proposed HCC at any of those meetings. If either the SFMTA Board or, if applicable, any other City body, does not endorse the submitted HCC Term Sheet, then the Parties may mutually agree to modify the HCC Term Sheet and have it resubmitted for endorsement. City will execute the mutually-approved HCC Term Sheet within seven (7) Business Days of endorsement (if at all) of the HCC Term Sheet by the SFMTA Board or later endorsement (if at all) by any other City body, if applicable. The Parties acknowledge that any executed HCC Term Sheet is intended only to set forth general principles for negotiation of the HCC Agreement and the other HCC Transaction Documents. The HCC Agreement and each of the other HCC Transaction Documents will be subject to review and approval by the Parties, their respective legal counsel, the SFMTA Board, and as applicable, by the Board of Supervisors, with both boards acting in their sole discretion. Regardless of whether the HCC Term Sheet is executed by City, City cannot be bound by the HCC Agreement or any of the other HCC Transaction Documents until they are approved by the SFMTA Board and as applicable, the Board of Supervisors or any other City board or commission, each in their respective sole discretion, and executed by City, which will not occur until CEQA review for the Project is complete.

(f) Financing. Lead Developer must timely pursue the sources of Housing and Commercial Component funding listed in its Financial Proposal, and any additional sources of funding that it identifies during the PDA Term, in compliance with the HCC Schedule, the Financing Management Plan described in the attached Appendix B-2, and the Finance Plan, if any. Lead Developer shall also be responsible for ensuring compliance with all the conditions and requirements of that funding, including any that apply to actions taken by Lead Developer during the PDA Term. If the Financial Proposal includes MOHCD loans, Lead Developer shall comply with, and structure any Housing Project Company developing Affordable Units to be funded with the MOHCD loans in compliance with, the underwriting guidelines for MOHCD predevelopment loans, which can be located at <https://sfmohcd.org/housing-development-forms-documents>. At the kick-off meeting described in Performance Milestone 1, MOHCD will discuss the materials Lead Developer will need to submit to MOHCD to apply for a predevelopment loan with respect to the Affordable Units that qualify for a

MOHCD predevelopment loan. Lead Developer will promptly respond to MOHCD requests for information needed to timely submit and process the predevelopment loan application.

(g) Feasibility Analysis. Lead Developer must timely develop and deliver a Housing and Commercial Component feasibility and financing analysis, plans, and commitments consistent with the Financial Proposal and in compliance with the HCC Schedule, the Financing Management Plan described in the attached Appendix B-2, and the Finance Plan, if any. The Financing Management Plan will account for tax credits that Lead Developer anticipates in regard to the construction of the Affordable Units. Although the Housing and Commercial Component share (based on PCIH) of the Common Infrastructure costs will be the Housing Project Company's responsibility, Lead Developer has the sole discretion in allocating those costs among the Affordable Units and the Housing and Commercial Component market rate residential units and non-residential units. The materials described in this subsection and the timelines included in those materials must reflect the Project Schedule and the HCC Schedule and comply with the HCC Interface Requirements.

(h) Additional HCC Materials. The Design Deliverables include certain plans, drawings and specifications for the Housing and Commercial Component. If Lead Developer elects to prepare any other plans, drawings and specifications for the Housing and Commercial Component (the "**Additional HCC Materials**") during the PDA Term, Lead Developer must submit the Additional HCC Materials to City for approval, in its proprietary capacity as owner of the Project Site and to confirm compliance with the Technical Requirements, before the Additional HCC Materials are submitted to any Regulatory Agency (including City acting in its proprietary capacity) for review or approval. City shall review and respond to any Additional HCC Materials submitted within the time periods specified in the HCC Development Plan. Lead Developer acknowledges and agrees that any Additional HCC Materials will, to the extent applicable, reflect the HCC Schedule milestones for the development, financing, construction, and Substantial Completion of the Housing and Commercial Component. Lead Developer shall be responsible at its sole cost and expense for the development of all Additional HCC Materials, which Lead Developer must ensure are: (i) assignable to any housing developer for the Affordable Units or the Housing and Commercial Component market rate residential units, as necessary, that holds an interest in the proceeds of any construction loan for those Affordable Units or market rate residential units, and (ii) comply with Applicable Law (including but not limited to Chapter 7 of the San Francisco Environment Code), the Technical Requirements, and, if applicable, MOHCD's design requirements for housing funded with MOHCD funds.

6.10. Local Business Enterprise Plan. Lead Developer must timely develop a program for utilizing Local Business Enterprises (as defined in Chapter 14B of the San Francisco Administrative Code) that must be consistent with the policy goals and purpose of Chapter 14B of the San Francisco Administrative Code to ensure participation by Local Business Enterprises and non-discrimination in the design, construction, and ongoing asset management of the Project during the term of the Project Agreement (the "**LBE Plan**"). Within twenty-eight (28) days of the Commencement Date, Lead Developer must meet with City to commence LBE Plan discussions. Lead Developer acknowledges City may require an LBE Plan that differs from the Local Business Enterprise assumptions Lead Developer used for the purposes of the Proposal, as described in Technical Submittal 28 of the Technical Proposal. Lead Developer must obtain the approval of City to the LBE Plan no later than Performance Milestone 17. In addition, during the PDA Term, Lead Developer will strive to incorporate Local Business Enterprises participation in appropriate Work activities. If Lead Developer wishes to engage and receive credit for its use of Local Business Enterprises during the PDA Term, it will need the prior written consent of City's Contract Monitoring Division, which can be withheld in the sole discretion of City's Contract Monitoring Division.

6.11. Design-Build Contract. Lead Developer must timely prepare the contract for the design and construction of the Facility in compliance with the requirements of this Agreement (the "**Design-Build Contract**") and its related materials, including the process for obtaining

competitive bids and selecting the design-builder, all of which are subject to City's prior approval and must be performed in consultation with City. Lead Developer may procure more than one Design-Build Contract and contractor, provided that the Infrastructure Facility is designed and built by a single design-build contractor pursuant to a single Design-Build Contract, and provided Lead Developer takes responsibility for all integration and interface risks resulting from the use of more than one Design-Build Contract and contractor. The Design-Build Contract must incorporate the 100% Schematic Design Package described in Appendix B-2 to the extent approved by City at Performance Milestone 28, be subject to the applicable requirements of the Project Agreement and the HCC Agreement, as applicable, incorporate the applicable requirements set forth in Appendix M, and, except as otherwise mutually agreed by the Parties, incorporate the Technical Requirements applicable to the work to be performed under the Design-Build Contract. No Development Team Member or its Affiliates can submit a bid for the Design-Build Contract; provided, however, that _____ [*Lead Developer's Design Consultant*] can be a subcontractor to any entity that submits a Design-Build Contract bid.

6.12. Infrastructure Facility Maintenance. Table 1 in Division 7 of the Technical Requirements summarizes the Infrastructure Facility Maintenance scope of work, which is to be provided on a 24/7/365 basis. In consultation with City, Lead Developer must timely refine and finalize the scope of the Infrastructure Facility Maintenance and develop the Asset Management Program, as required in the PDA Management Plan and the attached Appendix B-2, all of which are subject to City's prior approval and must be performed in consultation with City. City's goal is to pass the risk of life-cycle renewal and replacement to provide cost certainty, transparency, and optimized performance of the Infrastructure Facility to the Principal Project Company. This is important for the financial feasibility and operations of the Bus Yard Component and Housing and Commercial Component and their coexistence as part of a vertically integrated Facility.

City expects that the Housing Term will be longer than the Infrastructure Facility Term. In recognition of this likely fact and to address the relevant risks, after the Infrastructure Facility Term ends, City will ensure that the Infrastructure Facility continues to be maintained with substantially the same scope and performance standards as the Infrastructure Facility Maintenance specified in the Asset Management Program by electing, in its sole discretion, to (a) self-perform the Infrastructure Facility Maintenance, (b) contract it to a maintenance provider, (c) retain the Principal Project Company to continue providing it, or (d) any other option selected by City. After the Infrastructure Facility Term ends, the share of the Infrastructure Facility Maintenance Costs allocated to the Housing and Commercial Component must be paid to City for the remainder of the Housing Term.

6.13. IFM Contract. Lead Developer must timely prepare the contract for the performance of the Infrastructure Facility Maintenance during the Infrastructure Facility Term in compliance with the requirements of this Agreement (the "**IFM Contract**") and the related contract materials, including the process for obtaining competitive bids for the IFM Contract and selecting the IFM Contract contractor, as further described in in the attached Appendix B-2. The IFM Contract must be subject to the applicable requirements of the Project Agreement, incorporate the scope of the Infrastructure Facility Maintenance to be provided by the Principal Project Company and the applicable requirements set forth in Appendix M and, except as otherwise mutually agreed by the Parties, incorporate the Technical Requirements applicable to the work to be performed under the IFM Contract. Except for Lead Developer, no Development Team Member or its Affiliates can submit a bid for the IFM Contract.

6.14. Interface Agreements and Direct Agreements. During the PDA Term, City expects that Lead Developer will develop the form of interface agreements with respect to the Asset Management Program services to be performed by or for the Principal Project Company and the

Housing Project Company, which agreements will be among Principal Project Company and/or the Housing Project Company and other parties identified by Lead Developer with City's prior consent during the PDA Term, unless City otherwise agrees, in writing and in its sole discretion, to those forms being developed pursuant to the Project Agreement. City will develop during the PDA Term the forms of direct agreements among City, Principal Project Company or the Housing Project Company, as applicable, and parties providing financing for the Project, unless City otherwise agrees, in writing and in its sole discretion, to those forms being developed pursuant to the Project Agreement.

The interface agreements and direct agreements shall be substantially the same in type, form, and content as those customary for joint development and design-build-finance-maintain procurements, and will be subject to the prior written approval of City in its sole discretion.

6.15. Pricing and Fixed Budget Limit; Determining the Final Price

(a) Update with Contractor Pricing. At Performance Milestone 31, Lead Developer must submit to City the forms included as Attachment 4 to Appendix B-2, ("Best-value Contractor Recommendation Form and Final Price and Cost Savings Form"), which will reflect the Design-Build Contract pricing for the Infrastructure Facility and IFM Contract pricing provided by the contractors recommended for award of the Design-Build Contract for the Infrastructure Facility and IFM Contract, respectively, the 30% cost saving amount, if applicable, and any deduction for the Continuation Payment if made by City.

(b) Pricing Lower than Fixed Budget Limit + Insurance + Escalation. If the Best-Value Contractor Recommendation Form submitted at Performance Milestone 31 shows any reduced cost to design and build the Infrastructure Facility or perform the Infrastructure Facility Maintenance when compared to the total amount set forth in FS Form A8 delivered at Performance Milestone 27A, then the Final Price shall be determined in accordance with the Final Price Form and Cost Savings Form included in Appendix B-2.

(c) Pricing Higher than Fixed Budget Limit + Insurance + Escalation.

(i) If the materials submitted at Performance Milestone 31 show any increased pricing to design and build the Infrastructure Facility or perform the Infrastructure Facility Maintenance when compared to the total amount set forth in FS Form A8 delivered at Performance Milestone 27A, then the Parties will enter into good faith negotiations for the ninety (90) day period immediately following Performance Milestone 31, subject to extension by mutual agreement, to identify and agree to changes to the Infrastructure Facility or the Infrastructure Facility Maintenance requirements to bring the costs within the total amount set forth in FS Form A8 delivered at Performance Milestone 27A. If the Parties do not, within the ninety (90) day period, or such extended period as agreed by the Parties, (A) reach agreement on modifications to the Infrastructure Facility or the Infrastructure Facility Maintenance requirements to bring the costs within the total amount set forth in FS Form A8 delivered at Performance Milestone 27A, or (B) agree to reprocure the Design-Build Contract for the Infrastructure Facility and/or the IFM Contract in accordance with Section 6.15(c)(ii), then City may elect to terminate this Agreement in accordance with Article 16, in which case Lead Developer will be entitled to the Termination Payment provided Lead Developer demonstrates that it used commercially reasonable efforts to stay within the Fixed Budget Limit and otherwise meets the conditions for payment of the Termination Payment.

(ii) During the ninety (90) day negotiation period described in Section 6.15(c)(i), the Parties may agree that Lead Developer will reprocure the Design-Build Contract for the Infrastructure Facility and/or the IFM Contract, on terms mutually agreed by the Parties. If the pricing for any new bids received by Lead Developer exceeds the total amount set forth in FS Form A8 delivered at Performance Milestone 27A, the Parties will enter into good faith negotiations for the ninety (90) day period commencing on the due date for the new bid(s), subject to extension by mutual agreement. If the Parties reach agreement

within the specified time period(s) on modifications to the Infrastructure Facility or the Infrastructure Facility Maintenance requirements to bring the costs within the total amount set forth in FS Form A8 delivered at Performance Milestone 27A, then the Final Price shall be the sum of the LD Predevelopment Cost, plus the Design-Build Contract price for the Infrastructure Facility and the IFM Contract price based on the scope and terms negotiated in good faith by the Parties. If the Parties do not reach agreement, within the ninety (90) day period specified in Section 6.15(c)(ii), or such extended period as agreed by the Parties, on modifications to the Infrastructure Facility or the Infrastructure Facility Maintenance requirements to bring the costs within the total amount set forth in FS Form A8 delivered at Performance Milestone 27A, then City may elect to terminate this Agreement in accordance with Article 16.

(d) Final Price. If a Final Price is determined pursuant to Section 6.15(b) or Section 6.15(c), Lead Developer will include the Final Price in the Finance Plan submitted to City at Performance Milestone 32.

(e) Adjustments to Final Price Prior to Commercial Close. The Final Price will be adjusted for the period beginning on the date that is thirty (30) days prior to the proposal due date for the Design-Build Contract and IFM Contract proposals and ending on the “**Setting Date**”, being the date that is fifteen (15) days prior to the date of Commercial Close, to account for the following events:

(i) Reprocurement Due to Unavoidable Delay or a Regulatory Appeal Delay. If the Parties mutually agree to extend the Predevelopment Period beyond April 30, 2024 as result of an Unavoidable Delay or a Regulatory Appeal Delay, the Parties will adjust the Final Price and modify the escalation amount set forth in FS Form A8 delivered at Performance Milestone 27A by adding the Reprocurement Amount (defined as follows), if applicable, and modifying the escalation amount given in the modified FS Form D submitted at Performance Milestone 32 to extend the assumed mid-point of construction by the number of days between April 30, 2024 and the extended date of Commercial Close. E.g., if Commercial Close occurs on June 30, 2024, the assumed mid-point of construction will be December 31, 2025. If an Unavoidable Delay or a Regulatory Appeal Delay occurs after Performance Milestone 32 and is not resolved until after the bid validity period for the Design-Build Contract for the Infrastructure Facility or the IFM Contract, the “**Reprocurement Amount**” shall be Lead Developer’s actual costs to reprocure the Design-Build Contract for the Infrastructure Facility or IFM Contract, as applicable.

(ii) Changes to Applicable Law. City accepts an LD Proposed Change due to a change in Applicable Law.

(iii) LD or Principal Project Company Required Insurance Pricing. City agrees to the reasonable costs presented by Lead Developer for insurance coverages to be provided by Lead Developer or the Principal Project Company based on the insurance requirements set forth in the draft Project Agreement provided by City to Lead Developer at Performance Milestone [32], provided the proposed coverages do not duplicate coverages already included in the Design-Build Contract for the Infrastructure Facility or the IFM Contract.

(iv) Regulatory Approval Conditions. The Planning Commission, the SFMTA Board, or the Board of Supervisors imposes Regulatory Approval conditions on the Infrastructure Facility or the Infrastructure Facility Maintenance.

(v) LD Predevelopment Cost. City approves an IF Reimbursement Request pursuant to Section 9.2(g).

6.16. Early Works. As further described in in the attached Appendix B-2, Lead Developer must also submit its analysis on the necessity of commencing Early Works and the process for procuring the contractor(s) that would perform the Early Works. If approved and accepted by City, which approval may be subject to completion of CEQA review for the Project if the Early Work is determined to not have independent utility from the Project, Lead Developer

will procure the Early Works contractor(s) in compliance with the process approved by City and, if approved by the SFMTA Board, execute an Early Works Agreement based on terms mutually agreed by the Parties. If Lead Developer enters into an Early Works Agreement in compliance with this Section, Lead Developer will ensure the Early Works is performed and, once executed by City, timely perform its obligations under that Early Works Agreement.

6.17. Formation of Principal Project Company and Housing Project Company. Lead Developer must cause the Principal Project Company and the Housing Project Company to be a legal entity that is funded to the satisfaction of City and has become a City vendor with a valid business tax registration number from the Business Tax Division of the City's Tax Collector at least thirty (30) days before Commercial Close, or any other date mutually selected by the Parties.

6.18. Utilities. Except as otherwise specified in this Section, Lead Developer is solely responsible for obtaining and implementing all new utility services needed for the Facility, and must submit the appropriate applications to obtain gas (if permitted under Applicable Law), electricity, water, internet (except as otherwise specified in the Technical Requirements), and all other utilities needed to develop and operate the Project, as further described in the attached Appendix B-2. Lead Developer acknowledges that under San Francisco Administrative Code Section 99, electric service to the Project Site must be provided by the San Francisco Public Utilities Commission ("SFPUC") unless it determines it is not feasible for it to provide electricity to the Project Site. As further described in Division 5 of the Technical Requirements, the SFMTA submitted two Applications for Electric Service for the Facility to the SFPUC on April 14, 2021 ("**SFPUC Applications**"). Within twenty-eight (28) days of the Commencement Date (concurrent with Performance Milestone 6), Lead Developer must assume the primary applicant role to the SFPUC Applications. Lead Developer must notify City if it foresees substantial changes in the Facility electrical service approach, as outlined in the SFPUC Applications, that would require an amendment to the SFPUC Applications. Lead Developer will cooperate with City to take all actions needed to further the SFPUC Applications and obtain electrical service for the Project.

6.19. Construction Permits. Lead Developer must not submit any construction or site permit application for the Project Site to City's Department of Building Inspection without the prior consent of City, which may be subject to the completion of CEQA review for the Project.

6.20. CEQA.

(a) Project Sponsor. The SFMTA, as project sponsor, filed an environmental review application for the Project with the Planning Department on November 20, 2019 (the "**CEQA Application**"). The Planning Department issued a preliminary project assessment for the Project (Case No. 2019-02188ENV) on May 22, 2020 (the "**Preliminary Project Assessment**"), and a draft Environmental Impact Report for the Project (Case No. 2019-02188ENV) on June 30, 2021 (the "**Draft EIR**"), and the SFMTA anticipates the EIR will be submitted to the Planning Commission for certification in _____ of 2022. The SFMTA will continue to be the project sponsor for purposes of CEQA, with the close collaboration of and support from Lead Developer and pay the Planning Department charges for its environmental review of the Project.

(b) Lead Developer Support. If the SFMTA intends to submit any materials to the Planning Department with respect to its CEQA review of the Project, Lead Developer must provide the SFMTA (or if directed by the SFMTA, the Planning Department) with its comments to those materials. Lead Developer must also collaborate with the SFMTA with respect to all comments and requests from the Planning Department with respect to its CEQA review of the Project, and provide the Planning Department and the SFMTA with all supporting materials needed for the Draft EIR and EIR (including but not limited to drawings, analyses, data points, and project features, and revisions of the requested

materials) within fifteen (15) days of the SFMTA's or the Planning Department's request for those comments or materials; provided, however, that if those comments or materials cannot be reasonably provided within that fifteen (15) day period, Lead Developer must provide them to the SFMTA and the Planning Department as soon as reasonably possible.

To facilitate efficient transfer of information after the Commencement Date, City will add LD Project Director and LD Project Manager to the list of approved Project agents to be identified in the submitted CEQA Application. Lead Developer must include City on all Planning Department communications pertinent to CEQA review of the Project, delivering all written communications to the SFMTA at the same time they are delivered to the Planning Department, and inviting the SFMTA to join all meetings and calls with the Planning Department. At the request of the Planning Department, the SFMTA engaged SWCA Environmental Consultants ("SWCA") to provide project scoping and environmental analysis to support the CEQA review process under an agreement (Contract No. SFMTA-2018-03) dated January 17, 2018, as amended (as amended, the "SWCA Contract"). The SFMTA will continue to retain SWCA, or any alternative environmental consultant acceptable to the Planning Department, to perform the environmental analysis required by the Planning Department for the Project's CEQA review process. If Lead Developer elects to have the Draft EIR or the EIR modified to accommodate an HCC Change to reduce the size of the Proposed HCC, then Lead Developer shall pay the costs of SWCA's and any other consultant's work to effect that modification.

(c) Hearings and Meetings. SFMTA staff will take the lead in coordinating hearings and meetings for the CEQA review of the Project and the certification, if at all, of the EIR. Notwithstanding the SFMTA's lead role for coordinating hearings and meetings, Lead Developer must provide any supporting materials reasonably requested by the SFMTA for those hearings and meetings on or before the tenth Business Day immediately following its receipt of the SFMTA's request. In addition, Lead Developer must be available to attend and respond to questions at those hearings and meetings.

(d) Conformity with CEQA Project Description and Draft EIR; MMRP. Lead Developer agrees to endeavor to design and plan the Facility in a manner that is consistent with the Project description in the Draft EIR, as well as the draft mitigation measures set forth in the draft EIR, subject to the review and findings of the Planning Department; provided if the EIR is certified by the Planning Commission during the PDA Term, Lead Developer must design and plan the Facility in a manner that is consistent with the Project description in the EIR and comply with any MMRP, to the extent any MMRP requirements apply during the PDA Term. Nothing in this Agreement shall be construed to preclude Lead Developer from proposing, or City and other public agencies from considering or approving Project designs, modifications, or alternatives that avoid or mitigate significant adverse environmental impacts. If the Planning Commission certifies the EIR, the Parties anticipate the Planning Commission would adopt the MMRP at that time. Lead Developer acknowledges and agrees that the MMRP, if adopted, may differ from the draft mitigation measures in the Draft EIR and it will modify its designs and plans accordingly to reflect the requirements of the MMRP.

6.21. Regulatory Approvals. The Parties acknowledge that approvals, permits, determinations, and authorization from governmental agencies acting in their regulatory capacity, including but not limited to those required from City acting in its regulatory capacity, and utility companies, are required for the development of the Project (each, a "**Regulatory Approval**"). Regulatory Approvals shall include any certification or adoption of environmental review for the Project prepared pursuant to CEQA and adoption of any CEQA findings that must be made by City or a responsible agency, as required by CEQA. The Parties' respective obligations for the CEQA review of the Project are set forth in Section 6.20. The Parties' respective obligations for the other Regulatory Approvals are described below.

(a) Project Document Approvals. SFMTA staff will take the lead in coordinating hearings and meetings for any approval of the Transaction Documents from all applicable City Regulatory Agencies (and their individual members and committees). Notwithstanding the SFMTA’s lead role for coordinating hearings and meetings, the Lead Developer must provide any supporting materials reasonably requested by the SFMTA for those hearings and meetings on or before the _____ Business Day immediately following its receipt of the SFMTA’s request. In addition, Lead Developer must be available to attend and respond to questions at those hearings and meetings.

(b) General Regulatory Approvals. “**General Regulatory Approvals**” means all Regulatory Approvals other than those needed for CEQA review of the Project and to authorize City’s execution of the Transaction Documents.

(i) Lead Developer is solely responsible for determining and obtaining, during the PDA Term, only those General Regulatory Approvals required to perform the Work, to achieve the Phase 2 Floating Milestone, and to achieve the following objectives set forth in Section 6.1(a): (A) develop the Project in compliance with this Agreement and the PDA Management Plan approved by City, (B) reach Commercial Close before the expiration of the Predevelopment Period, and (C) reach IF Financial Close by April 30, 2024. In obtaining such General Regulatory Approvals, Lead Developer shall incorporate any Project modifications or requirements required for those General Regulatory Approvals, and timely pursue such General Regulatory Approvals; provided that SFMTA staff will take the lead in coordinating General Regulatory Approval hearings and meetings for the Project with the applicable City Regulatory Agencies (and their individual members and committees) and the SFMTA will pay the Planning Department’s charges for any entitlement application review that Lead Developer requests from the Planning Department for the Project during the PDA Term, including the special use district, conditional use authorization, San Francisco General Plan amendment, and General Referral and design review. The SFMTA, as the City department with jurisdiction over the Project Site, will also collaborate with Lead Developer on its strategy for seeking the General Regulatory Approvals from all applicable City departments and City Regulatory Agencies and at Lead Developer’s request, SFMTA staff will join in Lead Developer’s meetings with the various City departments to discuss the General Regulatory Approvals at mutually agreeable times.

(ii) Lead Developer must not seek any General Regulatory Approvals for anything that does not comply with the requirements and processes described in the Technical Requirements or fall within the scope of the Project described in the Draft EIR, unless otherwise approved of in writing by City, which approval will be in its sole discretion. Lead Developer understands and agrees the SFMTA’s status as a department of City shall in no way limit the obligation of Lead Developer, at Lead Developer’s own cost and initiative, to obtain all the General Regulatory Approvals from the applicable Regulatory Agencies. If any Regulatory Agency does not initially approve any General Regulatory Approval pursued by Lead Developer, Lead Developer shall use commercially-reasonable efforts to make the changes required by the Regulatory Agency for that General Regulatory Approval, to the extent it is possible to do so while complying with the other requirements of this Agreement.

(iii) Before submitting any application or request for any General Regulatory Approval, Lead Developer first must present the basis upon which Lead Developer proposes to obtain all the required Regulatory Approvals (the “**Regulatory Approval Strategy**”) to the City for the Director of Transportation’s review and approval. City may suggest revisions or changes to the proposed Regulatory Approval Strategy, which Lead Developer must consider in good faith. Lead Developer acknowledges and agrees that maintaining professional working relations with Regulatory Agencies is critical to the SFMTA’s management of San Francisco ground transportation, including other current or future SFMTA projects. Accordingly, Lead Developer must use its best efforts throughout the PDA Term to take no actions relating to the Project that does not comport to the approved Regulatory Approval Strategy, would significantly and adversely affect the SFMTA’s relationship with any other Regulatory Agency, or would adversely affect the SFMTA’s management of San Francisco ground transportation or any current or future SFMTA projects unless otherwise approved of in writing by City, which approval will be in its sole discretion.

(iv) Before filing an application for any General Regulatory Approval that is not described in the Regulatory Approval Strategy approved by City, Lead Developer must obtain the Director of Transportation's authorization, which will not be unreasonably withheld or delayed. Lead Developer agrees that City's withholding or delay in approving any application for a General Regulatory Approval will be reasonable if the application would adversely affect the SFMTA's management of San Francisco ground transportation or any current or future SFMTA projects, does not substantially conform to the Preliminary Term Sheet, the HCC Term Sheet, or any subsequent Project Document or design document to which City and Lead Developer agreed, or requires City to be a co-permittee to the application as owner of the Project Site.

(c) No Lobbying; Proprietary Capacity. The approval of various City departments (including, but not limited to, the Planning Department, MOHCD, and SFPW) and other City Regulatory Agencies (including, but not limited to the Planning Commission, the SFMTA Board, and the Board of Supervisors) will be required for the Project. The City Project Manager and the SFMTA staff working on the Project on behalf of City in its proprietary capacity will collaborate with Lead Developer regarding its Project discussions with other City staff with respect to the Project, and Lead Developer will promptly and substantively respond to any communications or requests for information that it receives from City staff; provided, however, that Lead Developer understands and agrees that although the SFMTA is a department of City, City staff and executives have no authority or influence over any officials, departments, boards, commissions, agencies, or other entities responsible for the issuance of any Regulatory Approvals (individually defined as "**Regulatory Agency**" and collectively as "**Regulatory Agencies**") including but not limited to City officials, departments, boards, commissions or agencies acting in City's regulatory capacity. Accordingly, there is no guarantee or a presumption that any of the Regulatory Approvals will be issued by the appropriate Regulatory Agency. Other than as described in Section 5.5 as to the approval of the Transaction Documents by the SFMTA Board of Directors and the Board of Supervisors, to the extent applicable, City's sole obligation under this Agreement with respect to the Regulatory Approvals shall be to review the submitted Regulatory Approval Strategy and CEQA and General Regulatory Approvals Plan described in Appendix B-2, and act as the project sponsor for the CEQA review with the support of Lead Developer pursuant to Section 6.20(a).

Lead Developer acknowledges City is acting in its proprietary capacity under this Agreement and understands and agrees no City staff has an obligation to advocate, promote or lobby any Regulatory Agency and/or any governmental official (including any City official) for any Regulatory Approval or for approval of the Project, the Project Agreement, the HCC Term Sheet, or any other Transaction Documents, and any such advocacy, promotion or lobbying shall be done by Lead Developer at Lead Developer's sole cost and expense. Lead Developer hereby waives any claims against City, and fully releases and discharges City to the fullest extent permitted by law, from any liability relating to the failure of City or any Regulatory Agency from issuing any required Regulatory Approval or from issuing any approval of the Project.

(d) Costs. Subject to Lead Developer's costs to perform its obligations under Section 6.20(b) and Section 6.21(b), during the PDA Term, City will be responsible for City's costs associated with the Regulatory Approvals required under CEQA and for the approval of the Transaction Documents. Lead Developer will be solely responsible for applying for, obtaining, and paying all costs associated with all Regulatory Approvals, and Lead Developer, at its sole cost and expense, will comply with the terms of all Regulatory Approvals and shall pay and discharge any fines or penalties imposed as a result of Lead Developer's failure to comply with any Regulatory Approval, for which City will have no monetary or other liability.

(e) Cooperation. The Parties agree to cooperate with one another to expeditiously aid in (i) Lead Developer's efforts to obtain the General Regulatory Approvals in accordance with this Agreement and (ii) City's efforts, acting in its proprietary capacity, to seek the necessary CEQA approvals for the Project and the approvals of the SFMTA Board and, as applicable, the Board of Supervisors and any other City boards or commissions, to the Transaction Documents.

(f) Third-Party Challenge.

(i) “**Third-Party Challenge**” means any administrative, legal or equitable action or proceeding instituted by any party other than City or Lead Developer challenging the validity or performance of any provision of this Agreement, the Project, any Regulatory Approvals made by City acting as a Regulatory Agency (including the adoption or certification of the EIR), other actions taken pursuant to CEQA, or any action taken by City or Lead Developer in furtherance of this Agreement, or any combination thereof relating to all or any portion of the Project. The Parties agree to proceed with due diligence and cooperate with one another to defend and resolve any Third-Party Challenge to the extent reasonably possible. Lead Developer shall assist and cooperate with City at Lead Developer’s own expense in connection with any Third-Party Challenge. The City Attorney’s Office may use its own legal staff or outside counsel in connection with defense of the Third-Party Challenge, at the City Attorney’s sole discretion.

(ii) Subject to Section 6.21(f)(iii): (A) if a Third-Party Challenge solely arises from any aspect of the Housing and Commercial Component, Lead Developer shall reimburse City for its actual costs in defense of the action or proceeding, including but not limited to the time and expenses of the City Attorney’s Office (at the non-discounted rates then charged by the City Attorney’s Office) and any consultants (collectively, the “**City Challenge Costs**”), within thirty (30) days of receiving an invoice for those costs from City; provided, however, Lead Developer shall have the right to monthly invoices for all the City Challenge Costs with respect to that Third-Party Challenge; and (B) if a Third-Party Challenge arises with respect to the Bus Yard Component and the Housing and Commercial Component, or cannot be clearly ascribed to solely the Bus Yard Component, Lead Developer shall reimburse City by an amount equal to the City Challenge Costs multiplied by the PCIC within thirty (30) days of receiving an invoice for those costs from City; provided, however, Lead Developer shall have the right to monthly invoices for all the City Challenge Costs with respect to that Third-Party Challenge.

(iii) Notwithstanding Section 6.21(f)(ii), Lead Developer will not be responsible for reimbursing City for City Challenge Costs relating to any Third Party Challenge to Regulatory Approvals made by City acting as a Regulatory Agency (including the adoption or certification of the EIR), or other actions taken pursuant to CEQA, except to the extent the Third Party Challenge is directly related to Lead Developer’s failure to comply with this Agreement.

(iv) If this Agreement terminates before a Third-Party Challenge is resolved, the Parties shall jointly seek to have the Third-Party Challenge dismissed and Lead Developer shall have no obligation to reimburse City for any defense costs that City incurs after the dismissal.

(v) The filing of any Third-Party Challenge shall not delay or stop the Lead Developer’s performance of its obligations under this Agreement unless the third party obtains a court order preventing the activity or City elects to require that action.

6.22. Correction of Defective Work Materials. In addition to the other remedies that are available to City under this Agreement or Applicable Law and at no cost to City, at City’s request, Lead Developer must correct or revise, or cause the Lead Developer Agents, as applicable, to correct or revise as applicable, any Work Materials that are defective due to the negligent acts, errors or omissions of Lead Developer or any of Lead Developer Agents. City’s inspection of (or failure to inspect), review (or failure to review), acceptance of any of the Work Materials or any Termination Payment made under this Agreement cannot be construed to relieve any Lead Developer Related Entity of Lead Developer’s obligations and responsibilities under this Agreement for any negligent acts, errors or omissions nor operate as a waiver of any of City’s rights under this Agreement or any cause of action arising out of the performance of this Agreement. Subject to the terms of Section 21.3, Lead Developer will be and remain liable to City for all Losses caused by Lead Developer’s failure to comply with the terms and conditions of this Agreement or by the negligent acts, errors or omissions of any Lead Developer

Related Entities in the performance of this Agreement in accordance with Applicable Law. Lead Developer must use its professional judgment, care and prudence in approving and accepting any Work Materials prepared by any Lead Developer Agents and take all action necessary to ensure the Work Materials prepared by any Lead Developer Agents are correct and accurate.

6.23. Guaranty.

(a) The Guarantor shall provide and maintain the Guaranty, in the form of Appendix J, in full force and effect throughout the PDA Term.

(b) Lead Developer shall periodically report to City regarding the financial capacity of the Guarantor. If, at any point during the PDA Term, the Guarantor's financial capacity is materially negatively affected, as determined by City in its sole discretion, City may require, and Lead Developer shall provide, one or more additional guarantees so that the combined financial capacity of the Guarantor and the additional guarantors provides equivalent security to City as the Guaranty provided as of the Effective Date. Each such Guaranty shall be substantially in the form provided in Appendix J, together with appropriate evidence of authorization, execution, delivery and validity of such Guaranty.

7. PREDEVELOPMENT MANAGEMENT

7.1. Development Team. Lead Developer, and the Persons described in the attached Appendix I as its controlling and other Equity Members, the Affordable Housing Developer, the Housing Developer, the Design Consultant, the Construction Management Consultant, and Infrastructure Facility Maintenance Consultant (each, a "**Development Team Member**" and collectively, the "**Development Team**") will serve those respective roles for Lead Developer's performance of its obligations under this Agreement. Lead Developer must not make any changes to the Development Team or the roles assigned to each Development Team Member in the attached Appendix I without the prior written consent of City, which may be withheld in its sole discretion. If a Development Team Member notifies Lead Developer that it is withdrawing from the Project [*or the Guarantor intends to withdraw from the Project*], Lead Developer shall immediately notify City. If Lead Developer and City do not mutually agree to the replacement for the withdrawing Development Team Member [*or Guarantor*] within fifteen (15) days of the withdrawal of that Development Team Member [*or Guarantor*] (the "**Selection Period**"), City shall have the right to terminate this Agreement by delivering written notice of such termination to Lead Developer within ten (10) days of the expiration of the Selection Period. If City timely delivers a termination notice to Lead Developer under this Section, this Agreement shall terminate on the date of such delivery.

7.2. Key Personnel; Organization. In addition to the Development Team, Appendix I describes the additional persons that will be instrumental to Lead Developer's predevelopment activities for the Project (collectively, the "**Key Personnel**"). During the PDA Term, Lead Developer must retain the Key Personnel to implement the Lead Developer's obligations under this Agreement and to manage other Lead Developer personnel working on that implementation. Except for any termination of employment, retirement, death, injury or other similar circumstances, Lead Developer must not change any Key Personnel without City's prior written approval, which shall not be unreasonably withheld or conditioned. Lead Developer's proposed replacement of any Key Personnel for any reason is subject to City's prior written approval, which shall not be unreasonably withheld or conditioned. If Lead Developer intends to replace any Key Personnel, it shall first notify City in writing of the proposed replacement, the reason for the proposed replacement, the person it proposes as a replacement, and certify that the proposed replacement person complies with the requirements for the position that person would fill

described in Appendix I (a “**Proposed Replacement Notice**”). Within five (5) Business Days of receiving a Proposed Replacement Notice, City shall notify Lead Developer if it approves of the proposed replacement. If Lead Developer and City do not mutually agree to the replacement for the withdrawing Key Personnel individual within fifteen (15) Business Days of the withdrawal of that individual (the “**Selection Period**”), City shall have the right to terminate this Agreement by delivering written notice of such termination to Lead Developer within ten (10) Business Days of the expiration of the Selection Period. If City timely delivers a termination notice to Lead Developer under this Section, this Agreement shall terminate on the date of such delivery.

7.3. Project Directors and Project Managers.

(a) For Lead Developer. _____ (“**LD Project Manager**”) is the person responsible for managing Lead Developer’s day-to-day activities of the Project on a full-time basis, including ongoing communications and coordination with City and acting as the main point of contact between City and Lead Developer. _____ (“**LD Project Director**”) is authorized to make decisions and bind Lead Developer, and is the person responsible for overseeing Lead Developer’s rights and obligations under the PDA and Lead Developer’s contractual rights and obligations with the Development Team Members. Lead Developer must obtain the prior written approval of City to any change in the LD Project Director or the LD Project Manager, which approval will not be unreasonably withheld.

(b) For City. Tim Kempf (“**City Project Manager**”) will be the person responsible for managing City’s day-to-day activities of the Project on a full-time basis, including ongoing communications and coordination with Lead Developer and acting as the main point of contact between City and Lead Developer. Lycinia Iberri (“**City Project Director**”) is authorized to make decisions and bind City, and is the person responsible for overseeing City’s rights and obligations under the PDA. City must give written notice to Lead Developer of any change in the City Project Director or the City Project Manager.

7.4. Communication. The LD Project Director must keep the City Project Director fully informed on all matters concerning the Work and shall keep records of all material aspects, with weekly meetings on the status of the Performance Milestones.

7.5. Cost Reports and Audits.

(a) Quarterly Cost Reports. On the first day of each January, April, July, and October in the PDA Term, Lead Developer must submit a written report of all LD Predevelopment Cost (segregated into those incurred in connection with the Housing and Commercial Component, those incurred in connection with the Bus Yard Component, those incurred in connection with the Common Infrastructure) incurred by it in the three-month period immediately preceding the date of the applicable report, together with reasonable supporting materials documenting those costs.

(b) Audits. Lead Developer agrees to maintain and make available to City, during regular business hours, accurate books and accounting records relating to the LD Predevelopment Cost (segregated into those incurred in connection with the Housing and Commercial Component, those incurred in connection with the Bus Yard Component, those incurred in connection with the Common Infrastructure). Lead Developer will permit City to audit, examine and make excerpts and transcripts from such books and records, and to make audits of all invoices, materials, payrolls, records or personnel and other data related to all other matters covered by this Agreement, whether funded in whole or in part under this Agreement. Lead Developer shall maintain such data and records in an accessible location and condition for a period of not fewer than five years after final payment under this Agreement or until after final audit has been resolved, whichever is later. The State of California or any Federal agency having an interest in the subject matter of this Agreement shall have the same rights as conferred upon City by this

Section. Lead Developer shall include the same audit and inspection rights and record retention requirements in all subcontracts.

7.6. Community Outreach and Public Relations.

(a) SFMTA Public Outreach and Engagement Program. City will lead the stakeholder outreach to the following parties (the “**SFMTA Outreach Parties**”): SFMTA staff, the SFMTA Citizens’ Advisory Council, other SFMTA working and advisory groups, the SFMTA Board, the Board of Supervisors (and its committees and members), City departments, and other City Regulatory Agencies. This outreach (the “**SFMTA Public Outreach and Engagement Program**”) will be to educate the SFMTA Outreach Parties and address any of their questions regarding the Bus Facility Component. Lead Developer must not initiate any outreach for matters within the SFMTA Public Outreach and Engagement Program. Lead Developer must forward any questions or information requests it receives from the SFMTA Outreach Parties for matters within the scope of the SFMTA Public Outreach Program (other than those raised by a Regulatory Agency in connection with a General Regulatory Approval) to a SFMTA Project Communications Team Contact (defined in Section 7.6(d)) and notify the questioner or requester that it is doing so.

(b) Lead Developer Support. Lead Developer must use commercially reasonable efforts to support the SFMTA Public Outreach and Engagement Program by taking the following actions:

(i) Attending meetings scheduled by the SFMTA with members of the public and any of the SFMTA Outreach Parties to describe the Bus Facility Component, the Common Infrastructure, the Infrastructure Facility Maintenance, or the Housing and Commercial Component, provided the SFMTA shall provide at least five (5) Business Days’ prior notice of such meetings to Lead Developer;

(ii) Providing supporting materials for those meetings, as requested by the SFMTA;

(iii) Collaborating with the SFMTA on any written materials provided by the SFMTA to Lead Developer for the SFMTA Public Outreach and Engagement Program; and

(iv) If the SFMTA requests Lead Developer to provide supporting materials for the meetings described in the foregoing subsection (i) or input on any materials described in the foregoing subsection (iii), Lead Developer must make commercially reasonable efforts to provide those materials or that input within three (3) Business Days following its receipt of the SFMTA’s request; provided if they cannot be reasonably provided within such three (3) Business Day period, then Lead Developer must provide them as soon as reasonably possible.

(c) Lead Developer Outreach Plan. As described in Appendix B-2, Lead Developer must develop a Public Outreach and Engagement Plan (the “**LD Outreach Plan**”) for City’s review. Once approved by City, Lead Developer must comply with the processes and requirements of the LD Outreach Plan. Lead Developer will work collaboratively with City to ensure that the goals of the LD Outreach Plan are met, and to address any needed changes to LD Outreach Plan during the PDA Term.

(d) SFMTA Project Communications Team Meetings and Contacts.

(i) Within five (5) days of the Commencement Date, Lead Developer will organize and hold a one-day (minimum 3-hour) collaboration session with SFMTA staff members and consultants that have worked on Project stakeholder outreach and engagement (the “**SFMTA Project Communications Team**”) to discuss the following: (A) stakeholder identification process (e.g. type of stakeholders and their level of involvement), (B) mapping the public participation spectrum for each phase of the Project, including the design phase, the phase for public meetings and hearings for the Regulatory Approvals, the construction phase, and the operations phase, (C) planning the details of the engagement process, (D) best practices stemming from prior outreach and engagement efforts, (E) expected outreach and engagement budget, (F)

resources needed to implement community outreach events, (G) dealing with and managing stakeholder conflict, and (H) reviewing and assessing the process to demonstrate achievements and to identify lessons learned for informing future engagement exercises.

(ii) Within thirty-five (35) days of the Commencement Date, Lead Developer will organize and hold another collaboration session (minimum 2-hours) with the SFMTA Project Communications Team to discuss proposed public outreach and engagement events and the timeline around key decision points for public input, and to confirm the scope of work outlined by Lead Developer. City will review, vet, and approve all outreach content proposed by Lead Developer, and Lead Developer must incorporate stakeholder input into the Project in a manner satisfactory to City. The SFMTA will have the right to, at its election, attend every stakeholder engagement event held by Lead Developer, and Lead Developer will provide agenda allotment to the SFMTA at these events to provide SFMTA news and service updates and other announcements not otherwise pertinent to the Project.

(iii) Media and Communications Team Contacts. At or before the meeting described in the foregoing subsection (i), (A) City must designate at least two (2) SFMTA staff members authorized to receive notices and communicate with Lead Developer about all public outreach program matters (each, the “**SFMTA Project Communications Team Contact**”) and designate at least two (2) SFMTA staff members authorized to receive notices and communicate with Lead Developer about all media matters (each, the “**SFMTA Media Contact**”), and (B) Lead Developer must designate at least one person (the “**LD Project Communications Team Contact**”) who will be authorized to receive notices and communicate with City about the public outreach program matters and designate at least one person (the “**LD Media Contact**”) who will be authorized to receive notices and communicate with City about all media matters. Either Party shall have the right to change the persons designated as their respective Communications Team Contact and Media Contact by delivering written notice of that change to the other Party.

(e) Lead Developer Public Outreach. In addition to complying to the Public Outreach and Engagement Requirements included in Division 9 of the Technical Requirements, any City-approved LD Outreach Plan, and any outreach requirements required for the General Regulatory Approvals, Lead Developer must adhere to the following practices:

(i) Establish an appropriate budget to fund the SFMTA Public Outreach and Engagement Program and Lead Developer’s obligations under this Section to safely and effectively engage with Project stakeholders through each Project phase described in Section 7.6(d)(i)(B) (i.e. Project led events, community tabling events, sponsoring community events, collateral mailers, newspaper, radio and online ads, brochures, flyers, posters/signage, website/digital content, stakeholder giveaways, hand sanitizers, t-shirts, tote bags, water bottles, and other forums for educating the public).

(ii) Ensure that stakeholder contact information and correspondence is sent weekly to the SFMTA Project Communications Team Contact in order to update their stakeholder database.

(iii) Propose, plan, and schedule regular stakeholder updates by email, physical mailers, or in-person or virtual meetings when appropriate. These various communications channels are intended to keep Project stakeholders informed as the Project progresses. The proposed schedule of in-person and/or virtual meetings may be based on time, such as quarterly, and or may track to key Project milestones or community decision points for the Project.

(f) Potrero Yard Neighborhood Working Group. Commencing on the Commencement Date, Lead Developer will take the lead in facilitating, attending and sufficiently funding regular Potrero Yard Neighborhood Working Group meetings and activities during the PDA Term. Prior to the Effective Date, the Potrero Yard Neighborhood Working Group generally met on a monthly basis.

(g) Media Presence and Project Publicity. Unless City agrees otherwise in writing, Lead Developer must obtain the SFMTA Media Contact's prior consent to all Project press releases and press conferences. Lead Developer shall notify City as early as possible regarding Lead Developer's plan to issue press releases or hold press conferences and provide City with sufficient time to review and comment on those plans.

(h) Press Contacts. Lead Developer must not speak with the press or social media about any the Project, its negotiations with City or submittals to City, or Lead Developer's proposed development concepts, plans, phasing or uses (collectively, "**Press Matters**") that have not been approved by City in writing for public release.

A "**Press Release**" means any written press release, advertisement, or other formal communication to any media outlet (including newspapers, local blog, radio and television stations, and web sites). Lead Developer agrees it will provide the SFMTA Media Contact with a draft copy of any Press Release with no less than five (5) Business Days' prior notice before its proposed release and will not issue any Press Release that has not been approved by the SFMTA Media Contact. City will have the right to issue its own separate Press Releases.

The LD Outreach Plan will govern Lead Developer's Press Releases and Lead Developer's media contacts unless City gives Lead Developer written notice (a "**Noncompliance Notice**") that Lead Developer has not kept City informed of Lead Developer media's activities with respect to the Project as required in the LD Outreach Plan. As of the date of a Noncompliance Notice, Lead Developer may not issue, nor permit or authorize any other party to issue, any Press Release relating to the Project, its negotiations with City or submittals to City, or Lead Developer's proposed development concepts, plans, phasing or uses that have not been approved by the SFMTA Media Contact in writing for public release.

(i) Press Conference or Media Activity.

(i) Lead Developer agrees not to hold any press conference or media activities regarding any Press Matters without first inviting the SFMTA Media Contact to be present, or have another SFMTA representative to be present, at the press conference or media activity and obtaining the SFMTA Media Contact's consent to the press conference or media activity. Lead Developer must provide the SFMTA Media Contact with no less than five (5) Business Days' prior notice of the date and time of any proposed press conference or media activity and state in detail the purpose of the press conference or media activity and the topics to be discussed ("**Conference/Media Summary**"). The SFMTA Media Contact must review the Conference/Media Summary promptly and advise Lead Developer of any comments by 5:00 p.m. on the day before the press conference/media activity. If the SFMTA Media Contact does not respond within two (2) Business Days of receiving the Conference/Media Summary, the Conference/Media Summary will be deemed approved.

Lead Developer must make reasonable efforts to schedule the press conference or media activity to accommodate the schedules of the SFMTA representatives designated to attend by the SFMTA Media Contact. If City reasonably believes the proposed press conference/media activity would adversely affect its interests, then City shall have the right to withhold its consent to Lead Developer holding the press conference or media activity, even if the press conference or media activity may further Lead Developer's interests.

(ii) City is entitled to withhold its consent to a Press Release, proposed press conference or media activity by Lead Developer, or a Conference/Media Summary if the SFMTA believes it would adversely affect the SFMTA's relationship with the public or a Regulatory Agency or adversely affect a Regulatory Agency's decision regarding any Regulatory Approvals. If the SFMTA Media Contact reviews a Press Release or Conference/Media Summary and believes that revisions or changes are advisable and

appropriate, Lead Developer must make the those suggested revisions or changes irrespective of whether it may further Lead Developer's interests.

(iii) Lead Developer must timely notify the SFMTA Media Contact of media inquiries regarding the Project received by Lead Developer and Lead Developer's proposed response. The SFMTA Media Contact can waive any of the notice periods required under this Section in writing or by telephone.

7.7. Monthly and Quarterly Report. No later than the first day of each month and each calendar quarter during the PDA Term, Lead Developer must prepare and submit to City a meaningful summary (as described for progress reporting in Section 2.1.1.2 of Appendix B-2) of its major activities during the previous month or quarter, as applicable, to achieve each of the Performance Milestones for it required under Appendix B-1, and to prepare and deliver the Project Management Deliverables and Design Deliverables required under Appendix B-2.

7.8. Weekly Meetings. The LD Project Manager and City Project Manager will meet weekly to discuss Project coordination and the status of CEQA review for the Project, the Transaction Documents, Project financing, Regulatory Approvals, Design Documents, the status of any Early Works, Project feasibility, the Performance Milestones, and other Project-related matters, unless a weekly meeting is waived or rescheduled by mutual agreement. The LD Project Manager will coordinate for the LD Project Director, appropriate Key Personnel and other Lead Developer Agents, and the City Project Manager will coordinate for the City Project Director and other appropriate City staff working on the Project with respect to City's proprietary capacity under this Agreement, to attend those weekly meetings as applicable. The LD Project Manager and City Project Manager may, by mutual agreement, hold two weekly meetings to divide the topics for discussion between those meetings.

7.9. Data Room. Lead Developer must set up and manage an industry-standard virtual data room to store Project documents and materials to be shared between the Parties and with other parties approved by City to receive those documents and materials.

7.10. Assignment of Work Materials. Lead Developer must ensure its contracts with any Lead Developer Agent for the creation or submission of any Work Materials must include provisions automatically assigning the Work Materials created under those contracts to City if there is a Termination. Lead Developer must provide a copy of each contract for Work Materials between Lead Developer and that Lead Developer Agent. Work Materials will be assigned to City in accordance with Section 16.6. Lead Developer's obligations under this Section shall survive any termination of this Agreement.

8. CITY PREDEVELOPMENT OBLIGATIONS

In addition to City's other obligations under this Agreement, City must comply with the predevelopment obligations described in this Article acting solely in its proprietary capacity and not in its regulatory capacity.

8.1. Design and Plan Development. City will timely provide written comments to the draft Design Deliverables it receives from Lead Developer in the manner described in the Design Management Plan in the attached Appendix B-2 (if approved by City) and by the Performance Dates described for those comments in Appendix B-1; provided, however, that once any draft Design Deliverables are submitted to City by Lead Developer for City review, City shall have no less than twenty-eight (28) days to review and provide written comments on such drafts to Lead Developer.

8.2. Cooperation in Developing the Transaction Documents. City will deliver the draft Project Agreement and any other Project Document for which it elects to prepare the initial draft, and provide comments to the drafts of the Project Agreement and the other Transaction Documents within the time periods specified for those comments in the attached Appendix B-2.

8.3. Cooperation in Financing Efforts. City must use good faith efforts to reasonably cooperate in Lead Developer's efforts to secure the Project financing described in the City-approved Finance Plan ("**Approved Financing**") by timely responding to requests for information and attending meetings with potential lenders as reasonably requested by Lead Developer. City will use reasonable efforts to timely provide its comments on the draft Approved Financing agreements, the terms of which agreements shall be consistent with the requirements of the HCC Term Sheet and the final form of Project Agreement. City's full faith and credit and taxing power will not be pledged to secure any Approved Financing, nor can any Approved Financing constitute general indebtedness of City. Any Approved Financing agreements that require City's signature will be subject to the approval of the SFMTA Board and, if applicable, the Board of Supervisors, each acting in their sole discretion.

8.4. Housing and Commercial Component Feasibility Analysis and Financing. City will provide comments to the Housing and Commercial Component feasibility and financing analyses, plans, and commitments it receives from Lead Developer in the manner described in the attached Appendix B-2.

8.5. Design-Build Contract. City will provide comments to the draft Design-Build Contract materials it receives from Lead Developer, including the procurement materials and Lead Developer's proposed process for obtaining competitive bids for the Design-Build Contract and selecting the Design-Build Contract contractor in the manner described in the attached Appendix B-2.

8.6. Asset Management Program. City will collaborate with Lead Developer to ensure the Infrastructure Facility Maintenance will be sufficient to support the SFMTA's operations and maintenance of the Bus Yard Component. In addition to that collaboration, City will provide comments to the drafts of the scope of the Principal Project Company's Infrastructure Facility Maintenance it receives from Lead Developer in the manner described in the attached Appendix B-2.

8.7. Energy Management Program. City will collaborate with Lead Developer in its efforts to develop the Energy Management Program.

8.8. IFM Contract. City will provide comments to the draft IFM Contract materials it receives from Lead Developer, including the procurement materials and Lead Developer's proposed process for obtaining competitive bids for the IFM Contract and selecting the IFM Contract contractor in the manner described in the attached Appendix B-2.

8.9. Early Works. City will provide comments to the Early Works analysis it receives from Lead Developer and, if it approves and accepts the Early Works analysis, which approval may be subject to completion of CEQA review for the Project, execute an Early Works Agreement that addresses the City's requirements for the Early Works.

8.10. General Regulatory Approval Cooperation. City agrees, subject to its rights under Section 6.21 (Regulatory Approvals), to: (a) reasonably cooperate with Lead Developer in filing for, processing, and obtaining all General Regulatory Approvals in accordance with the Regulatory Approval Strategy; and (b) respond within a commercially reasonable time to requests for coordination, consultation, and scheduling additional meetings regarding the Project, including matters relating to any General Regulatory Approval if City would be the co-applicant.

This Section does not limit or otherwise constrain City’s discretion, powers, and duties as a Regulatory Agency.

9. CHANGES TO THE PROJECT

9.1. Infrastructure Facility or Infrastructure Facility Maintenance Changes Proposed by Lead Developer.

(a) **LD Proposed Change.** Lead Developer may, at any time during the PDA Term, propose a modification to the Infrastructure Facility or the Infrastructure Facility Maintenance requirements as described in the Technical Proposal or the Technical Requirements (an “**LD Proposed Change**”) due to: (i) any change in Applicable Law that occurs after [●] **[30 days before Proposal Due Date]**; (ii) the imposition of Regulatory Approval conditions on the Infrastructure Facility or Infrastructure Facility Maintenance by the Planning Commission, the SFMTA Board, or the Board of Supervisors (a “**Regulatory Change**”); (iii) any Project Site condition revealed through Lead Developer’s due diligence investigation of the Project Site that differs materially from the conditions disclosed in the Reference Documents; or (iv) any modification that Lead Developer reasonably believes is in the best interests of City or the Project.

(b) **LD Proposed Change Processes.** Any LD Proposed Change that, if accepted by City, would (i) increase the design and construction costs or the Infrastructure Facility Maintenance costs of the Infrastructure Facility, or (ii) alter the Technical Requirements, must be presented to City, for City’s review and approval or disapproval, through the LD Change Request procedures set forth in Section 9(c). Lead Developer may present all other LD Proposed Changes, being those not included in item (i) or (ii) of this Section 9.1(b), to City through the weekly Project meetings required pursuant to Section 7.8. City may, in its sole discretion, take the following actions with respect to any LD Proposed Change presented at a weekly Project meeting: (A) approve, (B) disapprove, or (C) request that Lead Developer submit an LD Change Request for such LD Proposed Change. City’s approval, disapproval or request for an LD Change Request with respect any LD Proposed Change presented at a weekly meeting will be documented in the meeting minutes. City’s approval of LD Proposed Changes at weekly meetings shall be summarized and included in the monthly and quarterly reports required under Section 7.7.

(c) **LD Change Request.**

(i) To propose an LD Proposed Change that, if accepted by City, would (A) increase the design and construction costs or the Infrastructure Facility Maintenance costs of the Infrastructure Facility, or (B) alter the Technical Requirements, Lead Developer must submit a written, detailed description of the LD Proposed Change and a narrative justification supporting the LD Proposed Change (an “**LD Change Request**”).

(ii) The LD Change Request must include the following: (A) narrative overview of the LD Proposed Change and how it differs from the Project, (B) rationale for the LD Proposed Change, (C) impact analysis, including environmental, social, economic, community, traffic, safety, operations and maintenance or third-party impacts (positive and negative) of the LD Proposed Change, (D) cost analysis, including any additional costs or savings to the Project resulting from the LD Proposed Change, (E) specifications and plan drawings, as applicable, and (F) any additional information relevant to adjudicating a decision on the LD Proposed Change.

(iii) Within ten (10) Business Days of receiving an LD Change Request, City will notify Lead Developer, in writing, if it agrees to the LD Change Request, disapproves or tentatively disapproves the LD Change Request, or needs additional information regarding the LD Change Request, and the reasons for any tentative disapproval, disapproval, or additional information request. Any such request for additional information from City must detail the specific information City needs from Lead Developer to consider the LD Change Request. If City requests additional information for an LD Change Request, City

will, within ten (10) Business Days of receiving that additional information, notify Lead Developer if it approves the LD Change Request, tentatively disapproves the LD Change Request, or needs additional information regarding the LD Change Request. The Parties shall agree in good faith to any necessary extensions to the review periods in this Section 9.1(c)(iii) to accommodate particularly complex LD Proposed Change or combination of LD Proposed Changes.

(iv) If City disapproves an LD Change Request because City reasonably determines it is not an LD Proposed Change as described in the first paragraph of Section 9.1, Lead Developer can request a meeting of the Parties to further discuss that LD Change Request within ten (10) Business Days of receiving City's written notice of its disapproval. Within ten (10) Business Days of that meeting, City will notify Lead Developer if City approves, tentatively disapproves, or disapproves the LD Change Request and the reasons for any tentative disapproval or disapproval.

(v) Any LD Proposed Change presented to City through the LD Change Request procedures will not take effect until approved in writing by City, which approval shall not be unreasonably withheld with respect to LD Proposed Changes categorized within items (i) through (iii) of Section 9.1(a); the approval of LD Proposed Changes described in item (iv) of Section 9.1(a) are within the City's sole discretion.

(vi) Lead Developer agrees that it would be reasonable for City to withhold its approval of any LD Proposed Change that City determines would (i) materially alter the Infrastructure Facility or the Infrastructure Facility Maintenance as described in the Technical Proposal or the Technical Requirements, (ii) materially increase City's costs or other liability with respect to the Project, (iii) materially and adversely affect the SFMTA's operations at or use of the Bus Yard Component, (iv) delay Substantial Completion of the Infrastructure Facility beyond the Outside Delivery Date, (v) materially reduce the number of residential units or reduce the number of any Affordable Units from that shown in the Technical Proposal, or (vi) materially increase City's risk from that shown in the Preliminary Term Sheet (or if an HCC Term Sheet is signed, from that shown in the HCC Term Sheet), materially differ from the Project Objectives, or any other aspect of the Project important to City.

(d) LD Proposed Changes will not result in an increase to the Fixed Budget Limit, except to the extent specifically permitted in Section 2.5(b)(ii).

9.2. HCC Change.

(a) Basis for HCC Changes. The Proposed HCC must comply with the applicable Project Objectives and the Technical Requirements and must be developed in a manner that meets the HCC Interface Requirements. However, the Parties recognize that the Proposed HCC can only be achieved in compliance with the HCC Interface Requirements with sufficient and timely financing, funding, and Regulatory Approvals. If Lead Developer reasonably determines that (i) it cannot feasibly obtain the financing, funding, or Regulatory Approvals needed to construct any housing at the Project Site that meets the Technical Requirements (including 100% affordable housing that qualifies for MOHCD loans); or (ii) it can obtain the necessary financing, funding, and Regulatory Approvals but the resulting housing cannot reasonably comply with the conditions of any of the Regulatory Approvals despite using cost effective means, or Lead Developer cannot comply with the HCC Interface Requirements, then Lead Developer may propose a change to the Proposed HCC (an "**HCC Change**").

(b) HCC Change Request. To request an HCC Change, Lead Developer must submit a written request (an "**HCC Change Request**") that includes (i) an overview of the HCC Change and how it differs from the Proposed HCC, (ii) the rationale for the HCC Change, (iii) an impact analysis, including environmental, social, economic, community, traffic, safety, operations and maintenance or third-party impacts (positive and negative) of the HCC Change, if applicable, (iv) a cost analysis, including any additional costs or savings to the Infrastructure Facility or Proposed HCC resulting from

the HCC Change, if applicable, (v) specifications and plan drawings, if applicable, and (vi) any additional information relevant to adjudicating a decision on the HCC Change.

(c) City Review. City shall not unreasonably withhold its consent to an HCC Change Request. The Parties agree it shall be reasonable for City to withhold its consent to an HCC Change Request if City determines (i) the matters described in the HCC Change Request do not qualify for an HCC Change, or (ii) the matters described in the HCC Change Request qualify for an HCC Change, but the Proposed HCC, as modified by the proposed HCC Change, would (A) fail to comply with the Technical Requirements, (B) fail to meet the HCC Interface Requirements or the Project Objectives, (C) fail to meet the affordable rental unit requirements of California Government Code Section 54221(f)(1)(F)(i) or California Government Code Section 54221(f)(1)(F)(ii), or if higher, the requirements of San Francisco Planning Code Section 415.6(a), or (D) materially increase City's costs or other liability.

(d) Within fifteen (15) Business Days of receiving an HCC Change Request, City will notify Lead Developer, in writing, if it approves or disapproves of the HCC Change Request or needs additional information, and the reasons for any disapproval or additional information request. If City requests additional information for an HCC Change Request, City will, within fifteen (15) Business Days of receiving that additional information, notify Lead Developer if it approves or disapproves of the HCC Change Request or needs additional information regarding the HCC Change Request.

(e) Approved HCC Change. If City approves an HCC Change, the Proposed HCC will be modified by that HCC Change as of Lead Developer's receipt of City's written approval of the HCC Change. Any costs or time resulting from an approved HCC Change will not be a LD Predevelopment Cost or otherwise be allocated to the Bus Yard Component. If the HCC Change results in removal of the Housing and Commercial Component from the Project, the LD Predevelopment Cost shall be reduced accordingly, and the amount of that reduction shall be negotiated in good faith by Parties.

(f) Disapproved HCC Change. If City reasonably disapproves an HCC Change Request under Section 9.2(c)(i), there will be no change to the Proposed HCC for that HCC Change Request. If City reasonably disapproves an HCC Change Request under Section 9.2(c)(ii), then the Project will be modified to only be comprised of the Bus Yard Component.

(g) IF Reimbursement Notice. If Lead Developer submits an HCC Change Request after Performance Milestone 27A due to a Regulatory Approval condition of the Planning Commission, the SFMTA Board, or the Board of Supervisors, and City reasonably disapproves that HCC Change Request under Section 9.2(c)(ii), then the LD Predevelopment Cost will be increased by any additional, documented costs incurred by Lead Developer (subject to City approval, which will not be unreasonably withheld) to modify the Design Deliverables for a Facility that will only be comprised of the Bus Yard Component. To request City's approval of any such costs, Lead Developer must submit a written request (an "**IF Reimbursement Notice**") that has a detailed description of the Design Deliverables modifications together with invoices evidencing the costs for those modifications. Within fifteen (15) Business Days of receiving an IF Reimbursement Notice, City will notify Lead Developer, in writing, if it approves or disapproves of the IF Reimbursement Request or needs additional information, and the reasons for any disapproval or additional information request. If City requests additional information for an IF Reimbursement Notice, City will, within fifteen (15) Business Days of receiving that additional information, notify Lead Developer if it approves or disapproves of the Request or needs additional information regarding the IF Reimbursement Notice

9.3. Changes Proposed by City.

(a) City may propose modifying the Preliminary Term Sheet and the HCC Term Sheet, if any, in the applicable draft Transaction Documents, without notice to any Guarantor. City may

also propose modifying the Technical Requirements, or any other aspect of the Project (“**City Proposed Change**”) at any time without notice to any Guarantor. To propose a City Proposed Change, City must submit a written, detailed description of that City Proposed Change and a narrative justification for the City Proposed Change. Within [x] Business Days of receiving notice of a City Proposed Change, Lead Developer must notify City in writing if it accepts the City Proposed Change or requests a meeting of the Parties to discuss the City Proposed Change. Any failure to timely respond to a City Proposed Change will be deemed Lead Developer’s acceptance of that City Proposed Change. If Lead Developer timely requests a meeting of the Parties with respect to a City Proposed Change, the Parties will meet within [x] Business Days of City’s receipt of that meeting request from Lead Developer. If City elects to pursue the City Proposed Change after that meeting, it must deliver written notice of that election to Lead Developer and the Project will be accordingly modified by the City Proposed Change. Pursuant to Section 2.5, any additional costs or time incurred by a City Proposed Change shall be equitably adjusted by the Parties, using the PCIC to the extent a City Proposed Change also benefits the Common Infrastructure or the Housing and Commercial Component.

(b) As of the execution of this Agreement, the Parties anticipate the requirements of the Regulatory Approvals that will be needed for the Proposed HCC, and the construction timing of the Proposed HCC, will not have a material, negative impact on City’s cost of the Infrastructure Facility, the timing for Substantial Completion of the Infrastructure Facility, or the operation of the Bus Yard Component after Substantial Completion of the Infrastructure Facility. However, the Parties acknowledge new information discovered during the PDA Term with respect to the timing, feasibility, and Regulatory Approval conditions and financing to deliver the Proposed HCC may affect that initial analysis. The primary objective of the Project is the timely delivery and operation of the Infrastructure Facility, but City recognizes that Lead Developer will expend time and funds to pursue its predevelopment obligations under this Agreement with respect to the Proposed HCC.

Accordingly, notwithstanding anything to the contrary in Section 9.3(a), City will not propose a City Proposed Change to modify or remove the Housing and Commercial Component and Common Infrastructure from the Project unless City reasonably determines (i) Lead Developer will not be able to obtain the Regulatory Approvals or financing needed for the timely construction of the Proposed HCC and timely payment of the Infrastructure Facility construction costs allocated to the Housing and Commercial Component, (ii) the Proposed HCC will delay Substantial Completion of the Infrastructure Facility beyond the Outside Delivery Date, (iii) the anticipated timing for Housing and Commercial Component construction activities will interfere with the SFMTA’s transit operations at the Bus Yard Component after the Substantial Completion of the Infrastructure Facility, or (iv) the Proposed HCC will materially increase City’s costs or liabilities with respect to the Project.

If any of the conditions of the foregoing paragraph are met, City can make a City Proposed Change to modify or remove the Housing and Commercial Component and Common Infrastructure from the Project through the procedure to effect a City Proposed Change under Section 9.3(a).

10. RECORDS

10.1. Definition of Material Adverse Change. The term “material adverse change” shall include any (i) bankruptcy, (ii) decrease in tangible net worth of 10% or greater of net assets, (iii) sale, merger, or acquisition exceeding 10% of the value of net assets prior to the sale, merger, or acquisition, (iv) downward change in credit rating, (v) inability to meet material conditions of loan or debt covenants, (vi) incurrence of a net operating loss, (vii) sustained charges exceeding 5% of the then net assets due to claims, changes in accounting, write-offs, or business restructuring; restructuring/reduction in salaried personnel exceeding 10% of its workforce or involving the disposition of assets exceeding 10% of the then net assets, (viii) or event know to

the entity which represents a material change in financial position from previously submitted financial statements.

10.2. Material Adverse Change in Financial Position. Lead Developer shall, for itself and for each Equity Member, Housing Developer, Affordable Housing Developer, and Guarantor, notify City of, and shall provide an explanation for, any material adverse change in financial position that was not reflected in or differed from the financial position reflected in the latest financial statements submitted in its response to the RFQ and updated in the Proposal. If there is any such material adverse change, Lead Developer shall promptly provide City with an assessment regarding the effect of such change on Lead Developer's ability to complete its obligations under this Agreement.

10.3. Future Performance. Following its review of financial statements or certifications provided under this Article 10, City may, in its sole discretion, require Lead Developer to develop and implement a plan assuring City of Lead Developer's capacity to continue to perform its obligations under this Agreement. City shall have the right to review and approve, in its sole discretion, such plan, and may identify additional measures assuring future performance, including requiring additional guarantees in accordance with Section 6.23. Lead Developer shall promptly and diligently carry out any approved plan in accordance with its terms.

11. CITY RIGHTS TO WORK MATERIALS

11.1. City Property. The Work Materials shall become the property of City once delivered to City pursuant to this Agreement; provided, however, that unless expressly prohibited elsewhere in this Agreement, Lead Developer may retain and use copies for reference and as documentation of its experience and capabilities.

11.2. Works for Hire. All the Work Materials shall, once a Termination Payment is paid to Lead Developer, be works for hire as defined under Title 17 of the United States Code, and all copyrights in such works shall, once a Termination Payment is paid to Lead Developer, be the property of the City. If any Work Materials are ever determined not to be works for hire under U.S. law, Lead Developer hereby assigns all its copyrights to those Work Materials to City, agrees to provide any material and execute any documents necessary to effectuate such assignment and agrees to include a clause in every contract it executes to develop the applicable Work Materials imposing the same duties upon the contractor(s) and making City a third-party beneficiary of those duties. With City's prior written approval, Lead Developer may retain and use copies of such works for reference and as documentation of its experience and capabilities. Notwithstanding the foregoing, Lead Developer and its consultants shall retain all common law, statutory, and other reserved rights, including copyrights and ownership of Lead Developer's and its consultant's standard design elements, Revit families, typical details, standard specifications, or general building component or system configurations that are not unique to the Project or City ("**Preexisting Materials**"). Lead Developer hereby grants, and shall require its consultants and its architect to grant, City a royalty-free, nonexclusive perpetual license to use the Preexisting Materials for this Project.

12. NO REPRESENTATION OR WARRANTY OF PROJECT VIABILITY

Lead Developer acknowledges and agrees that City has not made any representation or warranty regarding any matters relating to the Project Site, including but not limited to (i) the suitability of the Project Site for construction of the Project, (ii) the Project, (iii) if the SFMTA Board, Board of Supervisors, any other applicable City board or commission, and City's Mayor will approve the Transaction Documents, (iv) the ability to obtain CEQA approval for the Project, or (v) Lead Developer's ability to obtain the General Regulatory Approvals. Lead Developer further

acknowledges and agrees that although City is a Regulatory Agency, it is entering into this Agreement in its proprietary capacity and not as a Regulatory Agency with certain police powers and in that proprietary capacity, it has no authority or influence over other City officials, departments, boards, commissions, or agencies or any other Regulatory Agency responsible for issuing required Regulatory Approvals (including City, in its regulatory capacity). Accordingly, no guarantee or presumption exists that any of the Regulatory Approvals will be issued by the appropriate Regulatory Agency, and City's status as a Regulatory Agency will not limit Lead Developer's obligation to obtain General Regulatory Approvals from appropriate Regulatory Agencies that have jurisdiction over the Project.

13. FINAL ACTION SUBJECT TO ENVIRONMENTAL REVIEW

City will not enter into any Project Document or request approval of them until City has completed environmental review with respect to the Project in compliance with the California Environmental Quality Act ("CEQA") and City's CEQA Procedures, as set forth in San Francisco Administrative Code Chapter 31. The Project will also require discretionary approvals by a number of government bodies after public hearings and environmental review. Nothing in this Agreement commits, or shall be deemed to commit City or any other public agency to approve or implement the Project or the Transaction Documents, and they may not do so until environmental review of the Project as required under Applicable Law has been completed and they are able to review and consider the information contained in the CEQA document and all other relevant information about the Project. Accordingly, all references to the "Project" in this Agreement shall mean the proposed Project subject to future environmental review and consideration by City and other public bodies.

City and any other public agencies with jurisdiction over any part of the Project each shall have the absolute discretion to (a) require modifications to the Project and/or implementation of specific measures to mitigate significant adverse environmental impacts; (b) select feasible alternatives that avoid significant adverse impacts of the Project, including the "no project" alternative; (c) reject all or part of the Project if the economic and social benefits of the Project do not outweigh otherwise unavoidable significant adverse impacts of the Project; (d) approve the Project upon a finding that the economic and social benefits of the Project outweigh otherwise unavoidable significant adverse environmental impact of the Project; and (e) deny the Project.

14. COMMERCIAL CLOSE

14.1. Achieving Commercial Close. If Lead Developer has obtained all necessary General Regulatory Approvals, CEQA review for the Project has been completed, the Transaction Documents have been mutually approved by the Parties, and the Transaction Documents have been approved by the SFMTA Board, the Board of Supervisors, and any other applicable City board or commission, each acting in its sole discretion, and all the other Performance Milestones have been timely achieved, Lead Developer shall cause the Principal Project Company and the Housing Project Company to execute and deliver the Transaction Documents. Such execution and delivery will occur on or before the tenth (10th) Business Day (the "Scheduled Commercial Closing Date") immediately following the date legislation adopted by the Board of Supervisors to approve the Transaction Documents is effective (the "Project Approval Date") or any earlier date mutually selected by the Parties, the Principal Project Company, and the Housing Project Company between the Project Approval Date and the Scheduled Commercial Closing Date.

14.2. Flexibility for Separate Commercial Closings. Notwithstanding Section 14.1, the IF Commercial Close and the HCC Commercial Close may occur at different times, provided that City has provided its prior written approval in its sole discretion.

15. PROHIBITED ACTIONS

15.1. Prohibited Payments. Lead Developer may not pay, or agree to pay, any fee or commission, or any other thing of value contingent on entering into this Agreement, any other Project Document, or any other agreement with City related to the Project, to any City or City employee or official or to any contracting consultant hired by City for the Project. By entering into this Agreement, Lead Developer certifies to City that Lead Developer has not paid or agreed to pay any fee or commission, or any other thing of value contingent on entering into this Agreement, any other Project Document, or any other agreement with City related to the Project, to any City employee or official or to any contracting consultant hired by City for the Project.

15.2. No Entry. Lead Developer expressly acknowledges and agrees that this Agreement does not give Lead Developer or any Lead Developer Agents the right to enter or access the Project Site. Any entry on the Project Site by Lead Developer or any of the Lead Developer Agents must be pursuant to terms and conditions of the Access Agreement.

15.3. Submitting False Claims. The full text of San Francisco Administrative Code Section 21.35, including the enforcement and penalty provisions, is incorporated into this Agreement by this reference. Pursuant to San Francisco Administrative Code Section 21.35, any contractor or subcontractor who submits a false claim shall be liable to City for the statutory penalties set forth in that section. A contractor or subcontractor will be deemed to have submitted a false claim to City if the contractor or subcontractor: (a) knowingly presents or causes to be presented to an officer or employee of City a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by City; (c) conspires to defraud City by getting a false claim allowed or paid by City; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to City; or (e) is a beneficiary of an inadvertent submission of a false claim to City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to City within a reasonable time after of the false claim. Lead Developer agrees that all references to a contractor in San Francisco Administrative Code Section 21.35 apply to Lead Developer and all references to a subcontractor in San Francisco Administrative Code Section 21.35 apply to Lead Developer Agents and agents of Development Team Members.

16. TERMINATION

16.1. Termination for Convenience. In addition to its other termination rights in this Agreement, City shall have the right to terminate this Agreement at any time at its sole discretion by providing at least ten (10) days prior written notice of that termination to Lead Developer. Termination (or partial termination) of this Agreement shall not relieve any Guarantor of its obligation for any claims arising out of the Work performed.

16.2. Terminating Event. The occurrence of any of the following events (each, a “**Terminating Event**”) will cause early termination of and extinguish this Agreement (“**Termination**”), without an opportunity for the Lead Developer to cure:

- (a) City exercises its right to terminate this Agreement following an LD Event of Default;
- (b) City exercises its right to terminate this Agreement for convenience;

- (c) City issues a Discontinuation Notice;
- (d) The PDA Term expires before Commercial Close occurs;
- (e) Lead Developer exercises its right to terminate this Agreement following a City Event of Default;
- (f) Lead Developer fails to comply with Article 15 (Prohibited Actions), Article 18 (Assignment and Changes in Ownership of Lead Developer), or Section 24.1 (Nondiscrimination in City Contracts and Benefits Ordinance).

16.3. Termination Payments. If this Agreement terminates before Commercial Close for any reason, City will have no obligation to reimburse or otherwise pay Lead Developer for any of Lead Developer’s Project costs or expenses. Notwithstanding anything to the contrary in the foregoing sentence, City shall, in exchange for an executed release from Lead Developer satisfactory in form and substance to City, make the following payments (each, a “**Termination Payment**”), as applicable, to Lead Developer if this Agreement terminates before Commercial Close for any reason other than an LD Event of Default and Lead Developer has performed its obligations under Section 16.6(a). The executed release from Lead Developer shall release, waive, and discharge City and City Agents of and from all liabilities, obligations, claims, and demands whatsoever arising out of or under this Agreement. City’s liability to Lead Developer with respect to any claims or Disputes arising from this Agreement shall not exceed Nine Million Nine Hundred Ninety Thousand Dollars (\$9,990,000) plus the amount of the Continuation Payment if paid.. City’s payment of any Termination Payment shall not affect any of City’s rights under the Agreement with respect to completed Work, or relieve Lead Developer or any Guarantor from its respective obligations with respect thereto.

(a) Proposal Work Product Payment. If this Agreement terminates for any reason other than an LD Event of Default, and Lead Developer submitted a duly executed Payment for Work Product Agreement in the form given in the RFP with the Proposal, then City will pay Lead Developer an amount equal to One Million Dollars (\$1,000,000) (the “**Work Product Payment**”).

(b) PDA Phase 1. If this Agreement terminates for any reason other than an LD Event of Default after Lead Developer has timely submitted all the documents described as Performance Milestone 15, and those documents comply with the applicable requirements for them in the attached Appendix B-2, then, in addition to the Work Product Payment, City will pay Lead Developer an amount equal to the lesser of Lead Developer’s Qualified Out-of-Pocket Costs to provide the PDA Phase 1 materials (“**PDA Phase 1 Costs**”) and Four Million Nine Hundred Ninety Thousand Dollars (\$4,990,000). Lead Developer must submit commercially reasonable evidence of its PDA Phase 1 Costs to City before City is obligated to make any payment under this subsection (b).

(c) PDA Phase 2. If this Agreement terminates for any reason other than an LD Event of Default after Performance Milestone 16 and Lead Developer has timely delivered the materials described as Performance Milestone 27, and those materials comply with all the applicable requirements for them in the attached Appendix B-2, then, in addition to the Work Product Payment, City will pay Lead Developer an amount equal to the lesser of (A) the PDA Phase 1 Costs and Lead Developer’s Qualified Out-of-Pocket Costs to provide those PDA Phase 2 materials (“**PDA Phase 2 Costs**”) and (B) Seven Million Nine Hundred Ninety Thousand Dollars (\$7,990,000). Lead Developer must submit commercially reasonable evidence of its PDA Phase 1 Costs and its PDA Phase 2 Costs to City before City is obligated to make any payment under this subsection (c).

(d) PDA Phase 3. If this Agreement terminates for any reason other than an LD Event of Default after Performance Milestone 28 and after Lead Developer has timely delivered the materials and evidence described as Performance Milestones 32 and 33, and those materials comply with

all the applicable requirements for them in the attached Appendix B-2, then, in addition to the Work Product Payment, City will pay Lead Developer an amount equal to the lesser of (A) the PDA Phase 1 Costs, the PDA Phase 2 Costs and Lead Developer's Qualified Out-of-Pocket Costs to provide those PDA Phase 3 materials and perform those PDA Phase 3 activities ("**PDA Phase 3 Costs**") and (B) Eight Million Nine Hundred Ninety Thousand Dollars (\$8,990,000). Lead Developer must submit commercially reasonable evidence of its PDA Phase 1 Costs, its PDA Phase 2 Costs, and its PDA Phase 3 Costs to City before City is obligated to make any payment under this subsection (d).

(e) Termination between Milestones. City's delivery of Notice to Proceed #1 to Lead Developer and each of the Performance Milestones described in the foregoing subsections (b)-(d) are "**Qualifying Payment Milestones**". If this Agreement terminates for any reason other than an LD Event of Default between any of the Qualifying Payment Milestones for any reason other than an LD Event of Default, City will make a partial termination payment (a "**Partial Payment**") for Lead Developer's Qualified Out-of-Pocket Costs for any Work Materials completed by Lead Developer for the Qualifying Payment Milestone that would have immediately followed the date this Agreement is terminated if (1) Lead Developer has delivered those Work Materials to City within ten (10) Business Days following the termination of this Agreement, (2) those Work Materials comply with all the requirements for them in the attached Appendix B-2, as modified to reflect the early delivery of those Work Materials, and (3) all third parties that prepared any of those Work Materials have consented in writing to the assignment of them to City.

Lead Developer must submit commercially reasonable evidence of its Qualified Out-of-Pocket Costs for these partially-completed Work Materials to City before City is obligated to make any payment under this subsection (e). The amount of the Partial Payment will be the higher of (i) the amount calculated by prorating the termination payment associated with the next Qualifying Payment Milestone at the time this Agreement terminates by the number of days between that next Qualifying Payment Milestone and the immediately preceding Qualifying Payment Milestone, and determining the prorated portion of that next Qualifying Payment Milestone termination payment as of the date of termination, and (ii) the value of the completed or partially completed Work Materials prepared for the PDA Phase during which this Agreement terminates, as reasonably determined by mutual agreement of the Parties based on the percentage of completion of those Work Materials relative to the total amount of Work Materials required during the applicable PDA Phase.

(f) Electronic Payments. Lead Developer agrees that City's obligation to make any Termination Payment to Lead Developer is conditioned on Lead Developer signing up to receive electronic payments through the City's Automated Clearing House (ACH) payments service/provider. The process to sign up for those electronic payments is described at www.sfcontroller.org/electronic-payments-ach-vendors.

(g) Survival. The Parties' respective rights and obligations under this Section shall survive any termination of this Agreement.

16.4. Termination Notice; Effect of Termination. A Party shall exercise any termination right it has under this Agreement by delivering written notice to the other Party ("**Termination Notice**"). Following the delivery of a Termination Notice, this Agreement will terminate and each Party will be released from all liability under this Agreement except for any obligations that expressly survive the termination or expiration of this Agreement.

16.5. City's Rights Following Termination. If a Termination occurs, City in its sole discretion may take any action with respect to the Project Site, including the right to negotiate with another developer for the development of the Project Site, to elect not to pursue any project at the Project Site, or to undertake other efforts with the Project Site including pursuing a new procurement or issuing a new request for proposals. Lead Developer agrees that if this

Agreement terminates on its own terms, City shall have the right to elect to negotiate with another Short-Listed Proposer for to reprocur the Project, and use the Proposal and the Work Materials submitted by Lead Developer prior to Termination.

16.6. Assignment of Work Materials

(a) If there is a Termination, Lead Developer must take the following actions within the time periods specified in City's notice:

(i) assign, at no cost to City, all of its rights under its consulting contracts with Lead Developer Agents, including any rights to use all resulting Work Materials;

(ii) satisfy all outstanding fees relating to the Work Materials that are then due and payable or will become due and payable for services relating to the Project rendered by any of Lead Developer Agents providing any Work Materials up to the date of Termination and provide written evidence of satisfaction to City; and

(iii) deliver copies of all Work Materials in the possession of Lead Developer or a Development Team Member or, for materials not in the possession of Lead Developer or a Development Team Member, confirm, on request from the applicable Lead Developer Agents or City, those Lead Developer Agents are authorized to deliver or have delivered from the appropriate parties all Work Materials to City. Lead Developer's obligations under this Section will survive the expiration or earlier Termination of this Agreement.

(b) If there is a Termination, Lead Developer will be permitted to disclaim any representations or warranties with respect to the Work Materials (other than Lead Developer's payment of fees), and, at Lead Developer's request, City will provide Lead Developer with a release from liability for future use of the applicable Work Materials, in a form acceptable to Lead Developer and City. Lead Developer's acceptance of City's release will be deemed to waive and release City from any claims of proprietary rights or interest in the Work Materials, and Lead Developer agrees that, following a Project Assignment, City or its designee may use any of the Work Materials for any purpose, including pursuit of the same or a similar Project with a third party. "**Project Assignment**" means a contractual assignment of all of Lead Developer's rights under a consulting contract with a Lead Developer Agent for the performance of any of the Work, including any rights to use the Work Materials.

(c) Lead Developer's obligations under this Section shall survive a Termination.

17. INSURANCE

17.1. Required Coverage During PDA Term. Without in any way limiting Lead Developer's liability pursuant to Article 21, Lead Developer must maintain in force insurance in the following amounts and coverages during the PDA Term:

(a) Commercial General Liability Insurance with limits not less than \$1,000,000 each occurrence for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations.

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

(c) Workers' Compensation, in statutory amounts, with Employers' Liability Limits not less than \$1,000,000 each accident, injury, or illness.

(d) Professional Liability Insurance, applicable to Lead Developer's profession, with limits not less than \$1,000,000 for each claim with respect to negligent acts, errors or omissions in connection with the Work.

17.2. Endorsements. The insurance described in Section 17.1 shall include the following endorsements:

(a) The Commercial General Liability policy and the Commercial Automobile Liability Insurance policy must be endorsed to name as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees.

(b) The Workers' Compensation policy(ies) shall be endorsed with a waiver of subrogation in favor of City for all work performed by Lead Developer, its employees, agents and subcontractors under this Agreement.

(c) The Commercial General Liability policy shall provide that such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that the insurance applies separately to each insured against whom a claim is made or suit is brought.

(d) The Commercial Automobile Liability Insurance policy shall provide that such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that the insurance applies separately to each insured against whom claim is made or suit is brought.

17.3. Other Insurance Requirements. The insurance described in Section 17.1 are subject to the following requirements:

(a) Thirty (30) days' advance written notice shall be provided to City of cancellation, intended non-renewal, or reduction in coverages, except for non-payment for which no less than ten (10) days' notice shall be provided to City. Notices shall be sent to City address set forth in Section 23 below.

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

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

(d) Should any required insurance lapse during the PDA Term, City shall have no obligation to make any termination payments to Lead Developer until City receives satisfactory evidence of reinstated coverage as required by this Agreement, effective as of the lapse date. If insurance is not reinstated, City may, at its sole option, terminate this Agreement effective on the date of such lapse of insurance.

(e) Before commencing any Work, Lead Developer shall furnish to City certificates of insurance and additional insured policy endorsements with insurers with ratings comparable to A-, VIII or higher, that are authorized to do business in the State of California, and that are satisfactory to City, in form evidencing all coverages set forth above. Approval of the insurance by City shall not relieve or decrease Lead Developer's liability hereunder.

(f) If Lead Developer will use any Lead Developer Related Entity to provide Work, Lead Developer shall require the Lead Developer Related Entity to provide all necessary insurance and to name the City and County of San Francisco, its officers, agents and employees and Lead Developer as additional insureds.

18. ASSIGNMENT AND CHANGES IN OWNERSHIP OF LEAD DEVELOPER

18.1. Restrictions on Assignment. Lead Developer acknowledges that City is entering into this Agreement on the basis of the special skills, capabilities, and experience of Lead Developer, the Development Team and the Key Personnel. This Agreement is personal to Lead Developer and, except as provided in this Agreement, may not be assigned, transferred, conveyed, or otherwise disposed of without City's prior consent, which may be withheld in City's sole and absolute discretion; provided, however, that Lead Developer can assign this Agreement to an entity that (i) has Lead Developer as its sole or controlling member or shareholder, (ii) has the minimum assets required for the respondents to the RFP, (iii) has assumed Lead Developer's agreements with the Development Team Members) and (iv) has [*and the Guarantor*] with respect to the Project (an "**Approved Subsidiary**"). Any assignment, transfer, conveyance, or other disposition of this Agreement in violation of this Section will be an incurable LD Event of Default under this Agreement.

18.2. Restrictions on Changes in Ownership of Lead Developer. A Change of Control of Lead Developer or an Equity Transfer that results in any Equity Member ceasing to own (directly or indirectly) the same percentage of the issued share capital, partnership or membership interests, as applicable, in Lead Developer that it owned (directly or indirectly) as of Effective Date, shall be subject to City's prior written approval in City's sole discretion.

19. DEFAULT

19.1. LD Event of Default. The occurrence of any of the following events will constitute a default by Lead Developer under this Agreement after the expiration of the applicable cure period, if any (each, an "**LD Event of Default**"):

(a) Any fraudulent act, misrepresentation or willful misconduct by any Lead Developer Related Entity with respect to the Proposal, the Project or this Agreement;

(b) Lead Developer fails to achieve any of the Performance Milestones to be achieved by Lead Developer in the manner and by the Performance Dates described in the attached Appendix B-1, as the Performance Dates may be extended or stayed in accordance with Section 2.9, Section 2.10 or Section 3.1, as applicable, or extended by City in its sole discretion, if such failure is not cured within ten (10) Business Days after City's notice to Lead Developer, but if the default cannot reasonably be cured within the ten (10) Business Day cure period, Lead Developer will not be in default of this Agreement if Lead Developer commences to cure the default within the ten (10) Business Day cure period and diligently and in good faith prosecutes the cure to completion;

(c) Lead Developer fails to comply with any other provision of this Agreement or any Early Works Agreement if not cured within ten (10) Business Days after City's notice to Lead Developer, but if the default cannot reasonably be cured within the ten (10) Business Day cure period, Lead Developer will not be in default of this Agreement if Lead Developer commences to cure the default within the ten (10) Business Day cure period and diligently and in good faith prosecutes the cure to completion;

(d) Any of the representations, warranties or covenants made by Lead Developer or any Guarantor in Section 22.1 are not true in any material respect throughout the PDA Term;

(e) A voluntary or involuntary action is filed (i) to have Lead Developer adjudicated insolvent and unable to pay its debts as they mature or a petition for reorganization, arrangement or liquidation under any bankruptcy or insolvency law, or a general assignment by Lead Developer, for the benefit of creditors, or (ii) seeking Lead Developer's reorganization, arrangement, liquidation, or other relief under any law relating to bankruptcy, insolvency, or reorganization or seeking appointment of a trustee, receiver, or liquidator of Lead Developer or any substantial part of Lead Developer's assets or any of the foregoing events occurs with respect to any of the members of Lead Developer, any of the Development Team Members, or any Guarantor, and, in respect of any involuntary action, such action has not been dismissed within 60 days of being filed;

(f) There is an uncured event of default under any Early Works Agreement or the Access Agreement by Lead Developer or any of the Lead Developer Agents;

(g) There is a change in the Development Team or Key Personnel without City's consent;

(h) Lead Developer, its parent company, or their respective members or shareholders, or any of the Development Team Members are debarred or prohibited from doing business with any federal, state or local government agency; or

(i) Lead Developer fails to comply with Article 15 (Prohibited Actions) or Section 24.1 (Nondiscrimination in City Contracts and Benefits Ordinance); or

(j) Any Guarantor revokes or attempts to revoke its obligations under its Guaranty or otherwise takes the position that such instrument is no longer in full force and effect, and Lead Developer fails to cure such LD Event of Default cured within five (5) Business Days after City's notice to Lead Developer by providing City with alternative security and/or a new guarantor, which security and/or new guarantor must be in a form satisfactory to City, in its sole discretion.

19.2. City Event of Default. The occurrence of any of the following events will constitute a default by City under this Agreement after the expiration of the applicable cure period, if any (each, a "**City Event of Default**"):

(a) City's failure to comply with any provision of this Agreement if the failure is not cured within ten (10) Business Days after Lead Developer's notice to City; but if the default cannot reasonably be cured within the ten (10) Business Day cure period, City will not be in default of this Agreement if City commences to cure the default within the ten (10) Business Day cure period and diligently and in good faith prosecutes the cure to completion.

(b) A voluntary or involuntary action is filed (i) to have City adjudicated insolvent and unable to pay its debts as they mature or a petition for reorganization, arrangement or liquidation under any bankruptcy or insolvency law, or a general assignment by City for the benefit of creditors, or (ii) seeking City's reorganization, arrangement, liquidation, or other relief under any law relating to bankruptcy, insolvency, or reorganization or seeking appointment of a trustee, receiver, or liquidator of City or any substantial part of City's assets.

(c) Any representation or warranty made by City under this Agreement is false, misleading or inaccurate when made, in each case in any material respect, or omits material information when made.

20. REMEDIES

20.1. City's Remedies. Following an LD Event of Default, City may (a) terminate this Agreement by delivery of notice to Lead Developer and, as the termination date specified in that

notice (which may be on the delivery of the notice), Lead Developer and City will both be released from all liability under this Agreement (except for those obligations that survive Termination), (b) seek to enforce Lead Developer's indemnity obligations, (c) seek to enforce any Guarantor obligations under the Guarantees, (d) obtain copies and/or assignments of the Work Materials to which City is entitled. These remedies are not exclusive, but are cumulative with any remedies now or later allowed by law or in equity. If an LD Event of Default occurs, Lead Developer and any Guarantor shall be jointly and severally liable to City for all Losses incurred by the City and the City Agents.

20.2. Lead Developer's Remedies. Following a City Event of Default, Lead Developer will have the option, as its sole and exclusive remedy at law or in equity, to terminate this Agreement by delivery of notice to City and, as the termination date specified in that notice (which may be on the delivery of the notice), Lead Developer and City will both be released from all liability under this Agreement (except for those provisions that survive Termination, including City's obligations to make any payments to Lead Developer pursuant to Section 16.3). Lead Developer waives any and all rights it may now or later have to pursue any other remedy or recover any other damages on account of any City breach or default, including loss of bargain, special, punitive, compensatory or consequential damages. No member, official, agent or employee of City will be personally liable to Lead Developer, or any successor in interest (if and to the extent permitted under this Agreement), due to a City Event of Default or for any amount that may become due to Lead Developer or successor or on any obligations under the terms of this Agreement.

21. INDEMNITY; DISCLAIMERS; LIMITATION OF LIABILITY

21.1. Lead Developer's Duty to Indemnify. To the fullest extent permitted by law, and related to facts and circumstances arising from and after the Effective Date, Lead Developer agrees to indemnify and hold City and the City Agents (collectively, the "**Indemnified Parties**") harmless, and at City's request, defend them from and against any Losses that the Indemnified Parties may incur as a result, directly or indirectly, of any of the following:

(a) Any injury to or death of a person, including employees of any Indemnified Parties or any Lead Developer Related Entity, and any loss of or damage to property, in each case arising out of Lead Developer's performance of this Agreement, including, but not limited to, Lead Developer's use of facilities or equipment provided by City or others;

(b) Breach by any Lead Developer Related Entity of Applicable Law, including but not limited to privacy or personally identifiable information, health information, disability and labor laws or regulations;

(c) Strict liability imposed by any law or regulation arising out of Lead Developer's performance of this Agreement;

(d) Breach by any Lead Developer Related Entity of any of its obligations or any representation, warranty or covenant under the Agreement or any Early Works Agreement, including Lead Developer's execution of subcontracts or Development Team agreements not in accordance with the applicable requirements of this Agreement;

(e) Any Lead Developer Related Entity's failure to obtain or comply with the terms and conditions of any Regulatory Approval;

(f) Any fraud, criminal conduct, intentional misconduct, recklessness, bad faith, gross negligence, negligence or other culpable act or omission of any Lead Developer Related Entity; and

(g) Any alleged infringement of the patent rights, copyright, trade secret or any other proprietary right or trademark, and all other intellectual property claims of any Person or Persons arising directly or indirectly from (i) any allegedly improper appropriation or use of intellectual property by any Lead Developer Related Entity, or (ii) the receipt by City, or any of its officers or agents, of the Work.

The foregoing indemnification includes, without limitation, reasonable fees of attorneys, consultants and experts and related costs and City's costs of investigating any claims against City. In addition to Lead Developer's obligation to indemnify City, Lead Developer specifically acknowledges and agrees that it has an immediate and independent obligation to defend City from any claim which actually or potentially falls within this indemnification provision, even if the allegations are or may be groundless, false or fraudulent, which obligation arises at the time such claim is tendered to Lead Developer by City and continues at all times thereafter.

This indemnification shall apply regardless of whether or not a claim, suit, action, loss or liability was caused in part or contributed to by an Indemnified Party. However, without affecting the rights of City under any provision of this Agreement, Lead Developer shall not be required to indemnify and hold harmless City for liability to the extent caused by (i) the negligence, reckless or willful misconduct, bad faith or fraud of an Indemnified Party; or (ii) City's breach of any of its material obligations under this Agreement. In instances where City is shown to have been actively negligent, reckless, engaged in willful misconduct or acting in bad faith or with fraud and where such City actions account for only a percentage of the liability involved, the obligation of Lead Developer will be for that entire portion or percentage of liability not attributable to such actions of City.

With respect to Work performed by a design professional as defined in Civil Code section 2782.8, this indemnification shall apply only to the extent permitted by said section 2782.8.

Lead Developer's obligations under this Section will survive the expiration or earlier Termination of this Agreement.

21.2. Disclaimer and Acknowledgement.

(a) Disclaimer. Except as otherwise provided in this Agreement, City does not represent or warrant, and hereby disclaims: (i) that the information contained in the Reference Documents and in any other reference information is either complete or accurate or suitable for use or that such information is in conformity with the requirements of any Regulatory Approvals or other governmental approvals or rules; (ii) that the any itemized list set forth in the Technical Requirements is accurate or complete; (iii) responsibility for the condition of the Project Site; and (iv) responsibility for any Regulatory Agency's failure to issue any required Regulatory Approval.

(b) Acknowledgement. Lead Developer, on behalf of itself and the Lead Developer Related Entities, and each of their respective successors and assigns, hereby acknowledges (i) City's disclaimers set forth in Section 21.2(a); (ii) that Lead Developer previously received the Reference Documents through the RFP, and they were provided for general or reference information only and without any warranty as to their accuracy, completeness or fitness for any particular purpose; and (iii) agrees that the Lead Developer Related Entities shall have no recourse to City for any claim arising out of or relating to the matters set forth in Section 21.2(a).

21.3. Limitation of Liability

(a) Except as provided in Section 21.3(b), Lead Developer's liability to City for damages, including direct, indirect and consequential damages, arising out of Lead

Developer's performance of the Agreement (or failure to perform hereunder) shall be limited to Nine Million Nine Hundred Ninety Thousand Dollars (\$9,990,000) plus the amount of the Continuation Payment if paid.

(b) The limitation of damages set forth in Section 21.3(a) does not apply to or limit any right of recovery City may have respecting the following:

(i) Losses arising out of fraud, criminal conduct, intentional misconduct, recklessness, bad faith, or gross negligence on the part of any Lead Developer Related Entity;

(ii) Lead Developer's indemnities set forth in Section 21.1, or elsewhere in the Agreement, for third party claims;

(iii) Losses arising out of any release of hazardous materials by any Lead Developer Related Entity; and

(iv) Any liability for any type of damage or loss, to the extent such loss or damage is covered by insurance required under this Agreement or for which Lead Developer was required to provide insurance if coverage is not in force, or is covered by the actual amount of insurance applicable to the Project and the Work (regardless of whether required to be carried hereunder), whichever is greater.

22. REPRESENTATIONS AND WARRANTIES

22.1. Lead Developer Representations and Warranties. Lead Developer represents, warrants and covenants to City (and will cause its members, on behalf of themselves, to represent, warrant and covenant to City) as follows, as of the date hereof and throughout the PDA Term:

(a) Valid Existence; Good Standing. Lead Developer is a _____ duly incorporated and validly existing under the laws of the State of _____. Lead Developer's sole manager is _____ and its sole member is _____, both of which are _____ duly incorporated and validly existing under the laws of the State of _____. Lead Developer has the requisite power and authority to own its property and conduct its business as presently conducted. Lead Developer, its sole manager and its sole member have each made the necessary filings with, and are all good standing in, the State of California.

(b) Business Licenses. Lead Developer and its manager have obtained all licenses required to conduct its business in San Francisco and Lead Developer, its manager, and its member are not in default of any fees or taxes due to the City and County of San Francisco.

(c) Authority. Lead Developer and its manager each have the requisite power and authority to execute and deliver this Agreement and the agreements contemplated hereby and to carry out and perform all of the terms and covenants of this Agreement and the agreements contemplated hereby to be performed by Lead Developer.

(d) No Limitation on Ability to Perform. Neither Lead Developer's [[articles of organization or operating agreement]] nor any Applicable Law prohibit Lead Developer's entry into this Agreement or its performance hereunder. No consent, authorization or approval of, and no notice to or filing with, any governmental authority, Regulatory Agency or other Person is required for the due execution and delivery of this Agreement by Lead Developer and Lead Developer's performance hereunder, except for consents, authorizations and approvals which have already been obtained, notices which have already been given and filings which have already been made. There are no undischarged judgments pending against Lead Developer, and Lead Developer has not received notice of the filing of any pending suit or proceedings against Lead Developer before any court, Regulatory Agency, or

arbitrator, which might materially adversely affect the enforceability of this Agreement or the business, operations, assets or condition of Lead Developer.

(e) Valid Execution. The execution and delivery of this Agreement and the performance by Lead Developer hereunder have been duly and validly authorized. When executed and delivered by City and Lead Developer, this Agreement will be a legal, valid and binding obligation of Lead Developer.

(f) Defaults. The execution, delivery and performance of this Agreement (i) do not and will not violate or result in a violation of, contravene or conflict with, or constitute a default by Lead Developer under (1) any agreement, document or instrument to which Lead Developer is a party or by which Lead Developer is bound, (2) any Law applicable to Lead Developer or its business, or (3) the [[articles of organization or the operating agreement]] of Lead Developer, and (ii) do not result in the creation or imposition of any lien or other encumbrance upon the assets of Lead Developer, except as contemplated hereby.

(g) Financial Matters. Lead Developer is not in default under, and has not received notice asserting that it is in default under, any agreement for borrowed money, Lead Developer has not filed a petition for relief under any Chapter of the U.S. Bankruptcy Code, there has been no event that has materially adversely affected Lead Developer's ability to meet its obligations hereunder, and to the best of Lead Developer's knowledge, no involuntary petition naming Lead Developer as debtor has been filed under any Chapter of the U.S. Bankruptcy Code.

(h) Warranty of LD Development Program. Lead Developer warrants to City that all the Work will be performed with the degree of skill and care that is required by current, good and sound professional procedures and practices, and in conformance with generally accepted professional standards prevailing at the time they are performed so as to ensure that all performed Work is correct and appropriate for the purposes contemplated in this Agreement.

(i) Guarantor Valid Existence; Good Standing. Guarantor is duly organized and validly existing under the laws of the State of [●], with full power, right, and authority to own its properties and assets and carry on its business as now conducted or proposed to be conducted.

(j) Enforceability of Guaranty. The Guaranty constitutes the legal, valid and binding obligation of the Guarantor, enforceable in accordance with its terms, subject only to applicable bankruptcy, insolvency and similar laws affecting the enforceability of the rights of creditors generally and the general principles of equity.

(k) Valid Execution of Guaranty. The execution, delivery and performance of the Guaranty have been duly authorized by all necessary action of Guarantor and will not result in a breach of or a default under Guarantor's organizational documents or any indenture or loan or credit agreement or other material agreement or instrument to which Guarantor is a party or by which its properties and assets may be bound or affected.

22.2. City Representations and Warranties.

(a) Valid Existence; Good Standing. City is a municipal corporation created and validly existing under the laws of the State of California.

(b) Authority. City has the requisite power and authority to execute and deliver this Agreement and the Access Agreement and to perform all of the terms and covenants of this Agreement and the agreements contemplated hereby to be performed by City, subject to the terms and conditions of this Agreement.

(c) Valid Execution. The execution and delivery of this Agreement and the performance by City hereunder have been duly and validly authorized. When executed and delivered by City and Lead Developer, this Agreement will be a legal, valid and binding obligation of City.

(d) Defaults. The execution, delivery and performance of this Agreement do not and will not violate or result in a violation of, contravene or conflict with, or constitute a default by City under (i) any agreement, document or instrument to which City is a party or by which City is bound, (ii) any law applicable to City, or (ii) the City's Charter.

(e) Source of Funds. City has adequate sources of funds to perform the payment obligations of City under this Agreement, subject to the requirements of Section 24.15.

22.3. Survival. The representations and warranties herein will survive any termination of this Agreement.

23. NOTICES.

Any notice given under this Agreement must be in writing delivered in person, by commercial courier, next business day delivery requested, or by registered, certified mail or express mail, return receipt requested, with postage prepaid, to the mailing addresses below. All notices under this Agreement will be deemed given, received, made or communicated on the date personal receipt actually occurs or, if mailed, on the delivery date or attempted delivery date shown on the return receipt. For the convenience of the Parties, copies of notices may also be given by email to the email address given below but email notice will not be binding on either Party.

The effective time of a notice will not be affected by the receipt of the email copy of the notice. Any mailing address, or email address may be changed at any time by giving written notice of the change in the manner provided above at least ten (10) days before the effective date of the change.

City: San Francisco Municipal Transportation Agency
1 South Van Ness, 8th Floor
San Francisco, CA 94103
Attn: Licinia Iberri
Telephone: (415)646-2715

Email: Licinia.iberri@sfmta.com

[If person above is not the City Project Director, add City Project Director contact information]

With a copy to: Office of the City Attorney
City Hall, Room 234
1 Dr. Carlton B. Goodlett Place
San Francisco, California 94102-4682
Attn: Real Estate & Finance Group
Re: Potrero Yard Modernization Project

Email: Carol.R.Wong@sfcityatty.org

Lead Developer: [LD Project Director]

With a copy to: [●]

24. CITY REQUIREMENTS

Lead Developer has reviewed, understands, and is ready, willing, and able to comply with the terms and conditions of this Article, which summarizes special City requirements as of the Effective Date, each of which is fully incorporated by reference. Lead Developer acknowledges that City requirements in effect when any Transaction Documents are executed will be incorporated into the Transaction Documents, as applicable, and will apply to all contractors, subcontractors, and any other Lead Developer Parties, as applicable. City requirements of general applicability will apply to the Project even if not summarized below.

The following summary is for Lead Developer's convenience only; Lead Developer is obligated to become familiar with all applicable requirements and to comply with them fully as they are amended from time to time. City ordinances are currently available on the web at www.sfgov.org. References to specific laws in this Article refer to the San Francisco Municipal Code unless specified otherwise. Capitalized terms used in this Article and not defined in this Agreement will have the meanings assigned to them in the applicable section of the San Francisco Municipal Code.

24.1. Nondiscrimination in City Contracts and Benefits Ordinance.

(a) Non-Discrimination in Contracts. Lead Developer shall comply with the provisions of Chapters 12B and 12C of the Administrative Code, which are incorporated into this Agreement by this reference. Lead Developer shall incorporate by reference in all Subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the Administrative Code and shall require all subcontractors to comply with such provisions. Lead Developer is subject to the enforcement and penalty provisions in Chapters 12B and 12C.

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

24.2. Requiring Health Benefits for Covered Employees. All undefined, initially-capitalized terms used in this Section shall have the meanings given to them in Administrative Code Chapter 12Q (the "HCAO"). If the HCAO applies to this Agreement, Lead Developer shall comply with the requirements of the HCAO. For each Covered Employee, Lead Developer shall provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO. If Lead Developer chooses to offer the health plan option, such health plan shall meet the minimum standards set forth by the San Francisco Health Commission. Information about and the text of the HCAO, as well as the Health Commission's minimum standards, is available on the web at <http://sfgov.org/olse/hcao>. Lead Developer is subject to the enforcement and penalty provisions

in the HCAO. Any Subcontract entered into by Lead Developer shall require any Subcontractor with 20 or more employees to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section.

24.3. Minimum Compensation Ordinance. If San Francisco Administrative Code Chapter 12P applies to this Agreement, Lead Developer shall pay covered employees no less than the minimum compensation required by San Francisco Administrative Code Chapter 12P (“**Chapter 12P**”), including a minimum hourly gross compensation, compensated time off, and uncompensated time off. Lead Developer is subject to the enforcement and penalty provisions in Chapter 12P. Information about and the text of the Chapter 12P is available on the web at <http://sfgov.org/olse/mco>. Lead Developer is required to comply with all of the applicable provisions of Chapter 12P, irrespective of the listing of obligations in this Section. By signing and executing this Agreement, Lead Developer certifies that it complies with Chapter 12P.

24.4. Prevailing Rate of Wages and Working Conditions.

(a) Covered Services. Lead Developer agrees it will pay, and require the Lead Developer Agents to pay, the Prevailing Rate of Wages for any Project construction, asset management work or other covered work or improvements performed by Lead Developer or the Lead Developer Agents (“**Covered Services**”), including any trade work for the Project performed by or for Lead Developer during the PDA Term. The provisions of Section 6.22(e) of the San Francisco Administrative Code are incorporated as provisions of this Agreement as if fully set forth herein and will apply to any Covered Services performed by Lead Developer and the Lead Developer Agents.

(b) Determining the Prevailing Rate of Wages. The latest Prevailing Rate of Wages for private employment on public contracts as determined by the San Francisco Board of Supervisors and the Director of the California Department of Industrial Relations, as such prevailing wage rates may be changed during the PDA Term, are hereby incorporated as provisions of this Agreement. Copies of the Prevailing Rate of Wages as fixed and determined by the Board of Supervisors are available from the Office of Labor Standards and Enforcement (“**OLSE**”) and on the Internet at <http://www.dir.ca.gov/DLSR/PWD> and <http://sfgov.org/olse/prevailing-wage>. Lead Developer agrees that it and the Lead Developer Agents will pay no less than the Prevailing Rate of Wages, as fixed and determined by the Board of Supervisors, to all workers who perform Covered Services and are employed by Lead Developer or the Lead Developer Agents.

(c) Subcontract Requirements. As required by Section 6.22(e)(5) of the San Francisco Administrative Code, Lead Developer shall insert in every subcontract or other arrangement, which it may make for the performance of Covered Services under this Agreement, a provision that said subcontractor shall pay to all persons performing labor in connection with Covered Services under said subcontract or other arrangement not less than the highest general the Prevailing Rate of Wages as fixed and determined by the Board of Supervisors for such labor or services.

(d) Posted Notices. As required by Section 1771.4 of the California Labor Code, Lead Developer shall post job site notices prescribed by the California Department of Industrial Relations (“**DIR**”) at all job sites where Covered Services are to be performed.

(e) Payroll Records. As required by Section 6.22(e)(6) of the San Francisco Administrative Code and Section 1776 of the California Labor Code, Lead Developer shall keep or cause to be kept complete and accurate payroll records for all trade workers performing Covered Services. Such records shall include the name, address and social security number of each worker who provided Covered Services on the project, including apprentices, his or her classification, a general description of the services each worker performed each day, the rate of pay (including rates of contributions for, or costs assumed to provide fringe benefits), daily and weekly number of hours worked, deductions made and actual wages paid. Every subcontractor who shall undertake the performance of any part of Covered

Services shall keep a like record of each person engaged in the execution of Covered Services under the subcontract. All such records shall at all times be available for inspection of and examination by City and its authorized representatives and the DIR.

(f) Certified Payrolls. Certified payrolls shall be prepared pursuant to San Francisco Administrative Code Section 6.22(e)(6) and California Labor Code Section 1776 for the period involved for all employees, including those of subcontractors, who performed labor in connection with Covered Services. Lead Developer and each subcontractor performing Covered Services shall submit certified payrolls to City and to the DIR electronically. Lead Developer shall submit payrolls to City via the reporting system selected by City. The DIR will specify how to submit certified payrolls to it. City will provide basic training in the use of the reporting system at a scheduled training session. Lead Developer and all subcontractors that will perform Covered Services must attend the training session. Lead Developer and applicable subcontractors shall comply with electronic certified payroll requirements (including training) at no additional cost to City.

(g) Compliance Monitoring. Covered Services to be performed under this Agreement are subject to compliance monitoring and enforcement of prevailing wage requirements by the DIR and/or the OLSE. Lead Developer and any subcontractors performing Covered Services will cooperate fully with the DIR and/or the OLSE and other City employees and agents authorized to assist in the administration and enforcement of the prevailing wage requirements, and agrees to take the specific steps and actions as required by Section 6.22(e)(7) of the San Francisco Administrative Code. Steps and actions include but are not limited to requirements that: (i) Lead Developer will cooperate fully with the Labor Standards Enforcement Officer and other City employees and agents authorized to assist in the administration and enforcement of the Prevailing Wage requirements and other labor standards imposed on Lead Developer by the Charter and Chapter 6 of the San Francisco Administrative Code; (ii) Lead Developer agrees that the Labor Standards Enforcement Officer and his or her designees, in the performance of their duties, shall have the right to engage in random inspections of job sites and to have access to the employees of Lead Developer, employee time sheets, inspection logs, payroll records and employee paychecks; (iii) the contractor shall maintain a sign-in and sign-out sheet showing which employees are present on the job site; (iv) Lead Developer shall prominently post at each job-site a sign informing employees that the project is subject to the City's Prevailing Wage requirements and that these requirements are enforced by the Labor Standards Enforcement Officer; and (v) that the Labor Standards Enforcement Officer may audit such records of Lead Developer as he or she reasonably deems necessary to determine compliance with the Prevailing Wage and other labor standards imposed by the Charter and this Chapter and applicable to this Agreement. Failure to comply with these requirements may result in penalties and forfeitures consistent with analogous provisions of the California Labor Code, including Section 1776(g), as amended from time to time.

(h) Remedies. Should Lead Developer, or any subcontractor who shall undertake the performance of any Covered Services, fail or neglect to pay to the persons who perform Covered Services under this Agreement, subcontract or other arrangement for the Covered Services, the general prevailing rate of wages as herein specified, Lead Developer shall forfeit, and in the case of any subcontractor so failing or neglecting to pay said wage, Lead Developer and the subcontractor shall jointly and severally forfeit, back wages due plus the penalties set forth in San Francisco Administrative Code Section 6.22 (e) and/or California Labor Code Section 1775. City, when certifying any payment which may become due under the terms of this Agreement, shall deduct from the amount that would otherwise be due on such payment the amount of said forfeiture.

24.5. Local Hire. Lead Developer agrees to comply with the Local Hiring Policy for Construction set forth in San Francisco Administrative Code Chapter 82 (the "**Local Hiring Policy**") in the performance of any Work that is construction, asset management, and other covered work or improvement ("**Covered Work**"). Before starting any Covered Work, Lead Developer shall contact City's Office of Economic Workforce and Development ("**OEWD**") to verify the Local Hiring Policy requirements that apply to the Covered Work and Lead Developer

shall comply with all such requirements. Failure to comply shall be deemed a breach of this Agreement, and Lead Developer may also be liable for penalties as set forth in the Local Hiring Policy. Without limiting the foregoing:

(a) For Covered Projects that exceed \$750,000, Lead Developer shall comply with the applicable mandatory participation levels for Project Work Hours performed by Local Residents, Disadvantaged Workers, and Apprentices as set forth in Section 6.22(G)(4).

(b) For Covered Projects that exceed \$1,000,000, Lead Developer shall prepare and submit to OEWD for approval a local hiring plan as set forth in Section 6.22(G)(6).

(c) Lead Developer shall comply with the applicable record keeping and reporting requirements and shall cooperate in City inspections and audits for compliance with the Local Hiring Policy.

Any capitalized term used in this Section that is not defined will have the meaning given to such term in the Local Hiring Policy.

24.6. First Source Hiring; SFMTA Trainee Hiring Program.

(a) First Source Hiring Program. Lead Developer must comply with the First Source Hiring Program requirements for the Work it performs under this Agreement set forth in the attached Attachment 2 and comply with the requirements of all of the provisions of Chapter 83 of the San Francisco Administrative Code for any Covered Work. Lead Developer is subject to the enforcement and penalty provisions in Chapter 83 for that work. Lead Developer and the Development Team Members must hire a minimum number of professional service trainees in the area of that party's expertise in any Covered Work. These hires count toward the First Source Hiring Program requirements. Trainees may be obtained through the City's One Stop Employment Center, which works with various employment and job training agencies/organizations or other employment referral source.

(b) SFMTA Trainee Hiring Program. As part of the SFMTA Employment Training Program, City requires that Lead Developer cause a minimum number of professional service trainees in the area of the expertise of Lead Developer or the Development Team members to be hired during the PDA Term. The Project Agreement and the HCC Agreements also must require the Principal Project Company and the Housing Project Company, respectively, to cause a minimum number of professional service trainees in the area of the expertise of the Principal Project Company and the Housing Project Company to be hired during the term of any agreement between City and Principal Project Company, and City and any Housing Project Company, for the Project. If a person hired by Lead Developer, a Development Team member, the Principal Project Company, or a Housing Project Company for the Project through the First Source Hiring Program also meets the trainee requirements described below, that person will be counted toward these trainee hiring requirements. Trainees may be obtained through the City's One Stop Employment Center, which works with various employment and job training agencies/organizations or other employment referral source.

Lead Developer must cause at least four (4) trainees to be hired during the PDA Term by the times and for the areas specified in the attached Attachment 1. Lead Developer must cause trainees for any professional services performed under any Early Works Agreement to be hired during the term of those agreements, using no less than the number of trainees required under the SFMTA Trainee Hiring Program (based on the projected cost of professional services under the applicable agreement). Any agreement between the Principal Project Company and City, or between a Housing Project Company and City, for the Project, including the Project Agreement, and the HCC Agreement, must require that during the term of that agreement, the Principal Project Company and the Housing Project Company, respectively, cause trainees to be hired for any professional services performed for the Project under that

agreement, using no less than the number of trainees required by the SFMTA Trainee Hiring Program (based on the projected cost of professional services under the applicable agreement).

The following requirements apply to the trainees:

1. The trainee must be hired by the party providing professional services for the Project.

2. No trainee may be counted towards meeting more than one contract requirement. For example, if City and Lead Developer enter into the PDA and an Early Works Agreement, any trainee hired for the PDA services would not count toward the trainee hiring requirement for the Early Works Agreement.

3. A trainee must meet enrollment qualifications established under the City's First Source Hiring Program as follows:

a. "Qualified" with reference to an economically disadvantaged individual shall mean an individual who meets the minimum bona fide occupational qualifications provided by the prospective employer to the San Francisco Workforce Development System in the job availability notices required by the First Source Hiring Program.

b. "Economically disadvantaged individual" shall mean an individual who is either (i) eligible for services under the Workforce Investment Act of 1988 (29 U.S.C. 2801 et seq.), as determined by the San Francisco Private Industry Council; or (ii) designated "economically disadvantaged" by the FS First Source Hiring Program HP administration, which means an individual who is at risk of relying upon, or returning to, public assistance.

c. "On-the-job training" means the hiring party hire the trainee on a full-time basis for at least 12 months or on a part-time basis for 24 months (using the full-time or part-time definition of the employer hiring that trainee), with prior approval offering him/her on-the-job training that allows the trainee to progress on a career path.

4. Before a trainee is hired, Lead Developer, the Principal Project Company, or the Housing Project Company, as applicable, shall submit for City's approval a description and summary of training proposed for that trainee, along with the rate of pay for the position.

5. The trainee's commitment does not require that he/she is used only on this Project; the trainee may also be used on other Lead Developer, Principal Project Company, or Housing Project Company projects that may be appropriate for the trainee's skill development.

Lead Developer must work with the SFMTA Employment Training Program during the PDA Term to develop a trainee plan (the "**PA Trainee Plan**") that will apply to the term of any agreement between the Principal Project Company and City for the Infrastructure Facility, and to the term of any agreement between Housing Project Company and City for the Housing and Commercial Component, and those agreements will include the obligation to hire trainees as described in the PA Trainee Plan.

24.7. Prohibition on Use of Public Funds for Political Activity. In performing the Work, Lead Developer shall comply with San Francisco Administrative Code Chapter 12G, which prohibits funds appropriated by City for this Agreement from being expended to participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure. Lead Developer is subject to the enforcement and penalty provisions in Chapter 12G.

24.8. Consideration of Salary History. Lead Developer shall comply with San Francisco Administrative Code Chapter 12K, the Consideration of Salary History Ordinance or “Pay Parity Act.” Lead Developer is prohibited from considering current or past salary of an applicant in determining whether to hire the applicant or what salary to offer the applicant to the extent that such applicant is applying for employment to be performed on this Agreement or in furtherance of this Agreement, and whose application, in whole or part, will be solicited, received, processed or considered, whether or not through an interview, in City or on City property. The ordinance also prohibits employers from (1) asking such applicants about their current or past salary or (2) disclosing a current or former employee’s salary history without that employee’s authorization unless the salary history is publicly available. Lead Developer is subject to the enforcement and penalty provisions in Chapter 12K. Information about and the text of Chapter 12K is available on the web at <https://sfgov.org/olse/consideration-salary-history>. Lead Developer is required to comply with all of the applicable provisions of 12K, irrespective of the listing of obligations in this Section.

24.9. Consideration of Criminal History in Hiring and Employment Decisions.

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

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

24.10. Resource Efficiency Requirements. The Project will be subject to Chapter 7 of the San Francisco Environment Code. Accordingly, the Project must meet certain resource efficient requirements. Lead Developer agrees that it will design the Project to comply with Chapter 7 of the San Francisco Environment Code, as may be amended from time to time, or any similar law.

24.11. MacBride Principles Northern Ireland. City urges companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to abide by the MacBride Principles. City urges San Francisco companies to do business with corporations that abide by the MacBride Principles.

24.12. Notification of Limitations on Contributions. Lead Developer acknowledges its obligations under Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with, or is seeking a contract with, any department of City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, for a grant, loan or loan guarantee, or for a development agreement, from making any campaign contribution to (i) a City elected official if the contract must be approved by that official, a board on which that official serves, or the board of a state agency on which an appointee of that official serves, (ii) a candidate for that City elective office, or (iii) a committee controlled by such elected official or a

candidate for that office, at any time from the submission of a proposal for the contract until the later of either the termination of negotiations for such contract or twelve months after the date City approves the contract. The prohibition on contributions applies to (a) each prospective party to the contract, (b) each member of the contractor's board of directors, the contractor's chairperson, chief executive officer, chief financial officer and chief operating officer, (c) any person with an ownership interest of more than ten percent (10%) in the contractor, (d) any subcontractor listed in the bid or contract, and (e) any committee that is sponsored or controlled by the contractor. Lead Developer certifies that it has informed each such person of the limitation on contributions imposed by Section 1.126 by the time it submitted the Proposal, and has provided the names of the persons required to be informed to City.

24.13. Sunshine Ordinance. In accordance with Administrative Code Section 67.24(e), contracts, contractors' bids, leases, agreements, responses to requests for proposals, and all other records of communications between City and persons or firms seeking contracts will be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person's or organization's net worth or other proprietary financial data submitted for qualification for a contract, lease, agreement or other benefit until and unless that person or organization is awarded the contract, lease, agreement or benefit. Information provided to City that is within the scope of this Section will be made available to the public upon request.

24.14. Conflicts of Interest. Lead Developer acknowledges that it is familiar with the provisions of San Francisco Charter, Article III, Chapter 2, Section 15.103 of the City's Campaign and Governmental Conduct Code, and California Government Code Sections 87100 *et seq.* and Sections 1090 *et seq.*, certifies that it does not know of any facts that would constitute a violation of these provisions, and agrees that if Lead Developer becomes aware of any such fact during the PDA Term, Lead Developer will notify City immediately.

24.15. Certification of Funds. This Agreement is subject to the fiscal provisions of the City's Charter and the budget decisions of its Mayor and Board of Supervisors, each acting in its sole discretion. No funds will be available hereunder until prior written authorization certified by the City's Controller. The Controller cannot authorize payments unless funds have been certified as available in the budget or in a supplemental appropriation. This Agreement shall automatically terminate, without liability to City, if funds are not properly appropriated or certified by the Controller. City's obligations hereunder shall never exceed the amount certified by the Controller for the purpose and period stated in such certification. City, its employees and officers are not authorized to offer or promise any additional funding that would exceed the Termination Payment described in Section 16.3. Such additional funding requires lawful approval and certification by the Controller. Without such lawful approval and certification, City shall not be required to provide such additional funding.

24.16. Art Commission Design Review; Art Enrichment Allocation. The Facility will be subject to the requirements of San Francisco Charter Section 5.103 and Administrative Code Section 3.19. Lead Developer must work with the San Francisco Arts Commission, in consultation with the City, to design and build the Facility in compliance with those requirements.

25. DISPUTE RESOLUTION PROCEDURES

25.1. General. All Disputes shall be subject to the Dispute Resolution Procedures set forth in this Section 25, except for any decision, determination, judgment or other action of City that the Agreement states is subject to City's sole or absolute discretion (in which case the decision, determination, judgment or other action shall be final, binding and not subject to dispute resolution and shall not constitute a basis for any claim for additional monetary

compensation, time extension or any other relief); and except for any other matter for which the Agreement expressly provide otherwise. The Parties agree to use reasonable efforts to resolve any Disputes under this Section 25 as quickly as possible.

25.2. Claims. Any claim by Lead Developer must be submitted to City in writing within ten (10) days after the occurrence of the event or condition giving rise to the potential claim, and the written submittal shall include the reasons Lead Developer believes the claim is valid and shall identify any additional compensation and/or time claimed, the elements of the Work affected by the event or condition giving rise to the claim, Lead Developer's proposed interpretation of Agreement terms, and other legal, equitable, or contractual relief claimed. Lead Developer shall also furnish any additional information relating to the claim as City may require to evaluate the claim. Failure to comply with these requirements shall constitute a waiver by Lead Developer of any right, equitable or otherwise, to bring any such claim against City.

25.3. City Response to Lead Developer's Claim. Within thirty (30) days of receipt of a claim, City shall render a decision or the Parties shall mutually agree to a date by which City will render a decision with respect to the claim. If no decision is made and no date is agreed within thirty (30) days of City's receipt of the claim, the claim shall be deemed rejected by City.

25.4. Informal Dispute Resolution. If Lead Developer wishes to dispute City's decision under Section 25.3 (including a deemed rejection of a claim), or if a Dispute arises that does not involve a claim, the Parties shall use their best efforts to resolve such Dispute by submission of the Dispute to the City Project Director and the LD Project Director for resolution. If a Dispute cannot be resolved at this administrative level, then the Parties shall present the Dispute to the Director of Transportation or his duly authorized representative and to an equivalent executive officer with the Lead Developer for resolution. If the Dispute cannot be resolved at this executive level, the Parties may mutually agree to proceed in accordance with Section 25.5.

25.5. Mediation.

(a) Mediation Request. A Party may request non-binding mediation ("**Mediation**") by delivering a written request for Mediation ("**Mediation Request**") to the other Party. The Mediation Request must include a summary of the Dispute and the position of the Party submitting the request, together with any backup information or documentation that Party elects to provide. Within fifteen (15) days after receipt of the Mediation Request, the responding Party may agree to meet and confer promptly with the requesting Party to attempt to resolve the Dispute. In the absence of such agreement, or if the meet and confer does not resolve the matter promptly, the Party who requested Mediation may submit the Dispute for Mediation to JAMS in the City and County of San Francisco.

(b) Selection of Mediator and Process. The Parties will cooperate with JAMS and with one another in selecting a mediator from a JAMS panel of neutrals and in scheduling the Mediation proceedings as quickly as feasible. The Parties agree to participate in the Mediation in good faith. Neither Party may commence or if commenced, continue, a civil action with respect to a Dispute submitted to Mediation until after the completion of the initial Mediation session. The initial Mediation session must occur within 30 days of the date that the Dispute was submitted for Mediation to JAMS, or within such other time period as may be agreed by the Parties. The Parties will each pay their own costs and expenses in connection with the Mediation, and the Party that requested Mediation will pay all costs and fees of the mediator. Without limiting the foregoing, the provisions of Sections 703.5 and 1115 through 1128 of the California Evidence Code, inclusive, will apply in connection with any Mediation.

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

(d) If the Dispute cannot be resolved through Mediation, each Party may pursue any rights and remedies available at law or under this Agreement.

25.6. Continuing Performance. Lead Developer shall proceed diligently with performance of this Agreement pending resolution of any Dispute, appeal, or action ensuing under this Agreement, including all Work that is the subject of any Dispute, except for any performance City determines in writing should be delayed, suspended, or terminated as a result of such Dispute. City will continue to perform its obligations for undisputed amounts.

26. MISCELLANEOUS

26.1. Compliance with Law. Lead Developer shall keep itself fully informed of the City's Charter, codes, ordinances and duly adopted rules and regulations of the City and of all state, and federal laws in any manner affecting the Project or the performance of this Agreement, and must at all times comply with such local codes, ordinances, and regulations and all applicable laws as they may be amended from time to time. To the extent the Finance Plan approved by City includes any federal or state funding that prohibit any of City's contracting requirements in Article 24, City agrees such requirements will be waived.

26.2. California Law. This Agreement must be construed and interpreted in accordance with the laws of the State of California and the City's Charter.

26.3. Entire Agreement. This Agreement contains all of the representations and the entire agreement between the Parties with respect to the subject matter of this Agreement. Any prior correspondence, memoranda, agreements, warranties, or written or oral representations relating to its subject matter are superseded by this Agreement. No prior drafts of this Agreement or changes from those drafts to the executed version of this Agreement may be introduced as evidence in any litigation or other dispute resolution proceeding by any party or other person, and no court or other body should consider those drafts in interpreting this Agreement.

26.4. Amendments. No amendment to this Agreement will be valid unless it is in writing and signed by all of the Parties.

26.5. Severability. Except as otherwise specifically provided in this Agreement, a judgment or court order invalidating any provision of this Agreement, or its application to any person, will not affect any other provision of this Agreement or its application to any other person or circumstance, and the remaining portions of this Agreement will continue in full force and effect, unless enforcement of this Agreement as invalidated would be unreasonable or grossly inequitable under all of the circumstances or would frustrate the purposes of this Agreement.

26.6. No Party Drafter; Captions. The provisions of this Agreement will be construed as a whole according to their common meaning and not strictly for or against any party in order to achieve the objectives and purposes of the Parties. Any caption preceding the text of any Section, paragraph or subsection or in the table of contents is included only for convenience of reference and will be disregarded in the construction and interpretation of this Agreement.

26.7. Interpretation. Whenever required by the context, the singular shall include the plural and vice versa, the masculine gender shall include the feminine or neuter genders, and vice versa, and defined terms encompass all correlating forms of the terms (e.g., the definition of "waive" applies to "waiver," "waived," "waiving"). In this Agreement, the terms "include," "included" and "including" will be deemed to be followed by the words "without limitation" or "but not limited to." Provisions in this Agreement relating to number of days are calendar days

unless otherwise specified, but if the last day of any period to give notice, reply to a notice, or to undertake any other action does not occur on a Business Day, then the last day for undertaking the action or giving or replying to the notice will be the next succeeding Business Day.

26.8. Waiver. None of the following will constitute a waiver of any breach under, or of City's right to demand strict compliance with, this Agreement: (a) City's failure to insist upon Lead Developer's strict performance of any obligation under this Agreement; or (b) City's failure to exercise any right, power, or remedy arising from Lead Developer's failure to perform its obligations for any length of time. City's consent to or approval of any act by Lead Developer requiring City's consent or approval may not be deemed to waive or render unnecessary City's consent to or approval of any subsequent act by Lead Developer. Any waiver by City of any default must be in writing and will not be a waiver of any other default concerning the same or any other provision of this Agreement.

26.9. No Brokers. Each Party represents that it has not engaged a broker or finder in connection with this Agreement or any of the Transaction Documents.

26.10. Time is of the Essence. Time is of the essence for each provision of this Agreement, including performance of the Performance Milestones.

26.11. No Recording. Neither this Agreement nor any memorandum or short form thereof may be recorded by Lead Developer.

26.12. Notification of Legal Requests. Lead Developer shall immediately notify City upon receipt of any subpoenas, service of process, litigation holds, discovery requests and other legal requests ("**Legal Requests**") related to any City Confidential Information or City Data or that in any way might reasonably require access to the City Confidential Information or City Data, and in no event later than 24 hours after it receives the Legal Request. Lead Developer shall not respond to Legal Requests without first notifying City other than to notify the requestor that the information sought is potentially covered under a non-disclosure agreement. Lead Developer shall retain and preserve the City Confidential Information and City Data in accordance with the City's instruction and requests, including, without limitation, any retention schedules and/or litigation hold orders provided by the City to Lead Developer, independent of where the City Confidential Information or City Data is stored.

26.13. Joint and Several Liability. If Lead Developer is a joint venture or partnership, each venturer or partner will be jointly and severally liable for Lead Developer's obligations under this Agreement and City shall have no obligation to provide written notice of any Lead Developer default or failure under this Agreement to each venturer or partner.

26.14. Relationship of the Parties. Lead Developer, the Lead Developer Agents and their employees (collectively, the "**Developer Parties**") are and shall at all times be and remain independent from City and none shall be deemed to be an agent or an employee of City. Nothing in this Agreement shall be construed to place the Parties in the relationship of partners or joint ventures. Neither Party shall have any right or power to obligate or bind the other in any manner whatsoever. This Agreement is not intended nor shall it be construed to create any third-party beneficiary rights in any third party. City is not a fiduciary and has no special responsibilities to Lead Developer beyond the obligations expressly set forth in this Agreement.

26.15. Independent Contractor. Lead Developer acknowledges and agrees that at all times, each of the Developer Parties shall be deemed at all times to be an independent contractor and is wholly responsible for the manner in which they perform the services and work Lead Developer is required to perform under this Agreement. Lead Developer agrees that none of the Developer Parties will (i) represent or hold themselves out to be employees of the City at any time, (ii) have

employee status with City, and (iii) be entitled to participate in any plans, arrangements, or distributions by City pertaining to or in connection with any retirement, health or other benefits that City may offer its employees. Lead Developer acknowledges and agrees it is liable for the acts and omissions of itself and any of the other Developer Parties. Lead Developer shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to the performance of any the Work by any of the Developer Parties. Nothing in this Agreement shall be construed as creating an employment or agency relationship between City and any of the Developer Parties. Any terms in this Agreement referring to direction from City shall be construed as providing for direction as to policy and the result of the Work only, and not as to the means by which such a result is obtained. City does not retain the right to control the means or the method by which any of the Developer Parties performs work under this Agreement. Lead Developer agrees to maintain and make available to City, upon request and during regular business hours, accurate books and accounting records demonstrating Lead Developer's compliance with this Section. If City determines that Lead Developer or any of the other Developer Parties is not performing in accordance with the requirements of this Section, City shall provide Lead Developer with written notice of that deficiency. Lead Developer shall remedy the deficiency within five (5) Business Days of Lead Developer's receipt of such notice; provided, however, that if City believes that an action of Lead Developer or any of the other Developer Parties warrants immediate remedial action by Lead Developer, City shall contact Lead Developer and provide Lead Developer in writing with the reason for requesting such immediate action. Lead Developer's failure to timely remediate, or cause any of the other Developer Parties to remediate, the deficiency described in the writing shall be a breach of Lead Developer's obligations under this Agreement.

26.16. Federal Requirements. If the extent Project includes any federal funding, including funding through the Transportation Infrastructure Finance and Innovation Act (TIFIA) program, then:

(a) Lead Developer must follow all applicable federal requirements, including those for third party contracting, as contained in FTA Circular 4220.1F. <https://www.transit.dot.gov/sites/fta.dot.gov/files/docs/Third%20Party%20Contracting%20Guidance%20%28Circular%204220.1F%29.pdf>. Included as Appendix K to this Agreement are clauses that would pertain to aspects of the Project (i.e., design/build; procurement), which should be included in applicable Project Documents. Lead Developer must document its compliance with, and monitor its subcontractors and suppliers for, compliance with applicable federal requirements. Lead Developer shall also follow the required federal processes to comply with federal requirements (e.g., NEPA, Buy America, SBE/DBE goals/provisions, local hire). Lead Developer shall communicate with applicable SFMTA staff regularly, including to keep abreast of any changes in federal processes and procedures.

(b) To the extent the Project is federally funded, then if any provision of this Agreement conflicts with any requirement established by federal regulations, statutes or other federal law, including but not limited to any federal contract requirements set out in the Agreement, the federal requirement shall prevail.

(c) Lead Developer shall not utilize any subcontractor, supplier, or other person or entity that is debarred by any public agency that is a recipient of federal Department of Transportation grant or loan funds. If so directed by the City, Lead Developer shall at its own expense replace such subcontractor, supplier, or other person or entity with a qualified substitute approved by the City.

(d) Lead Developer acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1989, the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited on City premises. Moreover, Lead Developer's employees shall not be under the influence of alcohol while performing Work under this Agreement. Lead Developer agrees that any

violation of this prohibition by Lead Developer, its employees, agents or assigns, shall be deemed a material breach of this Agreement.

[SIGNATURES ON FOLLOWING PAGE]

Lead Developer and City have executed this Agreement as of the last date written below.

DEVELOPER: _____, a _____

By: _____

Name: _____

Its: _____

Date: _____

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

By: _____

Jeffrey Tumlin
Director of Transportation

Date: _____

APPROVED AS TO FORM:

David Chiu, City Attorney

By: _____

Carol Wong
Deputy City Attorney

APPENDIX A
DESCRIPTION OF PROJECT SITE

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

All that real property bound on the West by Bryant Street; on the North by 17th Street; on the East by Hampshire Street and on the South by Mariposa Street.

Being New Potrero Block No. 41; New Potrero Block 48 and a portion of York Street, closed November 20, 1939 by Resolutions 652, 708 and 760.

APN: Lot 001, Block 3971

APPENDIX B-1

PERFORMANCE MILESTONES AND PERFORMANCE DATES

All initially-capitalized, undefined terms or abbreviations used in this Appendix that are not otherwise defined in the Predevelopment Agreement will have the meanings given to them in the RFP.

PDA Phase	Performance Milestone Number	Description of Milestone	Calendar days from NTP 1	Comments/Requirements
1	NTP 1	Notice to Proceed #1: City delivers Notice to Proceed #1 to Lead Developer within the time frame set forth in Section 4.2(a) of this Agreement.	N/A	City will organize a series of structured meetings over the course of the first week, including a kick-off meeting, each as shown in Performance Milestones 1A through 4B. City will send invitations to City attendees, prepare agendas and communication protocols, and provide notice to Lead Developer of the meeting dates before delivering NTP 1.
1	1A	Kick-off meeting: City and Lead Developer shall hold a kick-off meeting with attendees from the SFMTA, OEWD, MOHCD, Mayor's Office, Board of Supervisor's District 10 and District 9, SF Planning, and SF Public Works, among others.	1	This will be an all-day meeting and will include a Project Site walk-through in the afternoon. Lead Developer shall incorporate the direction provided by City into the drafts of the Project Management Deliverables. City will arrange the final list of attendees and will schedule this meeting.
1	1B	BYC design review and validation meeting: Lead Developer shall meet with City and BYC end users to review proposed BYC design and organize a meeting series to include relevant SFMTA stakeholders in advancing the BYC design.	2	This will be an all-day meeting. Lead Developer to present proposed RFP design to SFMTA stakeholders and address stakeholder feedback prior to initiating public meetings and City review and permitting processes. Lead Developer must document feedback and proposed design revisions in a RFP Design Review & Validation Package, that will be formally reviewed and approved by the SFMTA.
1	1	Access Agreement and scope of due diligence investigations: Lead Developer shall execute and deliver to City the Access Agreement for its initial set of due diligence investigations at the Project Site, as set forth in Section 6.3 of this Agreement.	3	This meeting will take place in the morning. The Access Agreement sets forth provisions for scheduling and approval of the due diligence investigations. Lead Developer shall coordinate with City the times and manner of access to the Project Site so as to not disrupt in any way City's transit operations. The Access Agreement contains the process for location- and date-specific approvals for access, which may require isolation and/or shutdown of the overhead catenary system. This action must be

PDA Phase	Performance Milestone Number	Description of Milestone	Calendar days from NTP 1	Comments/Requirements
				<p>closely coordinated with City per the Access Agreement requirements.</p> <p>Lead Developer to coordinate with SFMTA for the Muni Construction Support and Clearance Permit, as needed – for example, to de-energize the Bus Yard. For more information, refer to: https://www.sfmta.com/permits/muni-construction-support-and-clearance-permit.</p>
1	2	<p>Public outreach meeting: Lead Developer shall meet with City to review and coordinate the approaches for the public outreach efforts to be led separately by City and Lead Developer, described in Section 7.6 of this Agreement.</p>	3	<p>This meeting will take place in the afternoon.</p> <p>Lead Developer shall incorporate the direction provided by City into the drafts of the Project Management Deliverables.</p>
1	3	<p>CEQA and entitlements process meeting and Project Application: Lead Developer shall meet with City and Planning Department to discuss the status and schedule for the continuation of the CEQA review process for the Project and Lead Developer’s support in this process, described in Section 6.20 of this Agreement. Additional topics to be discussed at this meeting include any further application requirements, and discussion of schedule of key activities and milestones for the CEQA review process and to secure entitlements for the Project. Concurrent with this meeting, Lead Developer shall prepare relevant applications for submittal to the Planning Department.</p>	4	<p>This meeting will take place in the morning. The purpose of this meeting is for Lead Developer, City and the Planning Department to discuss land use entitlements and the CEQA process. Given the timing of the meeting at the inception of the PDA Term, City will schedule this meeting on the Lead Developer’s behalf. In preparation for this meeting, Lead Developer shall prepare a revised Project Application: https://sfplanning.org/resource/prj-application including the proposed plans and design of the Facility. Additional applications may be required, such as a rezoning application, and any other applications the Planning Department requires.</p>

PDA Phase	Performance Milestone Number	Description of Milestone	Calendar days from NTP 1	Comments/Requirements
1	1F	HCC development plan meeting: Lead Developer shall meet with City and MOHCD to discuss the Lead Developer's proposed HCC Development Plan, including the HCC Schedule and HCC Term Sheet, for the HCC's development and financing process, as described in Section 6.9(c) of this Agreement.	4	This meeting will take place in the afternoon. The purpose of this meeting is for Lead Developer and City to discuss the Lead Developer's overall process for development of the HCC and to reach mutual agreement on the major decision point(s) for the continued inclusion and/or the scope of the HCC in the Project. A possible outcome of this meeting is the addition to Appendix B-1 of a new Performance Milestone for that purpose.
1	4A	SF Arts Commission meeting: Lead Developer shall meet with the San Francisco Arts Commission to discuss and ultimately agree on Civic Design Review Phase 1 requirements and public art enrichment requirements for development of the Design Deliverables, as per Section 24.16 of this Agreement.	5	This meeting will take place in the afternoon. Lead Developer to incorporate the direction provided by the SF Arts Commission into the drafts of the Project Management Deliverables.
1	4B	City facility maintenance team meeting: Lead Developer shall meet with City Project Manager and City facility maintenance staff to learn the City's: (a) current facility maintenance regime, processes, and systems; (b) structured asset data and electronic asset management hierarchies; (c) requirements for coordination and development of the Asset Management Program; and (d) the scope of the SFMTA O&M.	5	This meeting will take place in the morning. Lead Developer to incorporate the direction provided by City facility maintenance staff into the drafts of the Project Management Deliverables. Meeting attendees will be identified by City Project Manager.
1	5	Drafts of Project Management Deliverables: Lead Developer shall submit drafts of the Project Management Deliverables (including the PDA Management	43	The drafts of the Project Management Deliverables shall meet the minimum requirements set forth in Section 2 of Appendix B-2 to this Agreement and incorporate the agreed actions from Performance Milestones 1A through 4B.

PDA Phase	Performance Milestone Number	Description of Milestone	Calendar days from NTP 1	Comments/Requirements
		Plan and its corresponding sub-plans) to City for review and comment.		City will review the drafts of the Project Management Deliverables and provide comments for Lead Developer to prepare the final Project Management Deliverables, which shall be subject to approval by City.
1	6	SFPUC Applications for Electrical Service: Lead Developer shall submit to City its proposed approach to upgrade electrical service to the Project Site, including consideration of submission of new applications to supersede the previously submitted applications, or revising the previously submitted applications to SFPUC, as necessary.	29	Lead Developer shall coordinate with City regarding prior work conducted by City with regards to the SFPUC Applications for Electrical Service.
1	6A	LBE Plan: Lead Developer shall initiate discussions with City to outline a plan and process that will define the LBE Plan.	29	The LBE Plan must satisfy Section 6.10 of this Agreement, and reflect City's objective of implementing a robust inclusivity program to maximize the participation of LBEs in all phases of the Project, including work that may be performed by LBEs during the PDA Term.
1	7	Review comments to drafts of the Project Management Deliverables: City will issue comments to Lead Developer based on its review of the drafts of the Project Management Deliverables.	71	Lead Developer shall address each comment, make revisions as necessary, and prepare the final Project Management Deliverables to submit to City. Lead Developer shall meet and confer with City to resolve all comments to the satisfaction of City, prior to submitting the final Project Management Deliverables.
1	8	Final Project Management Deliverables: Lead Developer shall submit to City for approval the final Project Management Deliverables (including the PDA Management Plan and its corresponding sub-plans).	92	The final Project Management Deliverables shall meet the minimum requirements set forth in Section 2 of Appendix B-2 to this Agreement.

PDA Phase	Performance Milestone Number	Description of Milestone	Calendar days from NTP 1	Comments/Requirements
1	10	Final LBE Plan: Lead Developer to submit the final LBE Plan to City for approval.	120	The final LBE Plan must reflect the discussions with City, the Project Objectives, and in conformance with Section 6.10 of this Agreement.
1	11	Draft of 50% Schematic Design Package: Lead Developer shall submit to City for review and comment a draft 50% Schematic Design Package (draft 50% SD Package), which shall include the findings from Lead Developer's due diligence investigations of the Project Site.	120	The draft of the 50% Schematic Design Package shall meet the minimum requirements set forth in Section 3.1 of Appendix B-2 to this Agreement. City will review the draft 50% SD Package and provide comments for Lead Developer to prepare the final 50% SD Package.
1	11A	First draft of the Project Agreement: City shall submit to the Lead Developer the first draft of the Project Agreement and any other Transaction Documents that the Parties mutually agree to have submitted at this time.	120	Lead Developer shall meet and confer with City to resolve all review comments.
1	12	Draft Asset Management Program: Lead Developer shall submit to City for review and comment the draft Asset Management Program.	120	The draft Asset Management Program shall include the content and be presented in the format set forth in the Asset Management Program Development Plan previously submitted by Lead Developer and approved by City.
1	14	Review comments to drafts of 50% SD Package and Asset Management Program: City will issue comments to Lead Developer based on its review of drafts of the 50% SD Package and Asset Management Program.	155	Lead Developer shall address each comment, make revisions as necessary, and prepare the final 50% SD Package and Asset Management Program to submit to City. Lead Developer shall meet and confer with City to resolve all comments to the satisfaction of City, prior to submitting the final 50% SD Package and Asset Management Program.
1	14A	Comments on the first draft Project Agreement: Lead Developer shall submit to City its comments on the first draft Project Agreement.	155	No comments.

PDA Phase	Performance Milestone Number	Description of Milestone	Calendar days from NTP 1	Comments/Requirements
1	13	First draft of Finance Plan: Lead Developer shall submit to City the first draft Finance Plan.	169	The draft Finance Plan shall include the content and be presented in the format set forth in the final Financing Management Plan previously submitted by Lead Developer and approved by City.
1	15	Final 50% SD Package and final Asset Management Program: Lead Developer shall submit to City for approval the 50% SD Package and Asset Management Program.	176	No comments.
1	16	Validation point for PDA Phase 1 – 50% SD Package and Asset Management Program: City approves (or does not approve) the final 50% SD Package and Asset Management Program.	183	If City does not approve the 50% SD Package and/or the Asset Management Program, then City may elect to not issue Notice to Proceed #2 by issuing a Discontinuation Notice in accordance with Section 4.2(c) of this Agreement, after which this Agreement will terminate in accordance with Article 16.
2	NTP 2	Notice to Proceed #2: City issues notice to proceed to Lead Developer.	183	In accordance with Section 4.2(b) of this Agreement, City will issue Notice to Proceed #2 only if City has issued a Notice of Acceptance with respect to PDA Phase 1 and elects to proceed with the Work for PDA Phase 2.
2	Phase 2 Floating Milestone	Final CEQA approval(s) and Planning entitlements: The Parties obtain (or do not obtain) the Phase 2 Entitlements.	No later than 330	The Phase 2 Floating Milestone is defined in article 3.2(b) of this Agreement
2	16A	Second draft Project Agreement: City shall submit to the Lead Developer the second draft of the Project Agreement and any other Transaction Documents that the Parties mutually agree to have submitted at this time.	190	Lead Developer shall meet and confer with City to resolve all review comments.
2	17	Draft RFQ(s) for the Design-Build Contract and IFM Contract: Lead Developer shall submit to City for review and comment the draft(s) of the RFQ(s) for the Design-Build	204	The draft(s) of the RFQ(s) for the Design-Build Contract, IFM Contract, and interface agreements shall include the content and be presented in the format set forth in the final Contractor Procurement Plan previously submitted by Lead Developer and

PDA Phase	Performance Milestone Number	Description of Milestone	Calendar days from NTP 1	Comments/Requirements
		Contract and IFM Contract, as well as the applicable Interface Agreements and the final approved LBE Plan.		approved by City and comply with the requirements set forth in Section 2.2.4.1(a) of Appendix B-2 to this Agreement. The draft LBE Plan shall comply with the requirements set forth in Section 6.10 of this Agreement. The LBE Plan must be final and fully completed no later than Performance Milestone 17.
2	18	Review comments to the draft RFQ(s) for the Design-Build Contract and IFM Contract: Th City will issue comments to Lead Developer based on its review of the draft RFQ(s) for the Design-Build Contract and IFM Contract.	218	Lead Developer shall meet and confer with City to resolve all comments and obtain City's approval of the RFQ(s) for the Design-Build Contract and IFM Contract prior to their issuance.
2	19	Comments on the second draft Project Agreement: Lead Developer shall submit to City its comments on the second draft of the Project Agreement and any additional draft Transaction Documents submitted by City at Performance Milestone 16A.	218	Lead Developer shall meet and confer with City to resolve all review comments.
2	21	Issue RFQ(s) for Design-Build Contract and IFM Contract: Lead Developer shall initiate the contractor procurement process by issuing the RFQ(s) for the Design-Build Contract and IFM Contract.	232	This procurement process shall comply with the approach set forth in the final Contractor Procurement Plan submitted by Lead Developer and approved by City.
2	21A	Third draft Project Agreement: Th City shall submit to the Lead Developer the third draft of the Project Agreement and any other Transaction Documents that the Parties mutually agree to have submitted at this time.	246	Lead Developer shall meet and confer with City to resolve all review comments.
2	20	Draft RFP(s) for Design-Build Contract and IFM Contract: Lead	260	The draft(s) of the Contractor RFP(s) for the Design-Build Contract and IFM Contract shall include the

PDA Phase	Performance Milestone Number	Description of Milestone	Calendar days from NTP 1	Comments/Requirements
		Developer shall submit to City for review and comment the draft(s) of the RFP(s) for the Design-Build Contract and IFM Contract.		content and be presented in the format set forth in the final Contractor Procurement Plan previously submitted by Lead Developer and approved by City and comply with the requirements set forth in Section 2.2.4.1(b) of Appendix B-2 to this Agreement.
2	22	Review comments to the draft RFP(s) for the Design-Build Contract and IFM Contract: City will issue comments to Lead Developer based on its review of the draft RFP(s) for the Design-Build Contract and IFM Contract.	274	Lead Developer shall meet and confer with City to resolve all comments and obtain City's approval prior to their issuance.
2	23	Draft of 100% Schematic Design Package: Lead Developer shall submit to City for review and comment a draft 100% Schematic Design Package (draft 100% SD Package).	274	The draft 100% SD Package shall meet the minimum requirements set forth in Section 3.2 of Appendix B-2 to this Agreement. City will review the draft 100% SD Package and provide comments for Lead Developer to prepare the final 100% SD Package.
2	23A	Comments on the third draft Project Agreement: Lead Developer shall submit to City its comments on the third draft Project Agreement and on any other Transaction Documents submitted by City at Performance Milestone 21A.	274	No comments.
2	24	Second draft of the Finance Plan: Lead Developer shall submit to City for review and comment the second draft the Finance Plan.	295	The second draft of the Finance Plan shall include Lead Developer's draft and proposed Debt Financing Plan, per the requirements in Section 2.2.1.2 of Appendix B-2 to this Agreement. Lead Developer shall meet and confer with City to resolve all review comments.
2	26	Review comments to draft of 100% SD Package: City will issue	309	Lead Developer shall address each comment, make revisions as necessary, and prepare the final 100%

PDA Phase	Performance Milestone Number	Description of Milestone	Calendar days from NTP 1	Comments/Requirements
		comments to Lead Developer based on its review of the draft 100% SD Package.		SD Package to submit to City. Lead Developer shall meet and confer with City to resolve all comments to the satisfaction of City, prior to submitting the final 100% SD Package.
2	25	Recommendation of contractors for short-listing: Lead Developer shall submit to City for review and concurrence its recommendations for the short lists(s) of contractors for the Design-Build Contract and IFM Contract.	316	In accordance with Section 2.2.4.1(a) of Appendix B-2 to this Agreement, Lead Developer must share with City responses to the RFQs. Only after obtaining City's concurrence, which shall not be unreasonably withheld, Lead Developer shall publicly announce the shortlist determination(s).
2	27A	Final 100% SD Package: Lead Developer shall submit to City for approval the final 100% SD Package.	330	The final 100% SD Package shall meet the minimum requirements set forth in Section 3.2 of Appendix B-2 to this Agreement.
2	28	Validation point for PDA Phase 2 - 100% SD Package, contractor shortlist(s), and final RFP(s) for Design-Build Contract and IFM Contract: City approves (or does not approve) these Phase 2 deliverables.	337	If City does not approve the final 100% SD Package and/or the RFP(s) for the Design-Build Contract and IFM Contract, then City may elect to not issue Notice to Proceed #3 by issuing a Discontinuation Notice in accordance with Section 4.2(c) of this Agreement, after which this Agreement will terminate in accordance with Article 16
3	NTP 3	Notice to Proceed #3: City issues notice to proceed to Lead Developer.	337	In accordance with Section 4.2(b) of this Agreement, City will issue Notice to Proceed #3 only if City has issued a Notice of Acceptance with respect to PDA Phase 2 and elects to proceed with the Work for PDA Phase 3.
3	29	Issue RFP(s) for Design-Build Contract and IFM Contract: Lead Developer shall issue the RFP(s) for the Design-Build Contract and IFM Contract to the contractors shortlisted from the RFQ process.	338	In accordance with Section 2.2.4.1(b) of Appendix B-2 to this Agreement, the RFP(s) for the Design-Build Contract and IFM Contract shall include, at a minimum, the documents described in article 2.2.4.1(b) of Appendix B-2 to this Agreement.
3	29A	Fourth draft Project Agreement:	421	Prior to Performance Milestone 29A City and Lead

PDA Phase	Performance Milestone Number	Description of Milestone	Calendar days from NTP 1	Comments/Requirements
		City shall submit to the Lead Developer the fourth draft Project Agreement and other agreements that City will be signatory to, as applicable.		<p>Developer shall meet and confer during the contractor RFP processes to mutually agree on any changes that may need to be incorporated into the fourth draft Project Agreement and other agreements that City will be signatory to, as applicable.</p> <p>The Lead Developer shall issue to the RFP respondents the fourth draft Project Agreement as the basis for their proposals to be received at Performance Milestone 30.</p>
3	30	Contractor Proposals: Lead Developer shall deliver to City the proposals received in response to the RFP(s) for the Design-Build Contract and IFM Contract.	449	These proposals shall be provided to City for information purposes.
3	31	Recommendation of contractor(s) for award of fixed-price Design-Build Contract and IFM Contract: Lead Developer shall submit to City for review and concurrence its recommendation(s) for award of the Design-Build Contract and IFM Contract.	477	In accordance with Section 2.2.4.1(b) of Appendix B-2 to this Agreement, Lead Developer's award of the Design-Build Contract and IFM Contract are subject to City's concurrence, which shall not be unreasonably withheld.
3	32	Final Finance Plan: Lead Developer shall submit to City for review and comment the final Finance Plan.	491	The final Finance Plan shall be based on the fourth draft Project Agreement and other agreements that City will be signatory to, as applicable, and shall include the Final Price and final financing documents.
3	33	General Regulatory Approvals: Lead Developer shall submit to City evidence that it has obtained all General Regulatory Approvals necessary to achieve Commercial Close.	No later than 491	<p>Performance Milestone 33 shall be treated as a floating milestone that is dependent on scheduling of all applicable Regulatory Approvals needed prior to approval of the final Project Agreement.</p> <p>In accordance with Section 6.20(b)(i) of the Agreement, Lead Developer is solely responsible for</p>

PDA Phase	Performance Milestone Number	Description of Milestone	Calendar days from NTP 1	Comments/Requirements
				determining and obtaining all the General Regulatory Approvals needed for the Project, incorporating any Project modifications or requirements required for those General Regulatory Approvals, and timely pursuing all General Regulatory Approvals.
3	34	Validation Point for PDA Phase 3 - final Project Agreement, and final Finance Plan: City agrees (or does not agree) to present for consideration, and recommend approval of, the final Project Agreement and final Finance Plan to SFMTA Board and Board of Supervisors.	505	<p>Prior to Performance Milestone 34 City and Lead Developer shall meet and confer to mutually agree on any changes that may need to be incorporated into the final Project Agreement and other agreements that City will be signatory to, as applicable. If City agrees to take this action, then it may present for consideration, and recommend approval of, the final Project Agreement and final Finance Plan to SFMTA Board and Board of Supervisors.</p> <p>If City does not agree to take this action, then City may issue a Discontinuation Notice in accordance with Section 4.2(c) of this Agreement ,after which this Agreement will terminate in accordance with Article 16</p>
4	35	Project Agreement approved by SFMTA Board: SFMTA Board approves (or does not approve) the final Project Agreement.	533	If the SFMTA Board does not approve the final Project Agreement, City would issue a Termination Notice in accordance with Section 16.4 of this Agreement.
4	36	Project Agreement approval by the Board of Supervisors: Board of Supervisors to approve (or not approve) the final Project Agreement.	561	If the Board of Supervisors does not approve the final Project Agreement, City would issue a Termination Notice in accordance with Section 16.4 of this Agreement.
4	37	Commercial Close: Provided the SFMTA Board and Board of Supervisors approve the final Project Agreement, the City and Lead Developer execute the execution version of the Project Agreement and other related agreements that	568	<p>Prior to Performance Milestone 37 City and Lead Developer shall meet and confer to prepare the execution versions of the Project Agreement and other agreements that City will be signatory to, as applicable.</p> <p>This may also include execution of other related</p>

PDA Phase	Performance Milestone Number	Description of Milestone	Calendar days from NTP 1	Comments/Requirements
		City is signatory to.		Transaction Documents, as applicable and agreed by City and Lead Developer.

APPENDIX B-2

PROJECT MANAGEMENT, DESIGN DELIVERABLES, SOFTWARE, AND DOCUMENT CONTROL REQUIREMENTS

All initially-capitalized, undefined terms or abbreviations used in this Appendix that are not otherwise defined in the Predevelopment Agreement will have the meanings given to them in the RFP.

Contents

APPENDIX B-2..... **Error! Bookmark not defined.**

1..... Introduction
 1

2..... Project Management Deliverables
 1

2.1 Overall Approach..... 4

2.2 Work Stream Specific Requirements..... 9

3..... Design Deliverables
 25

3.1 50% Schematic Design Package..... 26

3.2 100% Schematic Design Package..... 31

3.3 BIM Requirements for 50% SD and 100% SD Packages..... 37

4..... Software Requirements
 37

5..... Document Control
 38

Attachment 1 – Basis for Submittal of the Financial Model and the Pro Forma **Error! Bookmark not defined.**

Attachment 2 – Basis and Formats for Cost Submittals **Error! Bookmark not defined.**

Attachment 3 - Public Outreach and Engagement Plan Guide 2

Attachment 4 – Best-value Contractor Recommendation Form and Final Price and Cost Savings Form.. 19

1 Introduction

This Appendix B-2 sets forth the City’s minimum requirements for two sets of deliverables that the Lead Developer shall prepare and submit to the City for review and approval during the PDA Term and in accordance with the corresponding Performance Milestones in Appendix B-1.

The two sets of deliverables include:

1. Project Management Deliverables, which shall describe the scope of the Work and how the Lead Developer will plan, perform, manage, and administer the Work to develop the Project within the Fixed Budget Limit. The Project Management Deliverables consist of the PDA Management Plan (PMP) plus other plans, as follows: (1) Contract Document Management Plan; (2) Financing Management Plan; (3) Quality Management Plan (QMP); (4) Design Management Plan; (5) BIM Execution Plan (BEP); (6) Cost and Risk Management Plan; (7) Asset Management Program Development Plan; (8) Plan for Coordination with Regulatory Agencies; (9) Construction Permitting Plan; (10) Public Outreach and Engagement Plan; (11) CEQA and General Regulatory Approvals Plan; (12) Contractor Procurement Plan; and (13) Early Works Development Plan.
2. The descriptions of and minimum requirements for the Project Management Deliverables are set forth below in Section 2. These minimum requirements are not exhaustive and shall not fully prescribe how the Lead Developer performs the Work or any of its obligations under the Predevelopment Agreement.
3. Design Deliverables, which must document the design development of the Project during the PDA Term. The Design Deliverables include the 50% Schematic Design Package (50% SD Package) and the 100% Schematic Design Package (100% SD Package), the requirements for which are set forth in Section 3.

In addition, this Appendix B-2 sets forth other, miscellaneous requirements that apply to the Work and Lead Developer’s obligations under the Predevelopment Agreement, including certain software requirements set forth in Section 4 and document control requirements set forth in Section 5.

Unless stated otherwise, all section references included in this Appendix B-2 are to this Appendix B-2. All initially-capitalized, undefined terms used in this Appendix B-2 shall have the meanings given to them in the Predevelopment Agreement or, if not defined there, then as given to them in the RFP issued by the City for the Project on April 9, 2021, together with all its addenda. All references to “City” in this Appendix B-2 shall mean the City acting in its proprietary capacity as a party to the Predevelopment Agreement, unless otherwise indicated.

2 Project Management Deliverables

The Work during the PDA Term is categorized into five separate work streams, as follows: (1) Financial and Commercial; (2) Technical; (3) CEQA and Outreach; (4) Contractor Procurement; and (5) Early Works. The management of these work streams must be carefully planned and

organized within the PMP to reflect a clear understanding of the interdependencies among them and with the Technical Requirements.

The PMP shall document the Lead Developer's overall approach and schedule for the Work to be performed for each work stream during the PDA Term. It shall also describe the Development Team's organizational structure and resources for the performance of the Work.

For each work stream the Lead Developer shall develop the Project Management Deliverables, as shown below in **Table 1**. The Lead Developer shall use the Project Management Deliverables to document its scope of the Work for the corresponding work stream and how the Lead Developer will plan, perform, manage, and administer that Work.

The Project Management Deliverables shall include and be based on RFP Technical Submittals 28, 29, and 30, each included as part of the Project Management Submittal in the Lead Developer's Proposal. RFP Technical Submittals 28, 29, and 30 are included in Predevelopment Agreement Appendix H: Technical Proposal.

The Lead Developer shall submit the Project Management Deliverables to the City for review and approval as one complete package in accordance with Performance Milestone 5, in draft form, and Performance Milestone 8, in final form (see Appendix B-1). Once approved by the City, the Lead Developer may not change any Project Management Deliverable without the City's written approval, which will not be unreasonably withheld.

The PMP, which is defined in Section 2.1.1, and all the sub plans, which are defined in Section 2.1.2 and Section 2.2, are collectively referred to as the Project Management Deliverables. These plans shall be internally consistent and shall describe the anticipated interdependencies between deliverables described in this Exhibit B-2 and the Performance Milestones defined in Exhibit B-1. In the case of inconsistency, the prevailing plan features shall be determined by the City in its sole discretion. Unless otherwise specified, references to the PMP, include the sub plans.

Table 1. Organization of the Project Management Deliverables to Work Stream

PDA work stream	Project Management Deliverable	Topic(s) addressed
Overall Approach	Predevelopment Agreement Management Plan (PMP)	Overall approach and schedule for the Project's development during the PDA Term. See Section 2.1.1
	Quality Management Plan (QMP)	Approach to quality management. See Section 2.1.2
(1) Financial and Commercial	Contract Document Management Plan	Development of the Project Agreement and related contracts. See Section 2.2.1.1
	Financing Management Plan	Development of the Finance Plan for the Infrastructure Facility and Housing and Commercial Component. See Section 2.2.1.2

PDA work stream	Project Management Deliverable	Topic(s) addressed
(2) Technical	Design Management Plan	Development of the Design Deliverables. See Section 2.2.2.1
	BIM Execution Plan (BEP)	Development of BIM-enabled workflows and systems. See Section 2.2.2.2
	Cost and Risk Management Plan	Development of cost estimates, schedules, and risk registers that accompany the SD Package and the 50% DD Package. See Section 2.2.2.3
	Asset Management Program Development Plan	Development of the Asset Management Program. See Section 2.2.2.4
	Plan for Coordination with Regulatory Agencies	Approach to coordination with Regulatory Agencies for General Regulatory Approvals. See Section 2.2.2.5
	Construction Permitting Plan	Approach to obtain any construction permits that may be required for the Project prior to Commercial Close. See Section 2.2.2.6
(3) CEQA and Outreach	Public Outreach and Engagement Plan	Approach to public outreach and engagement and coordination with SFMTA-led outreach and engagement. See Section 2.2.3.1
	CEQA and General Regulatory Approvals Plan	CEQA and General Regulatory Approvals process necessary to achieve Commercial Close in conformity with the Design Management Plan, the Project Schedule, and the Financing Management Plan. See Section 2.2.3.2
(4) Contractor Procurement	Contractor Procurement Plan	Process to competitively procure the Design-Build Contract and IFM Contract. See Section 2.2.4.1
(6) Early Works	Early Works Plan	Development and performance of potential Early Works Agreements during the PDA Term. See Section 2.2.5.1

BIM = Building Information Model

FBL = Fixed Budget Limit

IFM = Infrastructure Facility Maintenance

2.1 Overall Approach

The subsections below describe the required Project Management Deliverable(s) related to the Lead Developer's overall approach to the Work and the minimum requirements for those deliverables.

2.1.1 Predevelopment Agreement Management Plan

The PMP shall describe the overall approach for the development of the Project during the PDA Term, organized by the work streams shown in **Table 1**, above.

At a minimum, the PMP shall:

1. Include a detailed description of the overall scope of the Work;
2. Describe and distinguish between the roles and responsibilities, including the organizational structure, of the Lead Developer and the Development Team to perform their corresponding scope of the Work;
3. Describe how the Lead Developer plans to collaborate and coordinate with the City for reviews, approvals, and other actions required of the City for the Lead Developer to perform the corresponding scope of the Work;
4. Include a list of documents and deliverables that will be treated as controlled documents;
5. Include a Project Schedule (defined in Section 2.1.1.1 below) and describe in detail the sequence for the Performance Milestones and how the content of each respective deliverable interrelates with one another¹ (see Section 2.1.1.1, below, for specific requirements for the Project Schedule);
6. Include a specific, actionable, and measurable work plan that:
 - a. applies and organizes human and material resources for the Project;
 - b. defines communication lines and methods, identifies communication roles and responsibilities, and defines each communication individual role, how frequently they need to communicate, which communications tools and media will be used, and any specific factors for initiating communication.
 - c. delineates the reporting process, including a methodology to manage requirements, and to create benchmarks and key performance indicators reflecting milestone achievement;
 - d. details the Lead Developer's approach to meet on a weekly basis and collaborate diligently, transparently, and in good faith with the City with the goal to manage the development of the Project within the Fixed Budget Limit – including, but not limited to, development of design deliverables, the Asset Management Program, development of the LBE utilization plan, the commercial-financial structure, and contractual documents –, to develop the Allowances and manage the change processes described in the Predevelopment Agreement, and to procure the DB and IFM contractors to deliver the

¹ For example, among other similar interrelationships, each design deliverable must take into account Project Site due diligence, express the feedback from the public outreach, and be accompanied by the cost and schedule validation and demonstration of compliance with the Fixed Budget Limit and the Project schedule.

Infrastructure Facility within the Fixed Budget Limit per the framework and requirements established in the Predevelopment Agreement; and

- e. describes the approach to manage quality for all the activities by the Lead Developer and the other Development Team members during the PDA Term (see Section 2.1.2 for the Quality Management Plan requirements); and,
- f. describes how the Lead Developer plans to utilize Local Business Enterprises in accordance with the requirements of Section 6.10 of the Predevelopment Agreement, and in alignment with the Performance Milestones in B-1.

The subsections below describe and set forth specific requirements for the Project Schedule, progress reporting, and Quality Management Plan.

2.1.1.1 Project Schedule

The PMP shall include a Project Schedule that demonstrates how the Lead Developer plans to (1) achieve the Project's schedule requirements all the way through final acceptance by the City, and (2) manage progress of its activities throughout the PDA Term. The Project Schedule will also be used by the City to assist it with tracking progress of the Work and to help it plan for and manage its corresponding activities.

The Project Schedule shall be based on the schedule submitted by the Lead Developer in the Technical Proposal, which is included in Predevelopment Agreement Appendix H.

The Project Schedule shall have two parts: Part 1: PDA Term, and Part 2: term of the Project Agreement. The PDA Term part of the schedule shall be organized according to the work streams shown in **Table 1** above, with clear identification of the development processes for the Infrastructure Facility versus the Housing and Commercial Component.

The Part 2 term of the Project Agreement shall be organized according to the Project's major phases and milestones, which include but are not limited to: (i) Commercial Close, (ii) completion of detailed design and construction documents, (iii) permits, (iv) construction, (v) facility commissioning, Substantial Completion, and operational readiness, (vi) move-in and operational start-up through final acceptance, and (vii) asset management phase, inclusive of hand-back provisions.

The Project Schedule shall be developed using Primavera 6 and shall be delivered in a printable document as well as in the native XER file. The level of detail in the Project Schedule shall align with the project design development stage following best practices as defined by the Association for the Advance of Cost Engineering (AACE).

A second summary schedule shall accompany each detailed Project Schedule submittal, summarizing each grouping of activities in overall durations, based on the work streams categorized by the Performance Milestones. The summary schedule shall be at a high level that easily defines the Project's phases and key milestones and shall be suitable for presentation materials for the City to share with the SFMTA outreach parties, which shall be in a format approved by the City.

The PMP must highlight how the Lead Developer will achieve the Performance Milestones and how it will complete the Work to satisfy all Technical Requirements in accordance with the Project Schedule.

The Lead Developer shall update and submit the Project Schedule at regular intervals and, at a minimum, upon submittal of the Draft and Final 50% SD Package and 100% SD Package according to the Performance Milestones in Appendix B-1. In addition, the Project Schedule shall be developed in coordination with the cost estimates and risk analysis described in the Cost and Risk Management Plan described in Section 2.2.2.3.

At a minimum, the Project Schedule shall provide the means for:

1. measuring progress against the planned schedule and how progress will be evaluated and reported;
2. grouping milestones, including but not limited to the Performance Milestones shown in Appendix B-1, with interdependencies to maintain schedule efficiencies and completeness;
3. managing schedule risk;
4. managing the process to obtain all approvals necessary for the Project to reach Commercial and Financial Close; and
5. an appropriate basis to prepare cost estimates, resourcing plans, and to assess time-related costs and risks.

2.1.1.2 **Progress Reporting**

The PMP shall include a plan that describes the Lead Developer's approach to submit to the City monthly reports to update the City on progress of the various aspects of the Work. At a minimum, this progress reporting plan shall address:

1. Updates to the Project Schedule, including actual progress during the prior 90-day period and progress forecasted for the next 90-day period, which may include recovery of time, as needed;
2. Status of approvals, including General Regulatory Approvals;
3. CEQA, entitlements, and permits status;
4. Status of public outreach and community engagement activities;
5. Status of Local Business Enterprise Plan development;
6. Status of the design of the Project;
7. Quality control checklists and status update, including any Lead Developer-led quality audits, including status reports to the City on any non-compliance actions with the LMD's obligations under the Predevelopment Agreement;
8. Cost controls, quantity surveying, risk management, constructability reviews, and other demonstrable methodologies supporting the cost estimates that must be developed to remain within the Fixed Budget Limit;
9. Discussion of efforts related to Regulatory Agencies for any General Regulatory Approvals;

10. Development of the Asset Management Program (AMP);
11. Status of Early Works (if applicable); and
12. Other pertinent and timely discussion topics, as needed.

2.1.2 Quality Management Plan

The PMP shall include a Quality Management Plan that describes the processes and procedures the Lead Developer will implement to verify compliance of the Work with applicable requirements under the Predevelopment Agreement.

The Quality Management Plan shall identify and describe the responsibilities of the Lead Developer's Quality Assurance Manager. At a minimum, the Quality Assurance Manager shall be dedicated to the Project, be responsible for the Lead Developer's overall quality-assurance program (which shall cover the Work performed by or for any of the Development Team members), work separately and independently from the Development Team, and report directly to the Lead Developer's Project Director and Project Principal(s).

At a minimum, the Quality Management Plan shall:

1. Describe the Lead Developer's responsibilities for performance, oversight, and verification of the Work;
2. Describe the process for quality checkpoints and regular reviews, independent checks and balances, and full quality audits, which shall be conducted when required by the City;
3. Document progress related to the Performance Milestones, including but not limited to the Design Deliverables, and any other milestones the Lead Developer deems necessary for the Project's development, which shall be submitted to the City for review; and
4. Report the Lead Developer's quality assurance activities conducted with each significant deliverables to demonstrate verifiable and objective evidence of compliance with the requirements of this Appendix B-2.

The Quality Management Plan shall be prepared and implemented in accordance with ISO 9001: "Quality Management Systems – Requirements."

2.1.2.1 Design Quality Management

The Quality Management Plan shall include a section that addresses the development of the Design Deliverables ("Design Quality Management"). This plan shall describe the Lead Developer's procedures to control and verify the design Work and ensure its compliance with the Technical Requirements and requirements of relevant Regulatory Agencies and that the design is progressing and evolving to be within the Fixed Budget Limit for the development of the design deliverables described in Section 3.

At a minimum, the Design Quality Management section of the Quality Management Plan shall describe how the Lead Developer will:

1. Review, identify and document design inputs (e.g., compliance with the Technical Requirements, Applicable Law, and industry best practice);

2. Establish the selection of design methods to ensure the design inputs are correctly selected and translated into Design Deliverables (e.g., drawings, procedures, specifications, and calculations);
3. Establish the selection and review for suitability of application of materials, parts, equipment, and processes that are essential to the operation of the Facility;
4. Provide ongoing and continuous verification that all design elements, systems, materials and quantities are adequately surveyed to ensure that the design is evolving within the established Fixed Budget Limit;
5. Verify that design inputs satisfy relevant Regulatory Agency requirements, including the requirements associated with entities providing funding sources for affordable housing, and other quality and technical requirements are correctly identified;
6. Ensure that all drawings, sketches, specifications, data sheets, reports, and design calculations are reviewed and approved in accordance with the Lead Developer's design control procedures prior to submission to the City;
7. Ensure design interfaces with all Regulatory Agencies are identified and controlled;
8. Provide clear documentation of modifications in each progressive Design Deliverable from prior versions;
9. Ensure design changes that may be considered are governed by control measures commensurate with those applied to the design included in the Proposal, including the identification of reasons for, and impacts of, the change;
10. Coordinate design reviews with the SFMTA, the Planning Department, and MOHCD to ensure consistency with the entitlements, consistency with MOHCD's standards for affordable housing developments, and the Project's competitiveness for affordable housing funding sources;
11. Establish a comment and resolution tracking format for City review and approval of all Design Deliverables, which shall be used to ensure that design review comments from the City and Regulatory Agencies are accounted for and resolved with the City;
12. Ensure that all design documents comply with the Quality Management Plan and applicable Technical Requirements;
13. Ensure the design analyses are performed in a planned, controlled, and documented manner;
14. Ensure design analysis documents are legible and suitable for reproduction and retrieval, and are sufficiently detailed as to purpose, assumptions, references, and units such that a technically qualified person can understand the analyses and verify their adequacy without recourse to the originator of the analysis;
15. Ensure the design control measures are applied to verify the adequacy of design by the performance of design verification reviews, the use of alternate calculations, and/or the performance of design qualification tests;
16. Ensure that calculations are identified by subject, originator, reviewer, date, or by other data such that the calculations are retrievable;

17. Maintain evidence that all computer programs used for design calculations are verified to show that the program produces valid solutions for the encoded mathematical model within the defined limits for each parameter employed and that the encoded mathematical model has been shown to produce a valid solution to the physical problem associated with the application; and
18. Ensure all computer programs are controlled to ensure that changes are documented and approved for compliance with the items above.

The design review procedures defined by the Lead Developer in the Design Quality Management section of the Quality Management Plan shall establish the responsibilities and techniques for administrative, quality assurance, and technical reviews at each significant point in the design process to ensure the accuracy and completeness of Design Deliverables before submittal to the City. The appropriate level of completion for each review point varies by the type of drawing and shall be identified in the drawings listed in the design control document log.

2.2 Work Stream Specific Requirements

For each work stream, the subsections below describe the purpose of the work stream, the required Project Management Deliverable(s) and their corresponding minimum requirements.

2.2.1 Financial and Commercial Work Stream

The purpose of the financial and commercial work stream is to develop the Project's financing and commercial structure and Transaction Documents, consistent with the different goals, needs, and constraints of each Project component, while preserving the Fixed Budget Limit and while conforming to the Preliminary Term Sheet.

As part of the financial and commercial work stream, the Lead Developer shall prepare and submit to the City, for its review and approval, the Contract Document Management Plan and Financing Management Plan.

In general, the Contract Document Management Plan and Financing Management Plan shall be consistent in content and format with the Lead Developer's Financial Proposal, which is attached as Predevelopment Agreement Appendix G. Specifically, they shall incorporate the Fixed Budget Limit, the LD Predevelopment Cost, the Percentage of Common Infrastructure Cost Allocated to the City (PCIC), the Discount to the Percentage of Common Infrastructure Cost Allocated to the City (PCIC(Dis)), the Maximum Percentage of Common Infrastructure Cost allocated to the City (PCIC(Max)), and the Percentage of Common Infrastructure Cost Allocated to the Housing and Commercial Component (PCIH).

Additional requirements for the Contract Document Management Plan and Financing Management Plan are set forth below.

2.2.1.1 Contract Document Management Plan

The Contract Document Management Plan shall describe the Lead Developer's plan to (a) coordinate with the City, who will develop the Project Agreement and all related contracts to

which the City would be signatory to, and (b) produce the initial drafts of and lead the development of all other contracts (other than the Transaction Documents) which are required to reach Commercial Close and Financial Close (collectively, the “Contract Documents”).

At a minimum, the Lead Developer shall meet and confer with the City to agree on its approach for the Contract Document Management Plan, which shall address the following based on mutual agreement between the City and Lead Developer prior to finalizing it:

1. A list, including general descriptions, of all Contract Documents the Lead Developer anticipates will be required;
2. The format and frequency of meetings between the City and the Lead Developer to discuss and/or negotiate the Contract Documents;
3. The Lead Developer’s processes and timelines for the development and negotiation of the Contract Documents; and
4. The dates by which the Lead Developer shall deliver to the City progressive drafts of the Contract Documents and, subject to the City’s approval, the dates by which the City would need to review, provide comments on, and, if applicable, approve those drafts, consistent with the applicable Performance Milestones.

2.2.1.2 **Financing Management Plan**

The Financing Management Plan shall describe the Lead Developer’s processes and procedures to develop the Finance Plan for the Infrastructure Facility and the Housing and Commercial Component, and shall be consistent in content and format with the Lead Developer’s Financial Proposal included in Predevelopment Agreement Appendix G.

The Financing Management Plan shall be submitted to the City in stages according to the corresponding Performance Milestones in Appendix B-1 and shall clearly identify the proposed timelines and due dates for the City to review and approve the Finance Plan, in accordance with the Performance Milestones.

The Financing Management Plan shall include a detailed schedule that includes activities and deliverables necessary to reach Commercial Close and Financial Close by the dates specified in the Predevelopment Agreement, including all conditions precedent to be satisfied by the Lead Developer, the City, and other third parties identified by the Lead Developer.

At a minimum, these processes and procedures in the Financing Management Plan shall describe:

1. Process to determine and promptly disclose to the City any materially adverse changes in the financial strength information previously submitted to the City in connection with the Project for each of the Equity Members, Housing Developer(s), and Affordable Housing Developer(s), which disclosures shall be accompanied by the applicable financial statements for the periods since those most recently submitted to the City.
2. Process to competitively select and negotiate with debt providers to ensure that the debt for the Infrastructure Facility is procured in the most favorable terms possible for the Project;

3. Process to submit to the City for review and endorsement progressive versions of a debt financing plan, in accordance with the applicable Performance Milestones, which plan shall describe the debt instruments and determine their amount, tenor, principal terms and conditions (interest rate, fees, drawdown schedule, covenants, conditions precedent, any hedging and/or monoline insurance, among others), lead arrangers/managers, underwriters and/or private placement agents, credit rating needs, as applicable (the “Debt Financing Plan”);
4. Process to confirm commitments from Equity Members, identifying each investor (including new Equity Members, which must meet the same financial strength and experience requirements of the Equity Members the Lead Developer identified in its statement of qualifications submitted in response to the RFQ), the amount of funds committed by each Equity Member, and supporting documentation, including the terms and conditions of their subscription, and the time horizon of their investment in the Principal Project Company (or any of its subsidiaries);
5. For the Housing and Commercial Component, process and schedule to develop the applicable elements of the Finance Plan, such as market studies, feasibility analyses, application for and securing of funding sources and Low Income Housing Tax Credits, and other relevant matters. This process shall identify the Lead Developer’s and City’s roles, interaction with third parties, and other relevant instances of coordination and approvals by the City and/or any other third parties;
6. Process to develop the financial model for the Infrastructure Facility (“Financial Model”) and the pro forma for the Housing and Commercial Component (“Pro Forma”), each to be included in the Finance Plan, including the procedures and timing for auditing by an independent financial model auditor;
7. Procedures to ensure the electronic files in MS Excel for the Financial Model, and Pro Forma are prepared based on the electronic files in MS Excel for the Preliminary Financial Model and the Preliminary Pro Forma, respectively, included in the Financial Proposal attached as Predevelopment Agreement Appendix G;
8. Procedures to ensure the Finance Plan, Financial Model, and Pro Forma are prepared according to the requirements set forth in RFP Part III, Division 1 (Cost Recovery and Scope Allocation Requirements) of the Technical Requirements, including the appropriate application of the PCIC and the PCIH, and the requirements set forth in Attachment 1 of this Appendix B-2 including their corresponding data books, user guides, assumptions, sources and uses, and detailed cash flow models showing all relevant Project stages following Commercial Close;
9. Procedures to update progressive versions of the Financial Model and Pro Forma, which shall be submitted to the City as part of the Finance Plan at the Performance Milestones indicated in Appendix B-1 and how the Financial Model will produce as an output the Availability Payments to be paid by the City;
10. Procedures to coordinate the Financial Model and Pro Forma with each other and with the other work streams during the PDA Term (e.g., procedures that demonstrate how the cash flows are consistent with the corresponding costs and schedules for the Design-Build (DB) and Infrastructure Facility Maintenance (IFM) scopes of work);

11. Process to obtain an opinion letter prepared by the Lead Developer's financial advisor stating that the Finance Plan is reasonable, achievable, and sufficient to fully fund the Principal Project Company's obligations expected under the Project Agreement—the opinion letter shall also identify any material assumptions and risks associated with their opinion; and,
12. Procedures for reporting of quarterly cost audits of the Lead Developer's Predevelopment Costs, as required in Sections 7.5 and Article 10 of the Predevelopment Agreement, and status updates of any other audits determined necessary to be performed by the City.

2.2.2 Technical Work Stream

The purpose of the technical work stream is to develop the Project's design, cost, and permits consistent with the Technical Requirements.

As part of the technical work stream, the Lead Developer shall prepare and submit to the City, for its review and approval, the Project Management Deliverables described in the subsections that follow. The minimum requirements for each plan are as set forth in the corresponding subsection.

2.2.2.1 Design Management Plan

The Design Management Plan shall describe the Lead Developer's plan to develop the Design Deliverables in compliance with the City's requirement that the 100% SD Package include a scope of work, design, and set of technical requirements for the Project sufficiently developed to enable fixed-price, date-certain bidding for the Project's entire scope of work on a full turn-key basis (see the requirements for the Contractor Procurement Plan set forth in Section 2.2.4.1) and within the Fixed Budget Limit and Project Schedule requirements.

At a minimum, the Design Management Plan shall:

1. Describe how the the Lead Developer will align the design processes for the Infrastructure Facility and the Housing and Commercial Component with how the HCC Development Plan will be incorporated in the PDA Term as described in Section 6.9(b) (*HCC Development Plan*) of the Predevelopment Agreement, to ensure that (a) the Project is designed and presented at every Predevelopment Agreement and Project Agreement phase design deliverable as an architecturally and functionally integrated joint development, and (b) that every Predevelopment Agreement and Project Agreement phase design deliverable meets the requirements of the Predevelopment Agreement, as applicable, and the Technical Requirements;
2. Describe how the Lead Developer will develop the design, up to and including the 100% SD Package, in coordination with the Cost and Risk Management Plan and within the Fixed Budget Limit;
3. Address how the Design Deliverables will be managed to fulfill their associated deadlines to submit them for review and/or approvals;
4. Address how design reviews by the City will be managed by the Lead Developer, including resolution and record-keeping of City design review comments;

5. Address how changes to the Project will be recorded, tracked, and communicated to the City, including LD Proposed Changes, City Proposed Changes, and HCC Changes;
6. Describe the content and format for the 50% SD Package and 100% SD Package, based on the minimum requirements set forth in Section 3 (Design Deliverables);
7. Incorporate the Owner's Information Requirements (described in Section 2.2.2.2 below) and the BIM-enabled processes and workflows described in the BIM Execution Plan, which the Lead Developer shall prepare in accordance with Section 2.2.2.2 (BIM Execution Plan); and
8. Describe how the Design Deliverables will be developed in coordination with the CEQA and General Regulatory Approvals Plan, described in Section 2.2.3.2 and describe how the Lead Developer shall incorporate input or feedback received through the CEQA and outreach processes.

Additional requirements for the Design Management Plan are set forth in the following subsections.

(a) Design Reviews

The Design Management Plan shall include a section that describes the Lead Developer's procedures to obtain reviews and, as applicable, approvals of Design Deliverables from the City and other Regulatory Agencies ("Design Reviews").

The Design Reviews section shall highlight where and how these procedures vary between the City, as owner of the Project, and other Regulatory Agencies, including the City in its regulatory capacity. In general, the Design Reviews section must provide for the City's review, comment, and approval of any Design Deliverable before the Lead Developer submits the Design Deliverable to a Regulatory Agency for review (e.g., as a condition to issuing permit).

At a minimum, in the procedures in the Design Reviews section shall provide for:

1. The City shall have no less than the number of days specified in the Predevelopment Agreement for the City to review, provide written comments, and approve the Design Deliverables (i.e., the 50% SD and 100% SD Package);
2. In the case of the 50% SD, Lead Developer shall document receipt, resolution, and incorporation into the design of all comments Lead Developer receives from the City and any Regulatory Agencies before advancing the design to the next stage;
3. In the case of the 100% SD Package, Lead Developer shall document receipt, resolution, and incorporation of all comments Lead Developer receives from City and any Regulatory Agencies prior to the procurement of the contractors for the Design-Build and IFM Contracts;
4. Lead Developer shall submit to the City for review and approval any changes made to the design in connection with or after the Lead Developer's procurement of the DB contractor and IFM contractor, and shall document receipt, resolution, and incorporation of all comments before it finalizes the Project Documents for Commercial Close;
5. Lead Developer shall work with Regulatory Agencies, including the City in its regulatory capacity, to complete reviews of Design Deliverables required for all General Regulatory

Approvals in connection with the Project, including without limitation the approvals described in Section 2.2.3.2;

6. Lead Developer shall: be solely responsible to coordinate, schedule, and facilitate timely pre-application meetings among the City, all Regulatory Agencies, and other regulatory authorities; make necessary submittals (including any Design Deliverables) to the applicable entities; verify that design inputs satisfy all their requirements; and obtain reviews and approvals, as applicable;
7. Lead Developer shall provide a minimum of 7 calendar days notice to the City before the Lead Developer makes submittals to the Planning Department or to other Regulatory Agencies; and,
8. Request assistance from the City's Project Manager to collaborate regarding contact with Regulatory Agencies, if necessary, subject to the limitations of Section 6.21 of the Predevelopment Agreement.

Except where the Lead Developer indicates otherwise, the procedures in the Design Reviews section shall apply to design reviews in connection with any Early Works Agreements.

(b) Change Management

The Design Management Plan shall include a section that describes the Lead Developer's procedures for change management. At a minimum, these procedures shall describe how the Lead Developer will comply with the requirements set forth in Article 9 and other applicable sections of the Predevelopment Agreement.

2.2.2.2 BIM Execution Plan

The BIM Execution Plan shall describe the Lead Developer's BIM-enabled workflows and systems to successfully deliver, operate, and maintain the Project, principally as a Level-2 BIM and in accordance with the BIM objectives and other parameters to be established in the Owner's Information Requirements (OIR) (See Section 2.2.2.2). The BIM Execution Plan shall set forth the processes and requirements for progressive development of an integrated BIM 3D-4D (schedule)-5D (cost)-6D (asset management) model for the Project.

At a minimum, the BIM Execution Plan shall describe:

1. BIM objectives and uses;
2. Roles and responsibilities of the parties;
3. BIM requirements and processes;
4. Methods and protocols / standards;
5. Schedule for progressive development of the BIM model according to the Project's anticipated development and procurement processes during the PDA Term and the Project Agreement phase;
6. Supporting software requirements;
7. Owner's Information Requirements; and

8. Development of (a) as-built drawings from the BIM model and (b) the as-built BIM model.

The BIM Execution Plan shall be consistent with and reference, as applicable, the relevant design review, project management, and or quality management processes and requirements set forth in this Appendix B-2. The BIM Execution Plan shall describe how the Lead Developer will include input from its Construction Management and Infrastructure Facility Maintenance Consultants into the BIM deliverables described below.

(a) Owner's Information Requirements

The BIM Execution Plan shall include a section that describes how the Lead Developer will work with the City to develop the Owner's Information Requirements (OIR), including workshops and a BIM strategy for the Project.

At a minimum, the OIR shall describe:

1. BIM objectives: the BIM objectives for the Project, which shall align with the Project Objectives;
2. BIM uses: the application of BIM methodologies and tools the Lead Developer and City will use to achieve the BIM objectives;
3. Level of detail: the types of information and level of detail used to specify the datasets model entities shall contain and the depth of such information: the level of detail refers to the depth of geometric and non-geometric information for each dataset ("level of detail");
4. BIM deliverables: any document or information developed by the Lead Developer that is necessary for the creation of the BIM models and the products resulting from the implementation of BIM tools and processes—at a minimum, these BIM deliverables shall include the BIM Execution Plan (BEP), the BIM models, and other supporting documents;
5. Collaboration strategy: the strategy for the City and Lead Developer to collaborate within the BIM environment, which shall incorporate known methods for management and information exchanges throughout the lifecycle Project: at a minimum, the collaboration strategy shall describe how the City and the Lead Developer will access, review, and approve information throughout the lifecycle of the Project; the collaboration strategy shall address the common data environment(s) (CDE(s)) that the Lead Developer will deploy to achieve the BIM objectives and the collaboration strategy;
6. Model structure / organization to share structured, unambiguous information as part of the BIM environment: the strategy for the City and the Lead Developer to agree on the minimum standardization requirements to guarantee the availability and quality of information throughout the lifecycle of the Project—examples of requirements for which Lead Developer must obtain City's mutual agreement upfront (before developing the BIM) include the BIM units, naming, and model sizes; and
7. Integration with Asset Management: the City and the Lead Developer shall agree on the asset data management for the Project's Asset Management Program, which shall be developed in accordance and coordination with the SFMTA's current asset structure and hierarchy in accordance with SFMTA's Infor CloudSuite EAM platform. SFMTA bases its facility hierarchies on the Federal Transit Administration's standard for State of Good Repair and their Transit Asset Management (TAM) program.

2.2.2.3 Cost and Risk Management Plan

The Cost and Risk Management Plan shall describe the Lead Developer's approach to develop cost estimates (including cost estimates for all Design-Build Contract and IFM Contract costs) and risk registers that the Lead Developer will submit to the City together with the 50% SD and the 100% SD Package.

The Cost and Risk Management Plan shall be coordinated with the Project Schedule, as described in Section 2.1.1.1 and shall be organized to include and explain the Lead Developer's methodology to prepare each element as follows.

(a) Cost Management

The Cost and Risk Management Plan shall include a section that describes the Lead Developer's approach to cost management ("Cost Management"). In general, the Cost Management section shall describe how the Lead Developer will meet the requirements of Article 2 of the Predevelopment Agreement.

At a minimum, the Cost Management section shall incorporate the requirements set forth in Attachment 2 of this Appendix B-2. At the appropriate Performance Milestones described in Section 6.15(a) of the Predevelopment Agreement, and as shown in Appendix B-1, the Lead Developer shall report to the City the DB, IFM, and LD Predevelopment Costs using the forms set forth in Attachment 4 of this Appendix B-2.

(b) Risk Management

The Cost and Risk Management Plan shall include a section that describes the Lead Developer's approach to develop and manage the Project's risk analysis and mitigation processes ("Risk Management"). At a minimum, this approach shall include:

1. The processes Lead Developer will utilize to collaborate with the City to identify and evaluate the Project's cost and schedule risks based on their probability of occurrence;
2. Development of a risk register that includes the Lead Developer's proposed risk responses and control strategies for each risk identified for the design, construction, and operations phases of the Project; Lead Developer shall consult with the City to review and update the risk register as appropriate during the PDA Term; and
3. Preparation of suitable presentation materials for the City to share with the SFMTA Outreach Parties, which shall be in a format approved by the City.

2.2.2.4 Asset Management Program Development Plan

The Asset Management Program Development Plan shall describe the Lead Developer's approach to develop the Asset Management Program (AMP) during the PDA Term, in accordance with the requirements set forth in Division 7 of the Technical Requirements.

At a minimum, this approach shall describe how the Lead Developer will:

1. Seek input from, submit deliverables for review to, and obtain approvals from the City in connection with the AMP;

2. Initially meet with the SFMTA Facility Maintenance team to understand the SFMTA's: (a) current maintenance regime, processes, and systems; (b) structured asset data and electronic asset management hierarchies; and (c) requirements for coordination and development of the Asset Management Program;
3. Develop the final scope and details of the AMP based on:
 - a. The Financial Proposal and Technical Proposal, included in Predevelopment Agreement Appendix G and Appendix H;
 - b. Detailed definition and resolution of the interfaces among the SFMTA O&M, the IFM, and the Property Management scopes of work;
 - c. The final choices the SFMTA will make during the PDA Term with respect to the scope of the SFMTA O&M and the IFM, as well as the performance requirements for the IFM including service standards, performance levels, and deductions regime;
4. Coordinate with the Cost and Risk Management Plan to work with the City to develop the scope of work for the IFM, including working collaboratively and iteratively with the City to develop the performance requirements for the IFM including service standards, performance levels, and deductions regime will be performed within the Fixed Budget Limit—in the case that the Lead Developer proposes for the PPC to self-perform the IFM scope of work, describe a transparent and robust method for market testing and benchmarking of all IFM costs to ensure that the pricing is competitive in the market;
5. Coordinate with the City the development by the City of the payment mechanism and deductions regime for the Availability Payments as part of the City developing the draft Project Agreement;
6. Integrate development of the AMP with the BIM-enabled workflows and systems for the Facility's design, in coordination with the BEP;
7. Integrate the AMP with the SFMTA's existing asset management standards, systems, and processes;
8. Develop the plans and systems that SFMTA will use to perform the SFMTA O&M²;
9. Develop a data system that is compatible with the SFMTA's existing CAFM software platform, to facilitate a smooth and proactive process for operational readiness, activation, and transition upon completion of construction of the SFMTA O&M to the SFMTA;
10. Develop a road map that shall be implemented in the PDA Term that captures the full value of BIM-enabled functionality, utilizing structured asset management data systems (including data from as-builts, O&M manuals, and warranty information), with Building Automated Systems (BAS) that will be controlled, monitored, and managed by the SFMTA's CAFM software platform for the elements that fall within the SFMTA O&M scope and by the Principal Project Company's software platform for those within the IFM³—this road map

2 These plans and systems will include, for example, provisions for the development of detailed manuals, computer-aided management systems, and training for SFMTA staff, so that the City is adequately prepared to perform the SFMTA O&M scope of work following the Infrastructure Facility's Substantial Completion.

3 The purpose of this is to fully enable the CAFM software as the core management tool of the BAS, which is required by building managers to ensure monitoring and efficient management of energy and occupant comfort.

shall address all building systems and equipment for both the SFMTA O&M and the IFM scopes of work, applying the same methodology for each;

11. Develop a commissioning and operational readiness plan that includes processes, checklists, and training to fully enable the SFMTA’s own asset management program for the SFMTA O&M scope— this shall include development of a plan to efficiently deliver complete as-built documents (drawings and BIM model(s)), O&M manuals, warrantee information, and all other record documents requirements, as well as an Owner training plan for all systems and equipment.

(a) Energy Management Program

As part of the development of the AMP, described above, the Lead Developer shall work with SFMTA to develop an energy management program for the Infrastructure Facility (the “Energy Management Program”), as required in Section 6.7 of the Predevelopment Agreement.

At a minimum, the Energy Management Program shall describe the Lead Developer’s approach to:

1. Ensure a commitment to responsible energy management without compromising the working environment and safety of users of the Facility;
2. Develop methods and standards to continuously measure and monitor energy usage to identify inefficient practices and opportunities for improve energy efficiency and reliability of service;
3. Develop objectives and annual energy targets to reduce energy consumption;
4. Develop methods and standards to manage energy usage and reduce energy costs by implementing sound operating and maintenance practices, and more efficient technology, equipment, and/or Facility systems;
5. Develop and promote, in conjunction with the City, an energy awareness program for all SFMTA staff, IFM personnel, and Property Management personnel working in the Facility;
6. Participate in government agency or utility programs that support or foster behavior change programs relating to sustainability and energy conservation, including documenting and submitting required information for the federal government's Energy Star program, as applicable;
7. Meet the requirements of the San Francisco Green Building Code for new buildings, California’s Green Building Standards, and Energy Efficiency Standards (Title 24 Part 6);
8. Propose a baseline scenario of energy consumption in the Infrastructure Facility; and,
9. Propose for negotiation with the City a painshare/gainshare mechanism for the Infrastructure Facility on the basis of the baseline scenario per the previous item4.

Effective BAS utilization allows for optimal building performance by extending equipment and systems' operational life by reducing loads and operating hours.

4 The painshare/gainshare mechanism has no impact on the Fixed Budget Limit.

2.2.2.5 Plan for Coordination with Regulatory Agencies

The Plan for Coordination with Regulatory Agencies shall describe the Lead Developer's approach to coordinate with applicable Regulatory Agencies to obtain required information, approvals, and/or permits, with the goal to successfully develop the Project to reach Commercial Close. The Regulatory Agencies Coordination Plan shall be coordinated with the Design Management Plan, the Project Schedule, and other plans as necessary.

At a minimum, the Regulatory Agencies Coordination Plan shall describe the Lead Developer's approach to coordinate with:

1. The Regulatory Agencies and SFMTA planning and transit operations staff for design reviews and Regulatory Approvals, and where any relevant design work would be prepared by such Regulatory Agencies, describe how the Lead Developer will coordinate their designs with the Project, and incorporate their designs into the Design Deliverables— notable coordination responsibilities include, but are not limited to, SFPUC/PG&E for increased power supply to the Project Site;
2. Departments of the City as necessary to determine relevant requirements of City in its regulatory capacity, develop and review designs, obtain required approvals of City in its regulatory capacity, and determine methods and processes to comply with the environmental compliance requirements set forth in the DEIR draft mitigation measures and the FEIR Mitigation Monitoring and Reporting Program (MMRP). Such departments include, but are not limited to, the Planning Department, San Francisco Public Works, San Francisco Public Utilities Commission, the Department of Environment, the Department of Building Inspection, San Francisco Public Health Department, and the Fire Department;
3. The San Francisco Arts Commission for the design of the Facility and any other Project site improvements with respect to: (i) the City's Civic Design Review and Public Art Enrichment requirements, and (ii) any art work commissioned by the City or the San Francisco Arts Commission that is to be incorporated at the Project Site as an integral building or Project Site element, including assisting with information necessary for the San Francisco Arts Commission to make the selection.
 - a. The plan shall describe how the Lead Developer will coordinate with and work with the SF Arts Commission, its committees, and any representatives of the City that the San Francisco Arts Commission may designate in the selection of artists for the City's Public Art Program
 - b. The plan shall also describe how, once the art work is selected, the Lead Developer will coordinate with and work with the SF Arts Commission, and the chosen artists, and any representatives the San Francisco Arts Commission may designate and provide design and engineering services necessary to incorporate requirements for the chosen artwork into the design for the Facility

2.2.2.6 Construction Permitting Plan

The Construction Permitting Plan shall describe the Lead Developer's approach to secure construction permits for the Project, including how pre-construction mitigation measures in the MMRP have been demonstrated to be satisfied, for any potential Early Works Agreements,

during the PDA Term. The Construction Permitting Plan shall be coordinated with the Project Schedule, as described in Section 2.1.1.1.

The Construction Permitting Plan must be submitted concurrently with the PMP. However, the Lead Developer may propose a revised plan at a later stage of the PDA Term to reflect any changes in its approach to construction permitting as the Project is developed.

2.2.3 Entitlements and Outreach Work Stream

The purpose of the entitlements and outreach work stream is to obtain all necessary environmental approvals and to work with stakeholders and the community.

As part of the entitlements and outreach work stream, the Lead Developer shall prepare and submit to the City, for its review and approval, the Project Management Deliverables described in the subsections that follow. The minimum requirements for each plan are as set forth in the corresponding subsection.

2.2.3.1 Public Outreach and Engagement Plan

The Lead Developer shall develop the Public Outreach and Engagement Plan (the “**LD Outreach Plan**”) using the SFMTA’s Communications Division’s Public Outreach and Engagement Requirements (POER) v.1.0, which is included in Division 9 of the Technical Requirements. The LD Outreach Plan also must conform to the process described in the Public Outreach and Engagement Plan Guide attached as Attachment 3 to this Appendix B-2.

At a minimum, the LD Outreach Plan shall provide for the requirements set forth in Section 7.6 of the Predevelopment Agreement and shall:

1. Identify community stakeholders and describe planned engagement with stakeholders, including those located within a minimum of 900 feet of the Project Site:
 - a. Local residents (renters and homeowners)
 - b. Neighborhood and merchant groups
 - c. Businesses
 - d. Property owners (business improvement districts, etc.)
 - e. Faith-based institutions
 - f. Cultural organizations
 - g. Community-based organizations
2. Identify opportunities for community stakeholders to provide input and influence the Project, including in developing alternatives and formulating solutions.
3. Detail outreach and engagement techniques that will be used to inform the public and solicit stakeholder input that could affect the Project, including multi-channel, multilingual communications tactics, community meetings, and other outreach methods.
4. Develop key messages for both general and specific audiences.

5. Establish a schedule for public outreach and engagement activities and tasks.
6. Establish a budget to fund the SFMTA Public Outreach and Engagement Program and LD Outreach Plan to safely and effectively engage with Project stakeholders.

2.2.3.2 Entitlements and General Regulatory Approvals Plan

The Entitlements and General Regulatory Approvals Plan shall describe the Lead Developer's approach to work with the SFMTA and Planning Department to advance the Project's entitlement process and documentation, including CEQA, and obtain approvals to successfully develop the Project and to reach Commercial Close.

The Entitlements and General Regulatory Approvals Plan shall address how the Lead Developer will integrate its work with the existing CEQA process, pursue the required rezoning and other land use entitlements, clearly define the Lead Developer's and the City's roles (including identifying instances where actions by each party need to be coordinated with the other), and shall be coordinated with the Design Management Plan, the Contractor Procurement Plan, the Project schedule, and the plans for financing the Infrastructure Facility and Housing and Commercial Component.

The Entitlements and General Regulatory Approvals Plan will be reviewed and is subject to approval by the SFMTA, under advisement by the Planning Department.

2.2.4 Contractor Procurement Work Stream

The purpose of the contractor procurement work stream is to develop the process to competitively procure the Design-Build Contract and the IFM Contract.

As part of the entitlement and outreach work stream, the Lead Developer shall prepare and submit to the City, for its review and approval, the Contractor Procurement Plan described, the requirements for which are set forth in the subsection that follows.

2.2.4.1 Contractor Procurement Plan

The Contractor Procurement Plan shall describe the Lead Developer's approach to competitively procure the Design-Build Contract and IFM Contract and shall be based on the approach the Lead Developer included in its Technical Proposal, included as Predevelopment Agreement Appendix H.

The Lead Developer shall submit the Contractor Procurement Plan to the City concurrently with the PMP and may propose a revised plan at a later stage of the PDA Term to reflect any changes in its procurement approach as the Project is developed. The Contractor Procurement Plan shall affirmatively state that the Lead Developer will seek the City's review and approval of a revised Contractor Procurement Plan, if applicable, prior to issuing any request for proposal ("RFQ") and or request for proposal ("RFP") for the Design-Build Contract or IFM Contract.

At a minimum, the Contractor Procurement Plan shall describe the Lead Developer's approach to:

1. Ensure a fair and transparent process procurement process in accordance with Applicable Law and the City's procurement goals for the Project;
2. Develop the RFQ(s) and/or RFP(s) for the Design-Build Contract and IFM Contract, the minimum requirements of which are set forth in the subsections below;
3. Ensure the City reviews and approves procurement documents such as the contractor RFQ(s), RFP(s), and related documents (e.g., the procurement schedule and proposal evaluation procedure and selection procedures);
4. Ensure selection of proposals for fixed prices and dates certain within the Fixed Budget Limit and develop contingency plans to achieve these requirements in case proposals indicate costs may exceed the Fixed Budget Limit;
5. Move efficiently and expeditiously from selection of the successful proposals to Commercial Close, all subject to the City's review and concurrence regarding compliance with the approved Contractor Procurement Plan;
6. Ensure compliance with all Technical Requirements and align with all prior approvals (including General Regulatory Approvals), stakeholder expectations, and the 100% SD Package; and
7. Include all City Requirements for all covered work.
8. The requirements for the Contractor Procurement Plan described in this Section may be modified by the Lead Developer, with the City's written approval, depending on:
 - a. The role of the Lead Developer's Design Consultant that is proposed by the Lead Developer;
 - b. Whether the Lead Developer chooses to exercise an option for the Principal Project Company or the Bus Yard Project Company to self-perform all or parts of the IFM scope of work;
 - c. Whether the Lead Developer chooses to join up the DB and IFM procurements into one process (instead of two parallel processes), with each contractor bidding team consisting of a DB contractor and an IFM contractor; and/or,
 - d. The Lead Developer's approach for construction contracting for the Infrastructure Facility and the HCC.

(a) Request for Qualifications for Design-Build Contract and IFM Contract

The Lead Developer shall prepare and submit to the City for review, comment, and approval one or more drafts of the RFQ(s) for the Design-Build Contract and IFM Contract before issuing these documents.

The RFQ(s) shall:

1. Be based on a standard form RFQ mutually agreed upon by the Lead Developer and the City (e.g., the Design-Build Institute of America (DBIA) standard form of RFQ);
2. Set forth the procurement schedule (e.g., approximately six to eight weeks to determine shortlist) and describe the evaluation process and criteria for selecting shortlists of contractors to respond to the RFP(s);

3. Provide enough information and time for contractors to: (a) determine the optimal size and composition of teams; (b) assess their internal resources to participate in the procurement process and to deliver the work; and (c) develop and submit timely responses;
4. Include submittal requirements that describe contractors' history of safety and technical delivery of projects similar in scope, scale and complexity as the Project, and require disclosures similar to those contained in the City's RFQ for the Project, issued on August 21, 2020, as amended;
5. Include evaluation criteria that assess the contractors' past experience delivering projects within budget;
6. Identify the number of contractors that will be shortlisted (e.g., the City expects that either three or four contractors will be shortlisted).
7. The Lead Developer shall share with the City and conduct evaluations of responses to the RFQs. Based on its evaluation of responses to the RFQs, the Lead Developer will recommend to the City the shortlists of qualified contractors, which shall be subject to the City's general review, comments and concurrence regarding compliance with the approved Contractor Placement Plan and RFQ. Only after obtaining the City's concurrence, which shall not be unreasonably withheld, the Lead Developer shall publicly announce the shortlist determination and proceed to issue the RFP(s) for the Design-Build Contract and IFM Contract.

(b) Request for Proposals for Design-Build Contract and IFM Contract

The Lead Developer shall prepare and submit to the City for review, comment, and approval one or more drafts of the RFP(s) for the Design-Build Contract and IFM Contract before issuing the documents to shortlisted contractors.

The RFP(s) shall:

1. Be based on a standard form RFP mutually agreed upon by the Lead Developer and the City (e.g., the DBIA standard form of RFP);
2. Set forth the procurement schedule and describe the evaluation process and criteria for selecting proposals in response to the RFP(s);
3. Unless otherwise agreed to by the City, at a minimum, include: (a) instructions for submittal requirements that include appropriate technical, financial, and pricing submittals; and (b) cost estimate work breakdown structure, formatting, and templates that Lead Developer developed during the PDA Term; pricing submittals shall be in the same format as the Fixed Budget Limit and accompanied by a basis of estimate of similar scope and structure as a minimum meeting with the requirements of Attachment 2 of this Appendix B-2;
4. Include proposal evaluation criteria that reflects the Project Objectives set forth in Predevelopment Agreement Appendix D. At a minimum, the evaluation criteria shall:
 - a. Take into consideration the contractors' previous experience delivering similar projects, previous experience teaming with the Lead Developer and delivering projects for the City, and the contractor's design approach and compliance with the 100% SD Package and all Technical Requirements; and

- b. Include pricing within the Fixed Budget Limit without qualifications, exclusions, or conditions—the Lead Developer shall use its cost estimates, based on the 100% SD Package, to evaluate pricing with respect to the Fixed Budget Limit.

Unless mutually agreed upon by the Lead Developer and the City prior to issuance, include the following documentation or items:

5. Draft Project Agreement (per the applicable Performance Milestones);
6. Detailed term sheets or draft agreements for the Design-Build Contract and IFM Contract, as applicable, and the Interface Agreement(s) on a back-to-back basis with the Project Agreement;
7. Applicable Technical Requirements, including the City's General Requirements;
8. Fixed Budget Limit for the Bus Yard Component and Common Infrastructure;
9. Lead Developer's Project Site due diligence (e.g., geotech, hazmat, utilities, etc), asset condition reports, and other relevant Project Site data and information;
10. Lead Developer's 100% SD Package, which must be in full compliance with the Technical Requirements, the EIR, and all Mitigation Measurement and Reporting Procedures (MMRP) that may be adopted by the Planning Commission for the Project; and
11. City contracting and administrative requirements, as applicable (e.g., Local Hiring Policy, prevailing wages, the LBE Plan, etc) for all covered work.

The Lead Developer shall share with the City and conduct evaluations of proposals in response to the RFP(s). Based on its evaluation of proposals, the Lead Developer shall score and rank proposals, from highest to lowest scores, and identify to the City the proposers that offer the "best value" to the City, which shall be subject to the City's concurrence regarding compliance with the approved Contractor Procurement Plan and the contractor RFP. Only after obtaining the City's concurrence, which shall not be unreasonably withheld, the Lead Developer shall publicly announce the successful proposers and proceed to award the Design-Build Contract and IFM Contract.

2.2.5 Early Works Work Stream

The City anticipates entering into one or more potential Early Works Agreements with the Lead Developer, under which the City would pay the Lead Developer to complete certain Early Works scope of services during the PDA Term to mitigate schedule risks to the Project.

The purpose of the Early Works work stream is to develop the Lead Developer's approach to delivering Early Works.

As part of the Early Works work stream, the Lead Developer shall prepare and submit to the City, for its review and approval, the Early Works Plan described below. The minimum requirements for the plan are as set forth below.

2.2.5.1 Early Works Plan

The Early Works Plan shall describe the Lead Developer's approach to identify, develop, and potentially implement the Early Works Agreements during the PDA Term and in accordance with the approach set forth in the Lead Developer's MME Proposal.

The Early Works Plan shall be submitted to the SFMTA for review and approval concurrently with the PMP.

3 Design Deliverables

This Section 3 describes the minimum requirements for the content and format of the Design Deliverables for the Project that the Lead Developer must submit to the City, for its review and approval, during the PDA Term. The Design Deliverables shall be developed to ensure (a) that the Project is designed and presented at every Predevelopment Agreement and Project Agreement phase design deliverable as an architecturally and functionally integrated joint development, and (b) that every Predevelopment Agreement and Project Agreement phase design deliverable meets the requirements of the Predevelopment Agreement, as applicable, and the Technical Requirements.

At a minimum, the Design Deliverables for the Facility shall include:

1. **50% SD Package**, prepared in accordance with the minimum requirements set forth in Section 3.1.
2. **100% SD Package**, prepared in accordance with the minimum requirements set forth in Section 3.2.
3. **BIM deliverables**, developed for the 50% SD Package and 100% SD Package and in accordance with the requirements of the BEP set forth in Section 2.2.2.2 and with the BIM deliverables requirements set forth in Section 3.3.

The Design Deliverables related to Early Works Agreements, if any, shall be developed based on the Lead Developer's plan described in Section 2.2.5.1.

The Design Deliverables shall include both traditional 2D drawing sets and BIM deliverables. The 2D drawing sets shall govern contractually during the PDA Term, unless otherwise agreed by the Lead Developer and the City.

With respect to the Allowances in the RFP, the Lead Developer shall work collaboratively with the City to identify strategies and to develop their respective scopes of work for inclusion of as many as possible in the FBL prior to the Design-Build Contract and IFM Contract RFP(s). The City anticipates that the following Allowances defined in the RFP may be deferred as Allowances for the Design-Build Contract and IFM Contract RFP(s), by mutual agreement of the City and the Lead Developer:

1. BEB Charging Equipment
2. IT/Comms Equipment
3. FF&E for the BYC's office/administrative and training facility spaces

4. Off-site utility improvements, unless it is the subject of an Early Works Agreement

With respect to item 4 in the above list, off-site utility improvements, the City and the Lead Developer shall work collaboratively during the development of the 50% SD and 100% SD Packages to determine the optimal approach for cost and schedule risk management of these improvements.

3.1 50% Schematic Design Package

The purpose of the 50% SD Package is for the Lead Developer to progress its design included in the Technical Proposal to a greater level of detail with input from and in coordination with the City, and to demonstrate compliance with the Technical Requirements.

The 50% SD Package shall incorporate community input the Lead Developer obtains through the outreach program (in accordance with the processes set forth in the Lead Developer Outreach Plan and the requirements in Section 2.2.3.1) and shall be coordinated with the CEQA review process and the requirements of the DEIR (in accordance with the processes set forth in the Lead Developer's CEQA and General Regulatory Approvals Plan in the requirements in Section 2.2.3.2).

The Lead Developer shall prepare and submit the 50% SD Package to the City for review and approval in accordance with the corresponding Performance Milestones indicated in Appendix B-1. The City will review and approve the 50% or 100% SD Package based on conformance with the Predevelopment Agreement and the Technical Requirements. At a minimum, the 50% SD Package shall consist of a drawing set, design narrative, BIM model, cost estimate demonstrating compliance with the Fixed Budget Limit, schedule, and risk register, the requirements for which are stated herein and also set forth below.

3.1.1 Drawings and Reports

The 50% SD Package shall include a drawing set that includes the drawings listed below. The drawing sheets shall be 34 x 22 inches (or another sheet size, by mutual agreement of the City and the Lead Developer), oriented north-up, be hard lined to scale with dimensions, and have materials clearly noted.

Based on the Lead Developer's BEP model development requirements and specifications, the 50% SD Package drawings shall be developed from the corresponding BIM models. The BIM Deliverables described in Section 3.3 shall be included in the 50% SD Package.

At a minimum, the 50% SD Package shall include:

1. **Cover Sheet:** Cover sheet with a rendering, project team, and architect contact information;
2. **Draft Basis of Design:** Primary document that translates, without exceptions, qualifications, or exclusions, the Technical Requirements into the Facility's components;
3. **Vicinity Plan:** Site plan at 1"=100' scale showing entire Project Site and surrounding streets, proposed project including Project component footprints, plaza, parking, vehicular, and pedestrian access, and landscape concept. Color code Project components;

4. **Site Plans:** Site plans at a scale 1"= 30'-0" of the Project components with building footprints, surrounding sidewalks and streets, public and private open spaces, parking, loading, and equipment areas, and exterior lighting, and street and sidewalk improvements. Show landscaping, drainage and stormwater management systems, utility layout and points of connection, and sustainability features (e.g., solar panels) in accordance with the Technical Requirements. Show locations of pedestrian and vehicle access points, Project Site circulation diagrams, and turning templates for all SFMTA revenue and non-revenue vehicles. Show topographic elevations of Project component entrances, proposed Project Site contours at one-foot intervals, Project Site grading, driveway curb cuts, and pedestrian curb ramps as needed for disabled access to Project components;
5. **Renderings:** Three 3D views that clearly illustrate the relationship of the proposed Project to adjoining streets and surrounding context. Surrounding elements do not need to be photo-realistic but must accurately convey the bulk, scale and character of the surrounding area;
6. **Elevations:** Rendered exterior elevations at 1/16" overall elevations for each Project component that illustrate the proposed massing and height, fenestration, materials, and related architectural elements including signage and public art integration;
7. **Sections:** At least two building sections through the various Project components at 1/16" that illustrate major spaces, including bus maintenance and parking areas, as well as, vertical circulation elements, any roof top equipment, and screening. Show heights equipment and clearances including floor and roof datums and floor to floor heights building equipment, overhead trolley wires, and BEB overhead infrastructure and vertical clearances;
8. **Floor and Roof Plans:** Floor plans at a 1/8" scale plan of each floor in each Project component and roof plan for each. Show structural gridlines and their dimensions, as well as overall dimensions of the building exterior envelope on each level. Show all entrances and circulation, program spaces and necessary mechanical, electrical, plumbing, telecommunication spaces in each Project component and any proposed roof top equipment. Plans shall address all the program and functional requirements set out in the Technical Requirements. For the Bus Yard Component, the plans shall indicate the turning templates for all SFMTA revenue and non-revenue vehicles. Show all open spaces, including rooftop;
9. **Engineering Plans:** Structural, Mechanical, Electrical, Plumbing, Civil, Equipment, Fire Protection, IT/Comms, and other engineering plans at the appropriate 50% Schematic Design level of design in coordination with the Architectural design and commensurate with the cost estimates, project schedule, and risk analysis that are required for this Design Deliverables package. The engineering plans shall, as a minimum, be sufficiently developed to identify the approach to the respective building systems, identify all physical spaces and distribution spaces and elements, and address the relevant provisions of the Technical Requirements;
10. **Engineering Reports:** in coordination with the drawings and meeting the relevant provisions of the Technical Requirements. The engineering reports shall include, but not be limited to, the following:
 - a. Structural, Mechanical, Electrical, Plumbing, Civil, Equipment, Fire Protection, IT/Comms, and other engineering plans at the appropriate 50% Schematic Design level of design in coordination with the Architectural design and commensurate with the cost estimates, project schedule, and risk analysis that are required for this Design Deliverables package;

- b. Noise and vibration studies and reports and Engineering Analysis described in RFP Part III, Division 4, Section 1 addressing Site Due Diligence and 50% SD deliverables defined therein;
- c. Seismic engineering studies and reports meeting the requirements of RFP Part III, Division 4, Section 2 addressing Site Due Diligence and 50% SD deliverables defined therein; and,
- d. Study of Common Utility Systems as required in RFP Part III, Division 4, Section 3.

11. **Site due diligence deliverables:**

- a. Utility investigation and mapping report for existing on-site utilities that must address as a minimum the following:
 - i. On-site utility study to verify whether all existing on-site utilities can be removed and capped at the property limits and identify whether there are existing on-site utilities that need to be relocated either as a result of them serving adjacent properties, or being mainline utilities that transect the Project Site;
 - ii. Composite utility drawings of all existing on-site utilities for the Project; and,
 - iii. Prepare a cut and salvage in place plan for existing SFMTA traction power utility.
- b. Geotechnical report with scope and detail appropriate for a design level, addressing the requirements geoseismic studies necessary to fulfill the requirements of RFP Part III, Division 4, Section 2 and containing at a minimum scope and detail set forth in the report included in RFP Part IV, Document 2;
- c. Environmental site investigations and report supplemental to the report included in RFP Part IV, Document 3, as necessary to increase the level of certainty and reduce the risks to the Project and to meet applicable regulatory requirements;
- d. Report of hazardous building materials related to demolition of the existing facilities at the current Potrero Yard of sufficient scope and detail to allow for scoping and cost estimating the associated demolitions works with sufficient confidence to allocate this risk to the DB contractor;
- e. ALTA survey;
- f. Noise and vibration measurements as described in RFP Part III, Division 4, Section 1.6.1 (*Site Due Diligence*); and,
- g. Surveys and site investigations for other site conditions beyond those described above to increase the level of certainty and reduce the risks to the Project.

14. **Preliminary security assessment:** Developer will provide a risk/threat assessment and narrative to align with City standards and provide recommendations for both physical and electronic security systems;

15. **Code Analysis:**

- a. Construction types;
- b. Fire separations;
- c. Exiting / egress; and

- d. Project component separations for each phase of construction;

16. Data Tables:

- a. Project component Area Tabulation:
 - i. Assignable square footages for each of the program areas;
 - ii. Usable square footage for public services, staff resources, office suite(s), and main equipment areas on each floor of each Project component; and
 - iii. Gross Project component square footage for each floor of each Project component and total for each Project component;
- b. Site and Open Space Data and Area Tabulation (including rooftop open spaces):
 - i. Open space Square footage on grade and on roofs and total;

17. **Site and Open Space Finish and Landscape Schedule:** Schedule of proposed Project Site and open space finishes, materials, and planting;

18. **Exterior Finish Schedule:** Schedule of proposed exterior finishes and glazing systems including a photograph and description of type and quality level of each;

19. **Interior Finish Schedule:** Schedule of proposed interior finishes including a photograph and description of type and quality level of each;

20. **Bus Maintenance Equipment List:** List of equipment by space with Cutsheets and Datasheets for each piece of equipment as follows:

- a. Cutsheets shall establish standards of quality, performance, feature, and construction; and
- b. Datasheets shall be for discipline coordination purposes between architectural, structural, mechanical, electrical, and plumbing;

21. **Process Flow Diagrams:** Diagrams showing the how all buses, people, non-revenue vehicles, and other vehicles interact in both operational process flow and maintenance process flow diagrams, illustrating how each moves through the Infrastructure Facility;

22. **Pedestrian Circulation Diagrams:** Diagrams illustrating safe pedestrian movement through the Project and the adjacent public realm; and

23. **Vehicle Circulation Diagrams:** Diagrams illustrating all major bus and non-revenue movements through, in and out of the Facility, including turn templates on all vehicle turns within the Facility and in the right-of-way.

3.1.2 Design Narrative

The 50% SD Package shall include an initial draft of the design narrative required for the 100% SD Package. The content of the design narrative shall be coordinated with the engineering reports described in Section 3.1.1 (*Drawings and Reports*) to avoid duplication. The design narrative shall be no more than 200 double-sided pages in length and include descriptions of:

1. The proposed design including Project Site and component design character. Describe the proposed siting, massing, Project component character, and landscape design and its relation to its surrounding context;

2. The proposed approach to Project Site and component layout to comply with the Technical Requirements, including ease of way-finding and access, efficient operations, and long-term flexibility that minimizes the need for and cost of future renovations for programmatic changes;
3. The proposed approach to public and private open space design including aesthetic treatment and security, shading or solar, pedestrian safety and lighting;
4. The proposed approach to public right-of-way improvements (including sidewalks and streets) and Project delivery statement reflecting values and policy mission of the SFMTA and addressing the Design Guidelines streetscape requirements;
5. The proposed approach to adherence to the Public Benefit Principles as set forth in Division 8 of the Technical Requirements and the Housing and Commercial Component technical guidelines as set forth in the Technical Requirements;
6. Locations where public art could be integrated into the Facility;
7. Proposed construction type(s), materials, systems, and access and security:
 - a. Project component's finishes and materials;
 - b. Roofing and waterproofing systems;
 - c. Structural, mechanical, electrical, plumbing, fire life safety and communications systems to explain the schematic level engineering plans in more detail;
 - d. Site elements including plaza, landscape areas, walks, parking areas (car-share and bicycle), fences, recycling, trash and equipment areas and fencing; and
 - e. General approach to access and security;
8. Proposed sustainability design including:
 - a. Sustainability Strategy and Plan for the Project to meet Project and City requirements (for example, including storm water management);
 - b. Energy efficiency including passive/active energy conservation strategies and design documents and how the load of the DC Charging Infrastructure will be managed;
 - c. LEED/ Sustainable Design report including LEED and Green Building checklists and scorecard; and
 - d. Healthy work environments;
 - e. Other design requirements per Chapter 7 of the San Francisco Environment Code
9. Battery electric bus charging equipment and infrastructure plan and details;
10. Information technology and communications systems and infrastructure: provide a program and scope analysis addressing the allocation of responsibilities as defined in RFP Part III, Division 1, Section 2.2;
11. Transportation Demand Management (TDM) approach for the Project, including detailed physical attributes of the Project included in TDM planning;
12. Environmental review in compliance with CEQA: Adherence to the established range of impacts discussed and disclosed through the Draft EIR. Completion of the checklist and

required summary comments as provided by the Environmental Planning Division of the Planning Department.

3.1.3 Specifications

The 50% SD Package shall include outline specifications as an update to those submitted in the Technical Proposal. The outline specifications shall be organized in Unifomat II or CSI-Master Format building elements and related sitework. Specifications must identify all systems proposed to be used in the Project. Specifications must also fully integrate the SFPW General Requirements in RFP Part III, Division 10, as well as the Standard Construction Measures in RFP Part III, Division 11. Any proposed deviations shall be presented with the 50% SD Package and shall be subject to the City's review and approval.

3.1.4 Cost, Schedule, and Risk

The 50% SD Package shall include the Lead Developer's cost estimates for all DB and IFM costs within the Fixed Budget Limit and for the Allowances, a risk register that includes a quantitative analysis of risk (as set forth in the Cost and Risk Management Plan per the requirements in Section 2.2.2.3), and a Project Schedule (as set forth in the Project Schedule section of the PMP per the requirements in Section 2.1.1.1).

In the case that the Lead Developer proposes for the PPC to self-perform the IFM scope of work, Lead Developer shall include in the 50% SD Package its market testing and benchmarking analysis of all IFM costs to ensure that the pricing is competitive in the market (as set forth in the Asset Management Program Development Plan per the requirements in Section 2.2.2.4).

3.2 100% Schematic Design Package

The purpose of the 100% SD Package is for the Lead Developer to progress the design in the 50% SD Package to a greater level of detail with input from and in coordination with the City, to finalize the scopes of work set forth as Allowances in the RFP for their inclusion in the FBL prior to the Design-Build Contract and IFM Contract RFP(s), and to demonstrate compliance with the Technical Requirements. The 100% SD Package shall serve as the bidding documents for Design-Build Contract and IFM Contract to achieve cost certainty within the Fixed Budget Limit.

The 100% SD Package shall incorporate community input through the outreach program (per the processes set forth in the Lead Developer's Public Outreach and Engagement Plan per the requirements in Section 2.2.3.1) and shall be coordinated with the CEQA documents (per the processes set forth in the Lead Developer's CEQA and General Regulatory Approvals Plan per the requirements in Section 2.2.3.2).

The Lead Developer shall prepare and submit the 100% SD Package to the City for review and approval in accordance with the corresponding Performance Milestones indicated in Appendix B-1. The City will review and approve the 100% SD Package based on conformance with the Predevelopment Agreement and the Technical Requirements. At a minimum, the 100% SD Package shall consist of drawings and reports, specifications, BIM model, and a cost estimate

demonstrating compliance with the Fixed Budget Limit, schedule, and risk register, the requirements for which are stated herein and also set forth below.

3.2.1 Drawings and Reports

The 100% SD Package shall include a drawing set and certain reports appropriate for inclusion in the contractor RFP(s). The 100% SD Package shall include, as a minimum, the drawings and reports listed below. The drawing sheets shall be 34 x 22 inches (or another sheet size, by mutual agreement of the City and the Lead Developer), oriented north-up, be hard lined to scale with dimensions and materials clearly noted.

Based on the Lead Developer's BEP model development requirements and specifications, the 100% SD Package drawings shall be developed from the corresponding BIM models. The BIM Deliverables described in [Section 3.3](#) shall be included in the 100% SD Package. At a minimum, the 100% SD Package shall include:

1. **Cover Sheet:** Cover sheet with a rendering, project team, and architect contact information;
2. **Basis of Design:** Primary document that translates, without exceptions, qualifications, or exclusions, the Technical Requirements into the Facility's components;
3. **Vicinity Plan:** Site plan at 1"=100' scale showing entire Project Site and surrounding streets, proposed project including Project component footprints, plaza, parking, vehicular, and pedestrian access, and landscape concept. Color code Project components;
4. **Construction Sequencing Plan:** As required to support regulatory approvals required during the PDA Term, site plan at a scale 1"= 30'-0" showing entire Project Site in each phase of construction with existing and proposed Project component footprints, parking, vehicular, and pedestrian access. Color code Project component;
5. **Site Plans:** Site plans at a scale 1"= 30'-0" of the Project components with building footprints, surrounding sidewalks and streets, public and private open spaces, parking, loading, and equipment areas, and exterior lighting, and street and sidewalk improvements. Show landscaping, drainage and stormwater management systems, utility layout and points of connection, and sustainability features (e.g., solar panels) in accordance with the Technical Requirements. Show locations of pedestrian and vehicle access points, Project Site circulation diagrams, and turning templates for all SFMTA revenue and non-revenue vehicles. Show topographic elevations of Project component entrances, proposed Project Site contours at one-foot intervals, Project Site grading, driveway curb cuts, and pedestrian curb ramps as needed for disabled access to Project components;
6. **Renderings:** Three 3D views that clearly illustrate the relationship of the proposed Project to adjoining streets and surrounding context. Surrounding elements do not need to be photo-realistic but must accurately convey the bulk, scale and character of the surrounding area;
7. **Elevations:** Rendered exterior elevations at 1/16" overall elevations for each Project component that illustrate the proposed massing and height, fenestration, materials, and related architectural elements including signage and public art integration;
8. **Sections:** At least two building sections through the various Project components at 1/16" that illustrate major spaces, including bus maintenance and parking areas, as well as, vertical

circulation elements, any roof top equipment, and screening. Show heights equipment and clearances including floor and roof datums and floor to floor heights building equipment, overhead trolley wires, and BEB overhead infrastructure and vertical clearances;

9. **Floor and Roof Plans:** Floor plans at a 1/8" scale plan of each floor in each Project component and roof plan for each. Show structural gridlines and their dimensions, as well as overall dimensions of the building exterior envelope on each level. Show all entrances and circulation, program spaces and necessary mechanical, electrical, plumbing, telecommunication spaces in each Project component and any proposed roof top equipment. Plans shall address all the program and functional requirements set out in the Technical Requirements. For the Bus Yard Component, the plans shall indicate the turning templates for all SFMTA revenue and non-revenue vehicles. Show all open spaces, including rooftop;
10. **Engineering Plans and reports:** Structural, Mechanical, Electrical, Plumbing, Civil, Equipment, Fire Protection, IT/Comms, and other engineering plans at the appropriate 100% Schematic Design level of design in coordination with the Architectural design and commensurate with the cost estimates, project schedule, and risk analysis that are required for this Design Deliverables package. The engineering plans shall, as a minimum, be sufficiently developed to identify the approach to the respective building systems, identify all physical spaces and distribution spaces and elements, and address the relevant provisions of the Technical Requirements. As a minimum, the engineering plans shall address:
 - a. **Structural Systems:** Structural system design documents, including drawings, sketches and descriptions, with particular attention, but not limited to, the (i) requirements of RFP Part III, Division 4, Section 2 addressing 100% SD deliverables defined therein, and (ii) design of the structure supporting the HCC over the BYC;
 - b. **Mechanical and Energy Systems:** Mechanical system design narrative and drawings conveying design concepts, sustainable features, energy efficiency strategies, sustainable power generation systems including drawings, sketches, descriptions, and other details, including underfloor air distribution, and system redundancy. If a District System approach has been taken, include plans and reports for the selected system;
 - c. **Plumbing and Fire Protection Systems:** Plumbing and fire protection system design documents, including drawings, sketches and descriptions;
 - d. **Electrical and Lighting Systems:** Electrical distribution systems, lighting design documents, and emergency backup power systems, including drawings, sketches and descriptions;
 - e. **Fire Protection Systems:** Fire protection backflow preventor, riser and standpipe locations, and fire protection sprinkler head layout;
 - f. **IT, Communication, and Security Systems:** Communication and security system documents, including diagrams, sketches and descriptions, addressing the allocation of responsibilities defined in RFP Part III, Division 1, Section 2.2;
 - g. **Building Automation Systems:** Building automation systems documents, including drawings, sketches and descriptions;
11. **Noise and Vibration report:** include the reports and Engineering Analysis described in RFP Part III, Division 4, Section 1 addressing 100% SD deliverables defined therein.

12. **Geotechnical Baseline Report:** include a Geotechnical Baseline Report as the basis for geotechnical risk allocation per the requirements of RFP Part II, Appendix F (*Preliminary Term Sheet*); the Geotechnical Baseline Report shall be prepared on the basis of the site due diligence reports submitted with the 50% SD Package and shall be developed in coordination and by mutual agreement with the City;
13. **Security countermeasure assessment:** Developer will provide a risk/threat assessment and narrative to align with City standards and provide recommendations for both physical and electronic security systems;
14. **Code Analysis:**
 - a. Construction types;
 - b. Fire separations;
 - c. Exiting / egress; and
 - d. Project component separations for each phase of construction;
15. **Data Tables:**
 - a. Project component Area Tabulation:
 - i. Assignable square footages for each of the program areas;
 - ii. Usable square footage for public services, staff resources, office suite(s), and main equipment areas on each floor of each Project component; and
 - iii. Gross Project component square footage for each floor of each Project component and total for each Project component;
 - b. Site and Open Space Data and Area Tabulation (including rooftop open spaces):
 - ii. Open space Square footage on grade and on roofs and total;
16. **Site and Open Space Finish and Landscape Schedule:** Schedule of proposed Project Site and open space finishes, materials, and planting;
17. **Exterior Finish Schedule:** Schedule of proposed exterior finishes and glazing systems including a photograph and description of type and quality level of each;
18. **Interior Finish Schedule:** Schedule of proposed interior finishes including a photograph and description of type and quality level of each;
19. **Furniture, Fixtures, and Equipment Schedule for BYC office/administrative and training facility spaces:** Schedule of proposed furniture and equipment defining the quantities and performance requirements of each;
20. **Typical wall sections, window / curtain wall details, and interior and exterior details;**
21. **Partition type details;**
22. **Demolition Plan:** Site plan showing demolition of the existing facilities and shoring, as applicable;
23. **Bus Maintenance Equipment List:** List of equipment by space with Cutsheets and Datasheets for each piece of equipment as follows:

- c. Cutsheets shall establish standards of quality, performance, feature, and construction; and
 - d. Datasheets shall be for discipline coordination purposes between architectural, structural, mechanical, electrical, and plumbing;
24. **Process Flow Diagrams:** Diagrams showing the how all buses, people, non-revenue vehicles, and other vehicles interact in both operational process flow and maintenance process flow diagrams, illustrating how each moves through the Infrastructure Facility;
25. **Pedestrian Circulation Diagrams:** Diagrams illustrating safe pedestrian movement through the Project and the adjacent public realm; and
26. **Vehicle Circulation Diagrams:** Diagrams illustrating all major bus and non-revenue movements through, in and out of the Facility, including turn templates on all vehicle turns within the Facility and in the right-of-way.

3.2.2 Design Narrative

The 100% SD Package shall include a design narrative appropriate for inclusion in the contractor RFP(s). The content of the design narrative shall be coordinated with the engineering reports described in Section 3.2.1 (*Drawings and Reports*) to avoid duplication. The design narrative shall be no more than 200 double-sided pages in length and include, as a minimum, descriptions of:

1. The proposed design including Project Site and component design character. Describe the proposed siting, massing, Project component character, and landscape design and its relation to its surrounding context;
2. The proposed approach to Project Site and component layout to comply with the Technical Requirements, including ease of way-finding and access, efficient operations, and long-term flexibility that minimizes the need for and cost of future renovations for programmatic changes;
3. The proposed approach to public and private open space design including aesthetic treatment and security, shading or solar, pedestrian safety and lighting;
4. The proposed approach to public right-of-way improvements (including sidewalks and streets) and Project delivery statement reflecting values and policy mission of the SFMTA and addressing the Design Guidelines streetscape requirements;
5. The proposed approach to adherence to the Public Benefit Principles as set forth in Division 8 of the Technical Requirements and the Housing and Commercial Component technical guidelines as set forth in the Technical Requirements;
6. Locations where public art could be integrated into the Facility;
7. Proposed construction type(s), materials, systems, and access and security:
 - a. Project component's finishes and materials;
 - b. Roofing and waterproofing systems;
 - c. Structural, mechanical, electrical, plumbing, fire life safety and communications systems to explain the schematic level engineering plans in more detail;

- d. Site elements including plaza, landscape areas, walks, parking areas (car-share and bicycle), fences, recycling, trash and equipment areas and fencing; and
 - e. General approach to access and security;
8. Proposed sustainability design including:
- a. Sustainability Strategy and Plan for the Project to meet Project and City requirements (for example, including storm water management);
 - b. Energy efficiency including passive/active energy conservation strategies and design documents and how the load of the DC Charging Infrastructure will be managed;
 - c. LEED/ Sustainable Design report including LEED and Green Building checklists and scorecard; and
 - d. Healthy work environments;
 - e. Other design requirements per Chapter 7 of the San Francisco Environment Code
9. Battery electric bus charging equipment and infrastructure plan and details;
10. Information technology and communications systems and infrastructure: provide a program and scope analysis addressing the allocation of responsibilities as defined in RFP Part III, Division 1, Section 2.2;
11. Transportation Demand Management (TDM) approach for the Project, including detailed physical attributes of the Project included in TDM planning;
12. Environmental review in compliance with CEQA: Adherence to the established range of impacts discussed and disclosed through the Draft EIR. Completion of the checklist and required summary comments as provided by the Environmental Planning Division of the Planning Department.

3.2.3 Specifications

The 100% SD Package shall include: draft specifications; calculations; furniture, fixtures, and equipment list; list of any proposed deviations from the Technical Requirements; and, must fully integrate the SFPW General Requirements in RFP Part III, Division 10, as well as the Standard Construction Measures in RFP Part III, Division 11. Any proposed deviations shall be presented with the 100% SD Package and shall be subject to the City's review and approval.

3.2.4 Cost, Schedule, and Risk

The 100% SD Package shall include the Lead Developer's cost estimates for all DB and IFM costs within the Fixed Budget Limit and a risk register that includes a quantitative analysis of risk (as set forth in the Cost and Risk Management Plan per the requirements in Section 2.2.2.3), and a Project Schedule (as set forth in the Project Schedule section of the PMP per the requirements in Section 2.1.1.1).

Unless otherwise agreed by the City in its sole discretion, the cost estimates for the FBL provided with the 100% SD Package shall fully incorporate into the FBL all the Allowances that were set forth in the RFP, with the exception of escalation and insurance. No further allowances

will be set forth in the cost estimates provided with the 100% SD Package, unless specifically agreed to by the City.

In the case that the Lead Developer proposes for the PPC to self-perform the IFM scope of work, Lead Developer shall include in the 100% SD Package its market testing and benchmarking analysis of all IFM costs to ensure that the pricing is competitive in the market (as set forth in the Asset Management Program Development Plan per the requirements in Section 2.2.2.4).

3.3 BIM Requirements for 50% SD and 100% SD Packages

The Lead Developer must deliver as part of each Performance Milestone associated with the Design Deliverables, as described in Sections 3.1 and 3.2, an integrated BIM 3D model that will be used, at a minimum, as a parametric design tool showing floor to floor heights, MEP plant space with height requirements, vertical zones for building components and distribution pathways including, but not limited to, structural, major MEP distribution, and bus maintenance equipment. The BIM model shall also allow for extraction of quantities to support cost estimates and related activities.

The BIM model shall be developed according to the BEP and OIR as set forth in Section 2.2.2.2 and shall be developed to support and be consistent with the contractor procurement RFP as set forth in Section 2.2.4.

The minimum level of detail associated with the Design Deliverables described in this Section 3 shall be as follows, unless agreed otherwise by the Lead Developer and the City:

1. 50% SD Package: BIM level of detail 200; and
2. 100% SD Package: BIM level of detail 200.

4 Software Requirements

The Lead Developer shall prepare documents it is required to develop under the Predevelopment Agreement in the following software applications:

1. Clash Detection, Autodesk Navisworks 2017;
2. Text documents on Microsoft Word 2013;
3. Spreadsheet documents on Microsoft Excel 2013;
4. Database information on Microsoft Access 2013;
5. Graphics on Adobe Creative Cloud Suite 2017;
6. BIM software as outlined / defined in the BEP – for example, Revit;
7. Project Schedule in Primavera 6; and
8. Estimating software at the discretion of the Lead Developer.

5 Document Control

The Lead Developer shall utilize a document control system to share information, manage flow of documents, and establish protocols for communications and the review and approval of documents.

The City may provide the Lead Developer with certain templates, artwork, and style guidelines, and other relevant instructions for preparing and submitting the Design Deliverables, reports, presentations, and other materials described in Appendix B-1. The Lead Developer shall ensure that all such deliverables comply with such guidance if and when the City expressly requires it in writing.

The Lead Developer shall maintain a secure online document control storage and file sharing website that is accessible to the City, includes a document control log for all controlled documents and deliverables, and provides the following information for those documents and deliverables: their dates and descriptions of revisions, dates of their review and approval by the City acting as a Regulatory Agency, and dates of their review and approval by the City acting in its proprietary capacity under the Predevelopment Agreement.

The document control log shall be stored online in a format accessible for review by the Lead Developer and the City, and shall be updated at least weekly. The Lead Developer shall provide licenses to allow all City users to access and for use the Document Control systems.

The Lead Developer shall deliver to the City one camera-ready copy in electronic format via a channel to be provided by the City and a number of hard copies to be determined by the parties during the PDA Term of certain deliverables (e.g., drawing sheets) as determined during the PDA Term and as described for Lead Developer's delivery to the City in Appendix B-1, unless otherwise directed by the City. The Lead Developer shall be responsible for printing such deliverables.

The City strongly encourages the use of electronic submittals, recycled materials and duplex printing (whenever possible) for all deliverables and presentation materials throughout the duration of the PDA Term. The Lead Developer shall be responsible for the quality management of these printed deliverables in terms of print quality and quantity.

The Lead Developer shall submit deliverables to the City's Project Manager for distribution. The City Project Manager shall handle the distribution of all the required copies of the deliverables(s), including all documents and their appendices, to the appropriate parties representing City. The Lead Developer's Project Manager shall be responsible for coordinating with the City's Project Manager to ensure that all such deliverables are posted to the online storage site referenced above.

The Lead Developer shall submit deliverables electronically in the original format of all products and in supplemental formats for specific types of deliverables, as follows, unless noted otherwise in this Appendix B-2 or unless otherwise directed by the City:

1. Drawing files in PDF (searchable, bookmarked, non-scanned wherever possible) 34 x 22 (full size) or 17 x 11 (half size) page format, as applicable

2. E-mail, letters, spreadsheets, and charts in Microsoft Office format (Outlook, Word, Excel, PowerPoint) and PDF (searchable, non-scanned wherever possible) format
3. Other documents, pictures, graphs, and like items, in PDF (searchable, non-scanned wherever possible) format (TIF or JPEG as an alternative)

The Project documents generated by the Lead Developer, including but not limited to, submittals, change proposals, schedules, meeting minutes, reports, and other required deliverables, shall be prepared in searchable (non-scanned wherever possible) PDF format. All printed material submitted must have a corresponding electronic file submitted the online storage site as a controlled document.

Attachment 1 – Basis for Submittal of the Financial Model and the Pro Forma

Part 1 Basis for Submittal of Financial Models and Pro Formas

The following requirements have been extracted from Appendix E1 of RFP Part I (Instructions to Proposers) for use during the PDA Term. Section number and FS Form references are the same as used in RFP Part I.

All references to "Preliminary Financial Model" shall apply to any Financial Model for the Infrastructure Facility submitted by the Lead Developer to the City during the PDA Term.

All references to "Preliminary Pro Forma" shall apply to any Pro Forma for the Housing and Commercial Component submitted by the Lead Developer to the City during the PDA Term.

E1.1 Basis for Submittal of the Financial Proposal's Preliminary Financial Model and Preliminary Pro Forma

The Proposer must adopt the assumptions in the tables set forth below as a basis for the Infrastructure Facility's Preliminary Financial Model (**Table E-2**) and the HCC's Preliminary Pro Forma (**Table E-3**). The Proposer is required to list these assumptions in its Financial Proposal and confirm that they have been used in the Preliminary Financial Model and Preliminary Pro Forma.

Table E-2: Basis for Infrastructure Facility's Preliminary Financial Model

Title	Contents
Base Date	The Base Date to be assumed for various inputs in the Preliminary Financial Model is the Proposal Due Date.

Title	Contents
Financial Closing Date of the Infrastructure Facility	The Financial Closing Date to be assumed for the Preliminary Financial Model is October 31, 2023 ¹⁴ .
Scheduled Substantial Completion Date of the Infrastructure Facility	The Scheduled Substantial Completion Date for the Infrastructure Facility to be assumed in the Preliminary Financial Model is no more than 36 months after Financial Closing (i.e., no later than on October 31, 2026) ¹⁵ .
First Operating Year	First operating year to be assumed in the Preliminary Financial Model starts at the Scheduled Substantial Completion Date and ends twelve months later.
Infrastructure Facility Term	The Project Agreement has an expiration date of 30 years from the Scheduled Substantial Completion Date of the Infrastructure Facility (i.e., construction period plus 30 years).
Currency	Prices are to be submitted in United States Dollars.
Inflation	For evaluation purposes, the inflation index to be assumed is at a rate of 3% per annum (index-linked).
Discount Rate	For purposes of NPV calculations, an annual discount rate of 6% to the Base Date will be used in all cases.
Commencement of Billing Period	For financial modeling purposes only, including NPV calculation, the “billing period” means each quarter of a contract year. The first billing period of the first contract year will begin on the Scheduled Substantial Completion Date of the Infrastructure Facility. The last billing period of the last contract year will end on the last day of the Infrastructure Facility Term.
Payment Date	For financial modeling purposes only, including NPV calculation, payments by the City are assumed to be made on the last day of the month following the last month of the quarter.
Milestone Payment	For financial modeling purposes only, assume that the City will pay, upon the Scheduled Substantial Completion Date of the Infrastructure Facility and in accordance with the PDA, the Milestone Payment shall be an amount equal to 40% of the aggregate of (a) the Bus Yard Cost; (b) the City’s pro rata share of the Common Infrastructure cost; (c) the City’s pro rata share of the LD’s Predevelopment Costs; and (d) the pro rata share of the City’s Predevelopment Costs. The pro rata amounts shall be calculated using the Proposer’s PCIC, as described in Appendix E1.3 (<i>Basis for Submittal of the Percentage of Common Infrastructure Cost Allocated to the City</i>).

¹⁴ The PDA establishes a no later than date of April 30, 2024 for Financial Close of the Infrastructure Facility. The date shown here is an assumed date only for the purpose of submitting the Proposal.

¹⁵ The PDA establishes a no later than date of April 30, 2027 for Substantial Completion of the Infrastructure Facility. The date shown here is an assumed date only for the purpose of submitting the Proposal

Title	Contents
Percentage of Common Infrastructure Cost Allocated to the City (PCIC)	The Preliminary Financial Model must clearly show how the Proposer’s PCIC is correctly applied to all relevant cost inputs, consistent with Financial Submittal 2 and the requirements of RFP Part III, Division 1 (<i>Cost and Scope Allocation Requirements</i>).
General Reporting Requirements	The Preferred Proposer may be asked to provide summary materials/reports as extracts from the Preliminary Financial Model to assist the City with the approval process for the Project and/or its reporting obligations.

HCC = Housing and Commercial Component
NPV = net present value
PDA = Predevelopment Agreement
PCIC = Percentage of Common Infrastructure Cost Allocated to the City

Table E-3: Basis for Housing and Commercial Component’s Preliminary Pro Forma¹⁶

Title	Contents
Base Date	The Base Date to be assumed for the Preliminary Pro Forma is the Proposal Due Date.
Financial Closing Date of the HCC	The Financial Closing Date to be assumed for the Preliminary Pro Forma is the date included in Proposer’s initial baseline schedule included in the Technical Proposal. If Proposer plans multiple HCC sub-components, their corresponding Financial Closing Dates shall be indicated.
Scheduled Substantial Completion Date of the HCC	The Scheduled Substantial Completion Date for the HCC to be assumed in the Preliminary Pro Forma is the date included in Proposer’s initial baseline schedule included in the Technical Proposal. The HCC’s Scheduled Substantial Completion Date shall be such that the proposed HCC meets (1) the applicable Project Objectives, (2) the Technical Requirements, and (3) must be developed in a manner that meets the HCC Interface Criteria as defined in the RFP Part II (<i>Form of Predevelopment Agreement</i>). If Proposer plans multiple HCC sub-components, their corresponding Scheduled Substantial Completion Dates shall be indicated.
First Operating Year	First operating year to be assumed in the Preliminary Pro Forma starts at the Scheduled Substantial Completion Date and ends twelve months later.
Housing Term	The Agreement has an expiration date of 75 years from the date of Financial Close, with the option of a 24-year extension.
Currency	Amounts are to be submitted in United States Dollars.

¹⁶ If Proposer plans multiple HCC transactions or sub-components, Proposer may submit multiple Preliminary Pro Formas. Each corresponding Preliminary Pro Forma shall conform with the requirements of the RFP. The use of the singular form in this section includes the plural form.

Title	Contents
Inflation and Other Underwriting Assumptions	<p>For evaluation purposes, the inflation index to be assumed for any market rate component of the HCC is a rate of 3% per annum (index-linked).</p> <p>For the affordable housing component of the HCC, refer to the standard Policies and Guidelines (including underwriting guidelines) adopted by MOHCD: https://sfmohcd.org/housing-development-forms-documents</p>
Percentage of Common Infrastructure Cost Allocated to the Housing and Commercial Component (PCIH)	<p>The Preliminary Pro Forma must clearly show how the Proposer's PCIH is correctly applied to all relevant cost inputs, consistent with Financial Submittal 2 and the requirements of RFP Part III, Division 1 (<i>Cost and Scope Allocation Requirements</i>).</p>
General Reporting Requirements	<p>The Preferred Proposer may be asked to provide summary materials/reports as extracts from the Preliminary Pro Forma to assist the City with the approval process for the Project and/or its reporting obligations.</p>

HCC = Housing and Commercial Component

PCIH = Percentage of Common Infrastructure Cost Allocated to the Housing and Commercial Component

Part 2 Infrastructure Facility’s Financial Model and HCC Pro Forma Submittal Requirements

All references to "Preliminary Financial Model" shall apply to any Financial Model for the Infrastructure Facility submitted by the Lead Developer to the City during the PDA Term.

All references to "Preliminary Pro Forma" shall apply to any Pro Forma for the Housing and Commercial Component submitted by the Lead Developer to the City during the PDA Term.

E4.2.2.2 Financial Submittal 9: Preliminary Financial Model

Submit an electronic file developed in MS Excel that generates Infrastructure Facility financial projections based on the FBL, with the appropriate application of the PCIC to the Common Infrastructure costs.

The Preliminary Financial Model must not include any disclaimers, qualifications, or exclusions. It must meet the requirements in **Table E-5** below and must allow the viewer access to all internal formulas, data, and assumptions together with a PDF of all model sheets.

Table E-5: Infrastructure Facility’s Preliminary Financial Model Requirements

Title	Contents
1. General Preliminary Financial Model Requirements	The Preliminary Financial Model requirements are as follows: <ol style="list-style-type: none"> a. Provide financial projections (cost and revenue projections) on a monthly basis from the Financial Closing date to the Scheduled Substantial Completion Date of the Infrastructure Facility and on a quarterly basis from the Scheduled Substantial Completion Date of the Infrastructure Facility to the end of the Infrastructure Facility Term b. Assume fiscal year for financial projections consistent with the Scheduled Substantial Completion Date of the Infrastructure Facility c. Be expressed in United States Dollars d. Include a print option macro e. Do not incorporate any password protection (or the password protection must be disclosed to the City) f. Do not include hidden sheets or areas g. Must not contain any circular references or balancing numbers and no input numbers in the calculation worksheets h. Use a start date for the Project that corresponds to the Base Date i. Functionality to include taxation, as indicated below
2. Specific Preliminary	The Preliminary Financial Model must show the following:

Title	Contents
Financial Model Requirements	<ul style="list-style-type: none"> a. Details of sources and uses of funds during construction, both in nominal and NPV terms for the BYC and the pro-rata share of the Common Infrastructure and the LD's Predevelopment Cost b. Details of sources and uses of funds during operations, both in total nominal and NPV terms for both the Bus Yard Component and of the Common Infrastructure (for the latter showing 100% of the value and the value after application of the PCIC) <p>The Preliminary Financial Model must, at a minimum, include the following:</p> <ul style="list-style-type: none"> c. Assumption schedules d. All costs included in the FBL and the Allowances, with the appropriate application of the PCIC for the Common Infrastructure costs and the LD's Predevelopment Cost: <ul style="list-style-type: none"> i. Capital and operating costs ii. Life-cycle/replacement cost schedule e. Taxation, as applicable and that is not otherwise included in the Infrastructure Facility's DB and IFM costs as per Appendix E1.2 (<i>Basis for the Financial Proposal's Cost Submittal</i>) of this ITP and included in FS Forms A1 to A8 f. Construction payment g. Payment mechanism h. A scenario control sheet <p>Outputs are as follows:</p> <ul style="list-style-type: none"> i. In a separate sheet, a schedule of quarterly and annual Availability Payments, both in real (uninflated) and nominal (inflated) terms j. In a separate sheet, the proposed funding structure, with funding schedules that specify the expected debt repayment dates and the amount of debt service (broken down by principal, interest, and other fees), in nominal terms only, to be repaid k. The calculation of Project returns for the Infrastructure Facility l. Projected income statements m. Projected balance sheet n. Cash flow projections o. Comprehensive cash waterfall in order of seniority (which must be consistent with any funding term sheets)
3. Outputs	<p>The Preliminary Financial Model must, at a minimum, produce the following outputs:</p> <ul style="list-style-type: none"> a. Project internal rate of return, in both real terms and nominal terms, on a pre-tax and post-tax basis b. Return on equity and sub-debt, in both real terms and nominal terms, and a blended equity return, that incorporates all sub-senior debt finance c. Debt-to-equity ratio at the time of the Financial Close and at the Scheduled Substantial Completion Date, defined as total financial debt divided by total shareholders' funds d. Drawdown schedule, including dates and amounts for all sources of finance on a monthly basis

Title	Contents
	<ul style="list-style-type: none"> e. Weighted average cost of capital at the Financial Close f. Annual debt service coverage ratio and loan life cover ratio for each year of the debt term, with minimum and average ratios <p>The precise timing of equity investments and details of the phasing, if appropriate, is as follows:</p> <ul style="list-style-type: none"> g. The annual Availability Payment and its NPV over the term, assuming no deductions, discounted at the rate provided in Appendix E1.1, which may be changed as the City's capital investment projects discount rate is modified over time h. Summary financial statements, in nominal terms only, for each year of the Term, in accordance with Generally Accepted Accounting Practice

NPV = net present value

E4.2.2.3 Financial Submittal 10: Preliminary Financial Model Instructions

Submit a detailed and comprehensive report separate from the Preliminary Financial Model, including, at a minimum, the following:

1. Instructions for using the Preliminary Financial Model, as follows:
 - a. How changes to input variables should be entered
 - b. How to run the model following changes to inputs
 - c. How to run sensitivities
 - d. A detailed description of the macros and their functionalities:
 - i. Reasons why this macro is used
 - ii. Which operations and functions are accomplished through the macro
 - iii. Which cells are modified by the macro
 - iv. The macro's results
 - v. Explanation of how the optimization is carried out, particularly with regard to input modifications
 - e. How to print key reports and the entire model
 - f. Details of the optimization procedure(s)
 - g. How the model is built, including (i) contents list of sheets and data contained within; and (ii) details of complex or unusual formulae
2. Full details of all inputs and assumptions used in the Preliminary Financial Model, as follows:

- a. For each source of finance: the drawdown timetable; grace period; repayment schedules; debt maturity profile; costs of finance, including margins and fees and all success fees; and any variations to margins or fees over the life of the loans
- b. Cost assumptions, including up-front development, design, and construction costs; operation and maintenance costs; and life-cycle/replacement costs, inclusive of reserve accounts, etc.
- c. Macro-economic assumptions, including interest, and inflation rates
- d. Taxation assumptions, including assumptions made in relation to applicable tax liabilities and recoverability
- e. Accounting policies, including depreciation by asset type, and working capital requirements
- f. All other assumptions that have been necessary in constructing the Preliminary Financial Model

The inputs and assumptions data must be consistent with, and reconcile to, the Preliminary Financial Model, preserving the necessary transparency in terms of assumptions and returns.

E5.2.2.2 Financial Submittal 14: Preliminary Pro Forma

Submit an electronic file constructed in MS Excel that generates HCC's financial projections based on the HCC's DB costs and the Percentage of Common Infrastructure Cost absorbed by the Housing Project Company (PCIH) applied to the Common Infrastructure cost and to the LD's Predevelopment Cost. If the HCC is structured as multiple transactions (e.g. 100% affordable + market rate/mixed income), then provide complete Preliminary Pro Formas for each separate transaction.

The Preliminary Pro Forma must meet the requirements in Table E-6 on the following page and must allow the viewer access to all internal formulas, data, and assumptions together with a PDF of all model sheets.

Table E-6: Preliminary Pro Forma Requirements

Title	Contents
<p>1. General Preliminary Pro Forma Requirements</p>	<p>The Preliminary Pro Forma requirements are as follows:</p> <ul style="list-style-type: none"> a. Provide financial projections (cost, revenue, expense and disposition projections) on a monthly basis from the Financial Close to the Scheduled Substantial Completion Date of the HCC and on a quarterly basis from the Scheduled Substantial Completion Date of the HCC to the end of the Housing Term and/or to any projected disposition value of the interest in the HCC b. Assume fiscal year for financial projections consistent with the Scheduled Substantial Completion Date of the HCC c. Be expressed in United States Dollars d. Include a print option macro e. Not incorporate any password protection (or the password protection must be disclosed to the City) f. Not include hidden sheets or areas g. Not contain any circular references or balancing numbers and no input numbers in the calculation worksheets h. Use a start date for the Project that corresponds to the Base Date i. Functionality to include taxation, as indicated below
<p>2. Specific Preliminary Pro Forma Requirements</p>	<p>The Preliminary Pro Forma must show, to the extent applicable, each of the subcomponents (e.g., market-rate/mixed-income housing, 100% affordable housing) of the HCC reflecting the Proposer’s approach. Indicate which subcomponent the commercial element would fall within. Provide the following:</p> <ul style="list-style-type: none"> a. Sources and uses budget for the total development costs of the HCC including the HCC’s share of Common Infrastructure and the LD’s Predevelopment Cost b. Include sources and uses for the commercial component of the HCC consistent with MOHCD’s commercial space guidelines (https://sfmohcd.org/housing-development-forms-documents) c. Details of sources and uses of funds during construction d. 1st full year housing operating budget including details of revenues, expenses, capital reserves, net operating income, debt service, and cash flow after debt service during operations. Provide nominal amounts over time and stabilized annual budget in today’s dollars and nominal dollars as of projected stabilization date. For affordable housing components of the HCC, ensure compliance with MOHCD policies, procedures, and underwriting guidelines (https://sfmohcd.org/housing-development-forms-documents) e. A 20-year cash flow that includes:

Title	Contents
	<ul style="list-style-type: none"> i. Rental income ii. Operating expenses reflecting full costs to operate the HCC, hard debt service, reserves deposits, and all residual receipts waterfall distributions, including any land value returned to the SFMTA; the operating budget should exclude support services such as case management and counseling but may include one FTE Services Coordinator/Connector for low income units; highlight any innovative operating cost controls and their relationship to the leveraging of conventional debt iii. If commercial spaces are to be within an affordable subcomponent of the HCC, sufficient lease revenue from commercial space leases to cover their operating costs including reserves pursuant to MOHCD's underwriting guidelines <p>f. A budget for resident services that includes: (i) services staffing information (number of FTEs, type of services staff, roles of services staff) for low income units - see Section 3.2 of RFP Part III, Division 6 (<i>Program for the Housing and Commercial Component</i>) for further information regarding required resident services; and (ii) proposed services funding sources.</p> <p>The Preliminary Pro Forma must, at a minimum, include the following:</p> <ul style="list-style-type: none"> g. Assumption schedules h. Taxation, as applicable and that is not otherwise included in the HCC's DB and Property Management costs as per Appendix E1.2 (<i>Basis for the Financial Proposal's Cost Submittal</i>) of this ITP and included in FS Forms G1 and G2 i. Construction payments j. Revenue stream k. A scenario control sheet <p>Outputs are as follows:</p> <ul style="list-style-type: none"> j. In a separate sheet, the proposed funding structure, with funding schedules that specify the expected debt financing, refinancing, and/or repayment dates, and the associated amounts of debt service (broken down by principal, interest, and other fees), in nominal terms only k. The calculation of project returns for the Housing Project Company l. Projected income statements m. Projected balance sheet n. Cash flow projections o. Comprehensive cash flow waterfall in order of seniority (which must be consistent with any funding term sheets)
3. Outputs	<p>The Preliminary Pro Forma must, at a minimum, produce the following outputs:</p> <ul style="list-style-type: none"> a. Project internal rate of return, in both real terms and nominal terms, on a pre-tax and post-tax basis, if applicable b. Return on cost c. Return on equity, in both real terms and nominal terms, if applicable d. Drawdown schedule, including dates and amounts for all sources of finance on a monthly basis

Title	Contents
	<ul style="list-style-type: none"> e. Target returns/weighted average cost of capital f. Annual debt service coverage ratios, and loan life cover ratio for each year of the debt term, with minimum and average ratios g. Any other ratios that are considered relevant to the proposed financial structure, financial covenants or financing agreements h. The precise timing of equity investments and details of the phasing, if appropriate i. The percentage of affordable units, breakdown of units by bedroom, AMI level, rent and utility allowance j. The PCIH applied to the appropriate costs allocated to the Housing Project Company and their NPV over the Housing Term k. Summary financial statements, in nominal terms only, for each year of the Term, in accordance with Generally Accepted Accounting Principles, if applicable

AMI = Area Median Income
NPV = net present value
O&M = operations and maintenance

E5.2.2.3 Financial Submittal 15: Preliminary Pro Forma Instructions

Submit a detailed and comprehensive booklet separate from the Preliminary Pro Forma, including, at a minimum, the following:

1. Instructions for using the Preliminary Pro Forma, as follows:
 - a. How changes to input variables should be entered
 - b. How to run the model following changes to inputs
 - c. How to run sensitivities
 - d. Detailed description of any macros and their functionalities:
 - i. Reasons why this macro is used
 - ii. Which operations and functions are accomplished through the macro
 - iii. Which cells are modified by the macro
 - iv. The macro's results
 - v. Explanation of how the optimization is carried out, particularly with regard to input modifications
 - e. How to print key reports and the entire model
 - f. Details of the optimization procedure(s)
 - g. How the model is built, including (i) contents list of sheets and data contained within; and (ii) details of complex or unusual formulae

2. Full details of all inputs and assumptions used in the Preliminary Pro Forma, as follows:
 - a. For each source of finance: the drawdown timetable; grace period; repayment schedules; debt maturity profile; costs of finance, including margins and fees and all success fees; and any variations to margins or fees over the life of the loans
 - b. Development cost assumptions, such as hard costs, soft costs, contingency factors, lease-up costs/deficits
 - c. Operating assumptions, including revenue assumptions such as unit mix, rental rates, lease-up absorption, stabilized occupancy rates, other income, concessions, bad debt,; operating expense assumptions such as payroll, repairs and maintenance, utilities, general and administrative, management fee, etc.; and capital reserve assumptions
 - d. Macro-economic assumptions, including interest, and inflation rates
 - e. Taxation assumptions, including assumptions made in relation to applicable tax liabilities and recoverability, if applicable
 - f. Accounting policies, including depreciation by asset type, and working capital requirements
 - g. All other assumptions that have been necessary in constructing the Preliminary Pro Forma

The inputs and assumptions data must be consistent with, and reconcile to, the Preliminary Model.

Attachment 2 – Basis and Formats for Cost Submittals

Part 1 Basis for Cost Estimates

The following requirements have been extracted from Appendix E1 of RFP Part I (*Instructions to Proposers*) for use during the PDA Term. Section number and FSForm references are the same as used in RFP Part I.

The Base Date for all cost estimates will be the same as in the Financial Model.

Costs for each Project component will be developed and presented separately from each other to allow for full transparency and accountability of cost allocations.

The DB and IFM costs for the Common Infrastructure will be developed and presented for the full scope of that Project component. Application of the Percentage of Common Infrastructure Cost Allocated to the City (PCIC) will be performed as indicated in the submittal forms and to input the appropriate pro rata share of costs in the Preliminary Financial Model.

No exclusions, qualifications, or conditions are permitted in any of the FBL cost components. Any exclusions, qualifications or conditions will not be recognized in the PDA Term.

In addition, the Lead Developer shall prepare the DB cost estimates according to the cost estimate classification matrix provided in AACE International recommended practice No. 56R-08 (most recent edition) as follows, unless otherwise agreed by the City and the Lead Developer:

1. Concurrent with the 50% SD Package: Class 4 Estimate
2. Concurrent with the 100% SD Package: Class 3 Estimate

As backup information to the DB and IFM costs presented in the applicable FS Forms, provide a detailed estimate based on the UNIFORMAT II classification system:

- a. Minimum level of detail UNIFORMAT II Level 5
- b. Organized clearly to show separately the DB and IFM cost estimates for the BYC, the Common Infrastructure, and the HCC
- c. Present the full DB and IFM costs of the Common Infrastructure, without applying the Percentage of Common Infrastructure Cost Allocated to the City (PCIC)
- d. The detailed estimate may be submitted in a CSI-Master Format classification system instead of the above, provided that it is equivalent in detail to that which is required in UNIFORMAT
- e. The choice of UNIFORMAT or CSI-Master Format must be internally consistent across all submittals during the PDA Term and the term of the Project Agreement
- f. Provide a critical path construction schedule for the whole Facility, presented both in 11"x17" sheet size (hard copy) and in Primavera P6 electronic format. The schedule shall be consistent with the information presented for the DB costs.

This basis and format for cost submittals to be generated during the Project Agreement term will be further developed during the PDA Term.

E1.2.1 Design Build Costs

The Proposer will develop the financial submittals for the DB costs that are part of the FBL, the Allowances, and the Housing DB Cost addressing the content requirements set forth in this Appendix.

1. **Estimate Methodology**

The Proposers shall provide a narrative explaining the cost estimating methodology and cost estimate classification system based on the AACE International recommended practice No. 56R-08 (most recent edition). All terminology shall be consistent with AACE International Recommended Practice 10S-90: Cost Engineering Terminology (most recent edition).

The estimate structure will clearly identify the following cost elements which are subject to the FBL:

- a. Direct costs, including labor, materials, and equipment.
- b. General conditions and general requirements, design costs, all taxes applicable to design-build contracts (e.g., sales taxes on materials and equipment, labor / payroll taxes, gross receipts taxes, etc.), and other soft costs (e.g., regulatory and/or impact fees associated with the Infrastructure Facility).
- c. [Not used]
- d. Contingency (see item 7 below).

2. **Scope**

Provide an overview of the Project as presented in the Technical Proposal and how the estimates for each Project component captures their programs and the proposed scopes. The Proposal shall clearly state that it is for a full turn-key delivery of the Project, including all elements of FF&E of the Infrastructure Facility.

3. **Construction Approach**

Provide an overview of the Project's construction process and how the Development Team will manage the Project to scope, schedule, and within the FBL for the Infrastructure Facility and within the Housing DB Cost for the HCC.

4. **Project Construction Schedule**

Provide a critical path schedule and narrative explaining key milestones, critical path, and schedule logic that support the FBL and Housing DB Cost. Include a narrative explaining how the Proposer will manage construction schedule risks through Final Acceptance of the entire Facility. The narrative shall address, among other topics, the process for operational readiness, activation, and transition, culminating in Substantial Completion of the Infrastructure Facility.

5. **Basis of Pricing and Direct Costs**

Provide a narrative explaining how the estimates of direct costs were developed and what they are based on. Direct costs shall not include contingency, escalation, etc.

Provide a narrative explaining all assumptions for how the cost for LBE participation has been developed and included in the proposed DB costs, including both qualitative and quantitative methodologies that describe the approach in detail that specifically corroborates the assumed LBE percentages for design and professional services and construction services set forth in Technical Submittal 28.

6. **General Conditions / General Requirements, Design Costs, and other Soft Costs**

Provide a narrative explaining how the General Conditions / General Requirements were developed and what they are based on, as well as all other “Below-the-Line” costs including design, public art¹⁷, applicable taxes as described in item 1 above, and other soft costs.

7. **Construction Risk, Risk Register, and Contingency**

Provide an approach to Project risk management and analysis of the Project’s risks based on a risk register. Explain how contingency is calculated and managed based on the proposed quantitative risk analysis method – the narrative should distinguish between “design contingency” and “construction contingency”.

Include contingency in the FBL and Housing DB Cost, each separately and as applicable to the respective Project components.

The approach to determine the Contingency line items in the FBL submittal forms shall be a bottom-up, risk-based estimate using industry-standard risk analysis methods. Present the risk register, risk analysis method and assumptions, and quantitative results of the risk analysis, with a clear linkage to the Contingency line items. Proposals shall not have Contingency based on a percentage of the Direct Cost of work.

Provide a narrative of the proposed approach to risk mitigation.

8. **Allowances Included in DB Costs and Not Subject to the FBL**

Provide cost estimates and an explanation of assumptions related to the following specific Allowances for the Infrastructure Facility that are not subject to the FBL. Allowances are to be reported separately from the FBL and all assumptions shall be clearly stated.

Allowances are limited for the following scope items associated with the Infrastructure Facility. For avoidance of doubt, all Infrastructure Facility scope of work items that are not included in the following list of Allowances will be included in the FBL.

- a. BEB Charging Equipment needed for start of BEB operations at Substantial Completion of the Infrastructure Facility—as defined in RFP Part III, Division 5 (*Battery-Electric Bus Supplemental Criteria*)

¹⁷ Per the requirements of Section 3.19 of the SF Administrative Code.

- b. Poling and de-poling of trolley buses at bus exit and re-entry to the Facility
- c. Off-site utility improvements
- d. Furniture, fixtures and equipment for the Bus Yard office/administrative and training facility spaces
- e. IT/Comms Equipment—per the requirements set forth in Section 2.2 (*Information Technology, Communications, and Security Systems*) in RFP Part III, Division 1 (*Cost and Scope Allocation Requirements*).
- f. Escalation—the construction cost escalation Allowance shall be 3.6%, matching the 20-year average of the Engineering News Record (ENR) Buildings Cost Index (BCI) in San Francisco, averaged year over year, and applied to the mid-point of construction which shall be assumed to be June 30, 2025
- g. DB insurance—include all required insurances associated with the Infrastructure Facility under the Project Agreement during the construction phase, assuming customary provisions including benchmarking of insurance premiums, identification of uninsurable risks, and conditions under which insurance would be regarded as unavailable under the Project Agreement. The following are general expectations for the DB insurance Allowance:
 - i. Required coverage during the construction phase of the Project is expected to include builder’s risk, commercial general liability, pollution liability, professional liability, worker’s compensation, automobile liability, excess/umbrella liability, among others
 - ii. Additional types of insurance coverage may be specified depending on the needs of the Project during the PDA phase
 - iii. The insurance requirements will also typically include the minimum amount of required coverage, requirements for named entities (such as the City and, in some circumstances, the Lenders) as additional insured parties, and other terms and conditions
- h. Hazardous building materials related to demolition of the existing facilities at the current Potrero Yard—the purpose of this Allowance item is to address hazardous building materials that are present throughout the existing Potrero Yard facility, reflective of materials used circa 1915 including but not limited to asbestos, lead paint, PCBs, and others. Such building materials include but are not limited to: flooring, wall and ceiling materials, surface coatings, adhesives, caulking, fireproofing, mastics, thermal systems insulation, gaskets, roofing, transite materials, mechanical system components and insulation, mastics, and vapor barriers. The allowance will be based on an assessment done by a registered professional on the type, amount, costs and schedule for removing/abating hazardous materials contained within the existing Potrero Yard facility.

9. **City's Standard General Requirements for Construction Projects and Standard Construction Measures**

RFP Part III, Division 10 (*SFPW Div 01 General Requirements for Construction*) consolidates the City's standard General Requirements that are applicable during the construction phase of projects, and RFP Part III, Division 11 (*SFPW Standard Construction Measures*), which shall be used by the Proposer:

- a. For the purpose of developing its Financial Proposal (specifically, the development of the cost proposal for the FBL)
- b. To provide the Proposers with companion documents to the PDA that describe in basic terms (x) the expected General Requirements during Construction and (y) standard practices to minimize the impact of construction on the environment, respectively

Additionally, the Proposer must take into account (i) standard document management processes and requirements (e.g., including but not limited to production of as-built drawings and project records) and (ii) standard project coordination, project meetings, and reporting with the Owner, field offices for the Owner's on site representatives, and an executive level partnering program that would normally be included in a project of comparable scope and size as the Project.

These General Requirements and Standard Construction Measures will be part of the Project's development process during the PDA Term, and shall be incorporated into the terms of the DB Contract which will be further developed during the PDA Term.

In the event of conflict between Division 11 (*SFPW Standard Construction Measures*) and Division 10 (*SFPW Div 01 General Requirements for Construction*), the requirements of Division 11 shall prevail.

E1.2.2 IFM Costs

The Proposer must develop the financial submittals for the IFM costs that are part of the FBL addressing the content requirements set forth in this Appendix. Include full details of the annual IFM costs expected to be incurred by the PPC after Financial Close per the relevant requirements set forth in Section 4 of RFP Part III, Division 7 (*Asset Management Program Requirements*).

1. **Estimate Methodology**

The Proposers shall provide a narrative explaining the cost estimating methodology. Provide a breakdown of direct costs for labor, materials, and equipment. Include all taxes applicable to facility maintenance contracts (e.g., sales taxes on materials and equipment, labor / payroll taxes, gross receipts taxes, etc.).

The estimate structure will clearly identify the following cost elements of the IFM scope of work which are subject to the FBL, each presented separately for the Bus Yard Component and for the Common Infrastructure over the full duration of the Infrastructure Facility Term:

- a. Routine maintenance costs (to be included in OpEx)
- b. Capital maintenance costs (to be included in Maintenance CapEx)
- c. Capital costs for the BEB fleet transition after Substantial Completion of the Infrastructure Facility¹⁸ (see item 5 below)

2. **Schedule for Capital Maintenance**

Provide a schedule narrative explaining the approach and assumptions for the schedule of capital maintenance expenditures, differentiating between capital maintenance for the Infrastructure Facility included in the IFM scope of work and the capital costs for the BEB fleet transition.

3. **Basis of Pricing**

Provide a narrative explaining how the costs were developed and what they are based on, including the estimate's basis in terms of the performance regime for the IFM scope of work based on relevant market precedents for transit maintenance facilities under long-term design-build-finance-maintain contracts. State all assumptions strictly relevant to the staffing and spare parts resources for the Proposer's estimate of the IFM-related costs. Present the IFM costs in constant dollars as of the Base Date.

To the extent it is applicable, provide a narrative explaining all assumptions for how the cost for LBE participation has been developed and included in the proposed IFM costs, including both qualitative and quantitative methodologies that describe the approach in detail that specifically corroborates the assumed LBE percentage set forth in Technical Submittal 28.

4. **Infrastructure Facility Maintenance Risk, Risk Register, and Contingency**

Provide an analysis of the Project's IFM risks based on a risk register. Explain how contingency is calculated and managed based on the proposed quantitative risk analysis method. Include contingency within the estimates, as applicable to the respective Project components. The approach will be a risk-based estimate using industry-standard risk analysis methods. Present the risk register, risk analysis method and assumptions, and quantitative results of the risk analysis. Include a proposed risk mitigation strategy.

5. **Allowance Included in IFM Costs and Not Subject to the FBL**

Provide cost estimates and an explanation of assumptions related to the following specific Allowances for the Infrastructure Facility that are not

¹⁸ Per the relevant requirements set forth in RFP Part III, Division 5 (*Battery-Electric Bus Supplemental Criteria*).

subject to the FBL. Allowances are to be reported separately from the FBL and all assumptions shall be clearly stated.

Allowances are limited for the following scope items associated with the Infrastructure Facility. For avoidance of doubt, all Infrastructure Facility scope of work items that are not included in the following list of Allowances will be included in the FBL.

- a. BEB Charging Equipment needed after Substantial Completion of the Infrastructure Facility to support the SFMTA's BEB fleet transition, as defined in RFP Part III, Division 5 (*Battery-Electric Bus Supplemental Criteria*).
- b. IFM services specifically for RFP Part III, Division 7, Section 4.4, Item 18 to support community and/or special/media events as requested by the City.
- c. IFM insurance—include all required insurances associated with the Infrastructure Facility under the Project Agreement during the operating phase, assuming customary provisions including benchmarking of insurance premiums, identification of uninsurable risks, and conditions under which insurance would be regarded as unavailable under the Project Agreement. The following are general expectations for the IFM insurance Allowance:
 - i. During the operating phase of the Project, the required coverage is expected to include "all-risk" property coverage, commercial general liability, pollution liability, professional liability, worker's compensation, automobile liability, excess/umbrella liability, among others
 - ii. Additional types of insurance coverage may be specified depending on the needs of the Project during the PDA phase
 - iii. The insurance requirements will also typically include the minimum amount of required coverage, requirements for named entities (such as the City and, in some circumstances, the Lenders) as additional insured parties, and other terms and conditions

E1.2.3 Lead Developer's Predevelopment Costs

The Proposer will develop the financial submittals for the LD's Predevelopment Costs that are part of the FBL for the Project as a whole, addressing the following content requirements: (1) direct, (2) indirect, (3) internal, and (4) third-party costs and expenses incurred by the Lead Developer during the PDA Term for the Project's predevelopment activities. The LD's Predevelopment Costs shall:

- a. Be governed by the provisions of Section 2 (*Predevelopment Guidelines*) and Section 6 (*Predevelopment Work*) of RFP Part II (*Form of Predevelopment Agreement*)

- b. Include the anticipated costs associated with the competitive procurement of the DB and IFM Contracts, as well as the MME Construction Agreement
- c. Include the cost of legal, financial, tax and accounting, and other advisors, as applicable, for the Project's predevelopment activities
- d. Not include costs strictly related to development of the specific solutions for the Project's final financing structure—such costs shall be reported and allocated separately (according to the actual costs associated with the Infrastructure Facility and HCC in Financial Submittals 9 and 14, respectively), and shall cover the following items: financial advisory costs, rating agency costs, financiers'/lenders' fees, financing related legal costs, financial model audit costs, lender roadshow costs, lender's technical and insurance advisor costs, accounting and tax advisory costs, and other such costs strictly related to the specific solutions to be developed for the Project's final financing structure

E1.3 Basis for Submittal of The Percentage of Common Infrastructure Cost Allocated to the City

The Proposer's Percentage of Common Infrastructure Cost allocated to the City (denominated the PCIC) must be stated as a percentage ranging from 0% to 100%, as follows:

$$PCIC = PCIC(Dis) * (100\% - PCIC(Max))\%$$

Where:

PCIC(Dis): means the Proposer's bid for the Discount to the Percentage of Common Infrastructure Cost allocated to the City as stated in FS Form B. This is the bid variable that is scored in the Financial Proposal.

PCIC(Max): means the Proposer's Percentage of Common Infrastructure Cost allocated to the City as stated in FS Form B. This is based on the gross square feet of floor area of the Bus Yard Component and the Housing and Commercial Component, based on the following formula. *PCIC(Max)* is not scored in the Financial Proposal.

$$PCIC(Max) = \frac{gsf\ of\ C\ Program}{gsf\ of\ C\ Program + gsf\ of\ HCC\ Program} \%$$

Where:

BYC: Bus Yard Component

HCC: Housing and Commercial Component

gsf: the floor area in gross square feet within the exterior face of the exterior walls of the Project component under consideration, exclusive of vent shafts and courts, without deduction for corridors, stairways, ramps, closets, the thickness

of interior walls, columns, or other features—the floor area, or portion thereof, not provided with surrounding exterior walls shall include the usable area under the horizontal projection of a roof or floor above where that is provided, and it shall not include shafts with no openings or interior courts

The gross square feet floor areas will be consistent with the applicable floor areas tabulated by the Proposer in its Technical Proposal, specifically in Technical Submittal 3. For avoidance of doubt, outdoor open spaces not meeting the gsf definition provided above should not be included in the calculation of the PCIC.

The FBL reported in Financial FS Form A7 as part of Financial Submittal 1 and the Preliminary Financial Model for the Infrastructure Facility, per Financial Submittal 9, will include the PCIC and apply it appropriately to the Common Infrastructure costs, the LD's Predevelopment Cost, and other cost items, as set forth in RFP Part II (*Form of Predevelopment Agreement*) and in Division 1 (*Cost and Scope Allocation Requirements*) of RFP Part III.

As such, the PCIC will be a factor in determining the Project costs to be remunerated by the Milestone Payment and the Availability Payments that the City is expected to pay to the PPC for the Infrastructure Facility.

The proposed PCIC(Max), PCIC(Dis), PCIC, and PCIH will be incorporated in the PDA if the Proposer is the Preferred Proposer and shall be governed by the provisions of Section 2.6 (*Allocation of Common Infrastructure Costs*) and Section 9 (*Changes to the Project*) of the RFP Part II (*Form of Predevelopment Agreement*).

The remaining Percentage of Common Infrastructure Cost that is allocated to the HCC (i.e., that which is not allocated to the City) will be calculated as follows:

$$PCIH = 100\% - PCIC$$

The Preliminary Pro Forma for the HCC, per Financial Submittal 13, will include the PCIH and apply it appropriately to the Common Infrastructure costs, the LD's Predevelopment Cost, and other cost items, as set forth in RFP Part II (*Form of Predevelopment Agreement*) and in Division 1 (*Cost and Scope Allocation Requirements*) of RFP Part III.

Part 2 Financial Forms

The following requirements have been extracted from Appendix G of RFP Part I (*Instructions to Proposers*) for use during the PDA Term. Section number and form references are the same as used in RFP Part I.

G3.1 FS Forms A1 to A8 – Fixed Budget Limit

The Fixed Budget Limit (FBL) represents the total arithmetic sum of DB and IFM costs for the BYC and the Common Infrastructure, plus the LD's Predevelopment Cost. The individual items of cost for the FBL will be presented in FS Forms A1 to A5. The total arithmetic sum of the individual cost elements will be presented as follows:

1. **FS Form A6:** sum of (a) costs unadjusted for the PCIC and (b) normalized for the number of housing units, each as applicable. This is the FBL(U) that is scored per Appendix E2.1 (*Evaluation Criterion for the Fixed Budget Limit*).
2. **FS Form A7:** sum of the costs adjusted for the PCIC, which is the FBL that the Lead Developer will be held accountable for development of the Infrastructure Facility during the PDA Term.
3. **FS Form A8:** sum of the cost items presented in FS Form A7 plus the escalation and insurance Allowance line items (f) and (g), respectively, shown in Part I of FS Form D and insurance Allowance line item (c) shown in Part III of FS Form D.

The DB and IFM costs provided in FS Forms A1 to A4 are not Project-wide and should reflect the Project component referenced in the specific form. The LD's Predevelopment Cost provided in FS Form A5 is Project-wide.

No exclusions, qualifications, or conditions are permitted in any of the FBL cost components.

G3.1.1 FS Form A1: Bus Yard Component DB Cost

		BYC DB Costs			
Description		Unit	QTY	Unit Cost	Sub Total
A	SUBSTRUCTURE				
B	SHELL				
C	INTERIORS				
D	SERVICES				
E	EQUIPMENT & FURNISHINGS				
F	SPECIAL CONSTRUCTION & DEMOLITION ⁽⁴⁾				
G	BUILDING SITE WORK				
Total Direct Cost =					
1	General Requirements / General Conditions				
2	Overhead & Profit				
3	Design Cost (excluding design cost prior to Commercial Close) ⁽³⁾				
4	Other Soft Costs [provide list – for example, regulatory/impact fees]				
5	Design Contingency				
6	Construction Contingency and Market Risk				
Total BYC DB Cost (report in FS Forms A6 and A7) =					

Notes:

1. The categories and figures reported in this form must clearly coordinate and link with Financial Submittal 4, per the requirements of RFP Part I, Appendix E1.2.
2. The costs reported in this form must match the inputs to the Preliminary Financial Model presented in Financial Submittal 9.
3. Design costs during the PDA Term are reported in FS Form A5.
4. Item (F) for the BYC's DB costs shall include the cost of demolition of the existing facilities and preparing the Project Site for construction.
5. Include all taxes applicable to design-build contracts (e.g., sales taxes on materials and equipment, labor / payroll taxes, gross receipts taxes, etc.)

G3.1.2 FS Form A2: Common Infrastructure DB Cost

Common Infrastructure DB Cost					
Description		Unit	QTY	Unit Cost	Sub Total
A	SUBSTRUCTURE				
B	SHELL				
C	INTERIORS				
D	SERVICES				
E	EQUIPMENT & FURNISHINGS				
F	SPECIAL CONSTRUCTION				
G	BUILDING SITE WORK				
Total Direct Cost =					
1	General Requirements / General Conditions				
2	Overhead & Profit				
3	Design Cost (excluding design cost prior to Commercial Close) ⁽³⁾				
4	Other Soft Costs [provide list – for example, regulatory/impact fees]				
5	Design Contingency				
6	Construction Contingency and Market Risk				
Total Common Infrastructure DB Cost (report in FS Forms A6 and A7) =					

Notes:

1. The categories and figures reported in this form must clearly coordinate and link with Financial Submittal 4, per the requirements of RFP Part I, Appendix E1.2.
2. The costs reported in this form must match the inputs to the Preliminary Financial Model presented in Financial Submittal 9.
3. Design costs during the PDA Term are reported in FS Form A5.
4. The costs reported in this form must be the total costs associated with the Common Infrastructure and must not include application of the PCIC. Application of the PCIC to these costs must be clearly shown in the Preliminary Financial Model presented in Financial Submittal 9 and application of the PCIH to these costs must be clearly shown in the Preliminary Pro Forma presented in Financial Submittal 14.
5. Include all taxes applicable to design-build contracts (e.g., sales taxes on materials and equipment, labor / payroll taxes, gross receipts taxes, etc.)

G3.1.3 FS Form A3: Bus Yard Component IFM Cost

BYC IFM Cost			
Operating Year ⁽¹⁾	OpEx ⁽²⁾	Maintenance CapEx ⁽³⁾	Total IFM Cost ⁽⁴⁾
1			
2			
3			
4			
5			
6			
7			
8			
9			
10			
11			
12			
13			
14			
15			
16			
17			
18			
19			
20			
21			
22			
23			
24			
25			
26			
27			
28			
29			
30			
Total 30-year BYC IFM Cost (report in FS Forms A6 and A7) =			

Notes:

1. Twelve-month periods, starting with the first twelve-month period following the Scheduled Substantial Completion Date of the Infrastructure Facility.
2. OpEx refers to the operational expenses associated with the IFM scope of work set forth in RFP Part III, Division 7 (*Asset Management Program Requirements*).
3. Maintenance CapEx refers capital expenses necessary to maintain the operating capacity or asset base of the Infrastructure Facility on a life-cycle basis, based on the requirements set forth in the IFM scope of work defined in RFP Part III, Division 7 (*Asset Management Program Requirements*), inclusive of capital expenses necessary for the Handback Requirements.
4. Sum of the annual OpEx and Maintenance CapEx.

5. The categories and figures reported in this form must clearly coordinate and link with Financial Submittal 7.
6. All IFM costs shown in this table must be in dollars of the Base Date year - do not include inflation or escalation in the figures reported in this table.
7. All costs associated with developing and implementing the IFM program up to the time of Substantial Completion should not be included in this Form – those costs should be included in the DB costs.
8. The costs reported in this form must match the inputs to the Preliminary Financial Model presented in Financial Submittal 9.
9. Include all taxes applicable to infrastructure facility maintenance contracts (e.g., sales taxes on materials and equipment, labor / payroll taxes, gross receipts taxes, etc.)

G3.1.4 FS Form A4: Common Infrastructure IFM Cost

Common Infrastructure IFM Cost			
Operating Year ⁽¹⁾	OpEx ⁽²⁾	Maintenance CapEx ⁽³⁾	Total IFM Cost ⁽⁴⁾
1			
2			
3			
4			
5			
6			
7			
8			
9			
10			
11			
12			
13			
14			
15			
16			
17			
18			
19			
20			
21			
22			
23			
24			
25			
26			
27			
28			
29			
30			
Total 30-year Common Infrastructure IFM Cost (report in FS Forms A6 and A7) =			

Notes:

1. Twelve-month periods, starting with the first twelve-month period following the Scheduled Substantial Completion Date of the Infrastructure Facility.
2. OpEx refers to the operational expenses associated with the IFM scope of work set forth in RFP Part III, Division 7 (*Asset Management Program Requirements*).
3. Maintenance CapEx refers capital expenses necessary to maintain the operating capacity or asset base of the Infrastructure Facility on a life-cycle basis, based on the requirements set forth in the IFM scope of work defined in RFP Part III, Division 7 (*Asset Management Program Requirements*), inclusive of capital expenses necessary for the Handback Requirements.
4. Sum of the annual OpEx and Maintenance CapEx.
5. The categories and figures reported in this form must clearly coordinate and link with Financial Submittal 7.
6. All IFM costs shown in this table must be in dollars of the Base Date year - do not include inflation or escalation in the figures reported in this table.

7. All costs associated with developing the IFM program up to the time of Substantial Completion should not be included in this Form – those costs should be included in the DB costs.
8. The costs reported in this form must match the inputs to the Preliminary Financial Model presented in Financial Submittal 9.
9. The costs reported in this form must be the total costs associated with the Common Infrastructure and must not include application of the PCIC. Application of the PCIC to these costs must be clearly shown in the Preliminary Financial Model presented in Financial Submittal 9 and application of the PCIH to these costs must be clearly shown in the Preliminary Pro Forma presented in Financial Submittal 14.
10. Include all taxes applicable to infrastructure facility maintenance contracts (e.g., sales taxes on materials and equipment, labor / payroll taxes, gross receipts taxes, etc.)

G3.1.5 FS Form A5: LD Predevelopment Cost

Submit full details of the costs expected to be incurred by the LD during the PDA Term, up to and including Commercial Close, that are associated with the Project as a whole. See instructions in Appendix E1.2.3 (*Lead Developer's Predevelopment Costs*) of this ITP for the costs reported in this form; in particular, see items (c) and (d) in that appendix for the costs to be reported in items (3) and (4) of this form.

		LD Predevelopment Costs			
Description		Unit	QTY	Unit Cost	Sub Total
	LD Predevelopment Cost items				
1	Development Fee ⁽¹⁾				
2	Design costs during the PDA Term (incl. site due diligence and surveys) ⁽²⁾				
3	Advisors' costs [provide list; e.g., financial, legal, tax and accounting]				
4	Financing related costs (e.g., financiers/lenders' fees, legal costs)				
5	CEQA consultant and public outreach costs				
6	Other costs [provide list]				
LD Predevelopment Cost (report in FS Forms A6 and A7) =					

Notes:

1. Provide a breakdown of the Development Fee for (a) the Infrastructure Facility, and (b) the Housing and Commercial Component.
2. Provide a breakdown of Design costs by discipline.
3. The costs reported in this form must be the total costs associated with the Project as a whole and must not include application of the PCIC. Application of the PCIC to these costs must be clearly shown in the Preliminary Financial Model presented in Financial Submittal 9 and application of the PCIH to these costs must be clearly shown in the Preliminary Pro Forma presented in Financial Submittal 14.

G3.1.6 FS Form A6: Fixed Budget Limit Unadjusted for the PCIC and Normalized for the Number of Housing Units

For the sole purpose of scoring the FBL submitted in the Proposals, according to the formulas provided in Appendix E2.1 (*Evaluation Criterion for the Fixed Budget Limit*), the costs associated with the Common Infrastructure must be normalized for the number of housing units in the HCC, which may vary among the Proposals.

I: Housing Unit Normalization Factor

Parameter	Value	Unit	Reference or Formula
N	_____	No. of housing units	From Technical Submittal 2: Housing and Commercial Component Design and Program (see Appendix D4.1.2).
F(N)	_____	N/A	$F(N) = \frac{575}{N}$

II: FBL Unadjusted for the PCIC and Normalized for the Number of Housing Units

		FBL(U) for the Infrastructure Facility
Description		Sub Total
1	Total Bus Yard DB Cost (from FS Form A1)	
2	Total Common Infrastructure DB Cost (from FS Form A2) x F(N)	
3	Total Bus Yard IFM Cost (from FS Form A3)	
4	Total Common Infrastructure IFM Cost (from FS Form A4) x F(N)	
5	LD Predevelopment Cost (from FS Form A5)	
FBL(U) =		

Notes:

1. The categories and figures reported in this form must clearly coordinate and link with the totals from FS Forms A1 to A5, as part of Financial Submittal 1.
2. For Items 2 and 4 only, multiply the totals reported in the corresponding Forms by the Housing Unit Normalization Factor F(N) as reported in Part I above.
3. All IFM costs shown in this table must be in dollars of the Base Date year - do not include inflation or escalation in the figures reported in this table.

G3.1.7 FS Form A7: Fixed Budget Limit

Description		FBL for the Infrastructure Facility (<i>Adjusted by the PCIC</i>)
		Sub Total
1	Total Bus Yard DB Cost (from FS Form A1)	
2	Total Common Infrastructure DB Cost (from FS Form A2) <i>x PCIC</i>	
3	Total Bus Yard IFM Cost (from FS Form A3)	
4	Total Common Infrastructure IFM Cost (from FS Form A4) <i>x PCIC</i>	
5	LD Predevelopment Cost (from FS Form A5) <i>x PCIC</i>	
FBL =		

Notes:

1. The categories and figures reported in this form must clearly coordinate and link with the totals from FS Forms A1 to A5, as part of Financial Submittal 1.
2. For Items 2, 4, and 5 only, multiply the totals reported in the corresponding Forms by the PCIC as reported in FS Form B – Discount to the Percentage of Common Infrastructure Cost Allocated to the City (see Appendix G3.2).
3. The total cost for the FBL reported in this form, adjusted for the PCIC, shall be the amount that the Preferred Proposer will be held accountable for development of the Infrastructure Facility during the PDA Term.
4. All IFM costs shown in this table must be in dollars of the Base Date year - do not include inflation or escalation in the figures reported in this table.

G3.1.8 FS Form A8: Fixed Budget Limit + Escalation + Insurance

Description		FBL + Escalation + Insurance
1	Fixed Budget Limit (from FS Form A7)	
2	Escalation for the Bus Yard's DB costs (from FS Form D, Part I (f.1))	
3	Escalation for the Common Infrastructure's DB costs (from FS Form D, Part I (f.2)) <i>x PCIC</i>	
4	Re-basing of the Bus Yard's IFM costs ⁽³⁾	
5	Re-basing of the Common Infrastructure's IFM costs <i>x PCIC</i> ⁽³⁾	
6	Insurance for the Bus Yard's DB (from FS Form D, Part I (g.1))	
7	Insurance for the Common Infrastructure's DB (from FS Form D, Part I (g.2)) <i>x PCIC</i>	
8	Insurance for the Bus Yard's IFM (from FS Form D, Part III (c.1))	
9	Insurance for the Common Infrastructure's IFM (from FS Form D, Part III (c.2)) <i>x PCIC</i>	
FBL+ Escalation + Insurance =		

Notes:

1. This FS Form A8 shall be submitted at Performance Milestones 15, 27A, and 31 per the provisions of Sections 2.5 and 6.15 of the Predevelopment Agreement. At the RFP stage submit this FS Form A8 with the values provided in the forms referenced in each line item, except for items (4) and (5) which must be shown "N/A" at the RFP stage.
2. For Items (3), (5), (7), and (9) only, multiply the totals reported in the corresponding Forms by the PCIC as reported in FS Form B – Discount to the Percentage of Common Infrastructure Cost Allocated to the City.
3. In items (4) and (5) include the cost re-basing amounts for the IFM costs included in the Financial Proposal at the RFP stage from the Base Date (as defined in the ITP) to the date of the applicable Performance Milestone. The appropriate rate for re-basing shall be mutually agreed by the City and the Lead Developer during the PDA Term.

G3.2 FS Form B – Discount to the Percentage of Common Infrastructure Cost Allocated to the City

Complete the following fields based on the formulas provided in Appendix E1.3 (*Basis for Submittal of the Percentage of Common Infrastructure Cost Allocated to the City*).

The gross square feet areas used to calculate the PCIC(Max) will be those tabulated by the Proposer in its Technical Proposal, specifically in Technical Submittal 3. The Preliminary Financial Model for the Infrastructure Facility, per Financial Submittal 9, will include the PCIC and apply it appropriately to the Common Infrastructure costs and to the LD’s Predevelopment Costs.

The Preliminary Pro Forma for the HCC, per Financial Submittal 14, will include the PCIH and apply it appropriately to the Common Infrastructure costs and to the LD’s Predevelopment Costs.

Parameter	Value	Definition	Inputs or Formula
PCIC(Max)	_____ %	The Proposer’s Maximum Percentage of Common Infrastructure Cost allocated to the City	gsf of BYC Program: _____ gsf of HCC Program: _____
PCIC(Dis)	_____ %	The Proposer’s bid for the Discount to the Percentage of Common Infrastructure Cost allocated to the City	N/A
PCIC	_____ %	The Proposer’s Percentage of Common Infrastructure Cost allocated to the City	$PCIC = PCIC(Max) * (100\% - PCIC(Dis)) \%$
PCIH	_____ %	The Proposer’s Percentage of Common Infrastructure Cost allocated to the Housing and Commercial Component	$PCIH = 100\% - PCIC$

BYC: Bus Yard Component
HCC: Housing and Commercial Component
gsf: gross square feet

Notes:

- The proposed PCIC(Max), PCIC(Dis), PCIC, and PCIH will be incorporated in the PDA if the Proposer is the Preferred Proposer and shall be governed by the provisions of Section 2.6 (*Allocation of Common Infrastructure Costs*) and Section 9 (*Changes to the Project*) of the RFP Part II (*Form of Predevelopment Agreement*).
- The information provided in the Technical Proposal (Volume 2) and the Financial Proposal (Volume 3) must reasonably support the proposed PCIC(Max), PCIC(Dis), PCIC, and PCIH.

G3.4 FS Form D – Infrastructure Facility Allowances

I. Summary cost estimates for Allowances included in the DB Cost and not subject to the FBL

Description		Infrastructure Facility Allowances included in the DB Cost			
		Unit	QTY	Unit Cost	Sub Total
	Allowances not subject to the FBL				
(a)	BEB Charging Equipment needed for start of operations				
(b)	Poling and de-poling of trolley buses				
(c)	Off-site utility improvements				
(d)	FF&E for the Bus Yard office/admin and training				
(e)	IT/Comms Equipment for the BYC				
(f.1)	Escalation for the BYC’s DB costs				
(f.2)	Escalation for the Common Infrastructure’s DB costs				
(g.1)	Insurance for the BYC’s DB contract				
(g.2)	Insurance for the Common Infrastructure’s DB contract				
(h)	Hazardous building materials related to demolition of the existing facilities at the current Potrero Yard				
Total Infrastructure Facility Allowances included in the DB Cost (not subject to FBL) =					

Notes:

1. The costs reported in this form must be the Proposer’s all-in estimate of the Allowance items, inclusive of direct and indirect costs, escalation, contingency, etc.
2. The costs reported in this form must be included as inputs to the Preliminary Financial Model presented in Financial Submittal 9 and the Preliminary Pro Forma in Financial Submittal 14 as follows:
 - a. All allowance items except for items (c), (f.2), and (g.2) shall be treated as Bus Yard Component DB costs
 - b. Allowance items (c), (f.2), and (g.2) shall be treated as Common Infrastructure DB costs, with the costs allocated using the PCIC and PCIH

II. Narrative description of methodology, assumptions, and limitations of the cost estimates for the Allowances included in the DB Cost

Allowance	Description
(a) BEB Charging Equipment needed for start of BEB operations at Substantial Completion of the Infrastructure Facility—as defined in RFP Part III, Division 5 (<i>Battery-Electric Bus Supplemental Criteria</i>)	
(b) Poling and de-poling of trolley buses	
(c) Off-site utility improvements	
(d) FF&E for the Bus Yard office/admin and training	
(e) IT/Comms Equipment—per the requirements set forth in Section 2.2 (<i>Information Technology, Communications, and Security Systems</i>) in RFP Part III, Division 1 (<i>Cost and Scope Allocation Requirements</i>)	
(f) Escalation of DB costs—differentiated for (f.1) the BYC and (f.2) the Common Infrastructure	
(g) DB insurance—differentiated for (g.1) the BYC and (g.2) the Common Infrastructure	
(h) Hazardous building materials related to demolition of the existing facilities at the current Potrero Yard	

III. Summary cost estimates for Allowances included in the IFM Cost

Description		Infrastructure Facility Allowances included in the IFM Cost			
		Unit	QTY	Unit Cost	Sub Total
	Allowances not subject to the FBL				
(a)	BEB Charging Equipment needed after Substantial Completion of the Infrastructure Facility to support the SFMTA's BEB fleet transition				
(b)	IFM services specifically for RFP Part III, Division 7, Section 4.4, Item 18 to support community and/or special/media events as requested by the City				
(c.1)	Insurance for the BYC's IFM contract				
(c.2)	Insurance for the Common Infrastructure's IFM contract				
Total Infrastructure Facility Allowances included in the IFM Cost (not subject to FBL) =					

Notes:

4. The costs reported in this form must be the Proposer's all-in estimate of the Allowance items, inclusive of direct and indirect costs, escalation, contingency, etc.
5. The cost for item (a) should represent the total cost over multiple years until the full transition of the SFMTA BEB fleet has been completed.
6. The costs reported in this form must be included as inputs to the Preliminary Financial Model presented in Financial Submittal 9 and the Preliminary Pro Forma in Financial Submittal 14 as follows:
 - a. All allowance items except for (c.2) shall be treated as Bus Yard Component IFM costs.
 - b. Allowance item (c.2) shall be treated as a Common Infrastructure IFM costs, with the costs allocated using the PCIC and PCIH.

IV. Narrative description of methodology, assumptions, and limitations of the cost estimates for the Allowances included in the IFM Cost

Allowance	Description
<p>(a) BEB Charging Equipment needed after Substantial Completion of the Infrastructure Facility to support the SFMTA’s BEB fleet transition—as defined in RFP Part III, Division 5 (<i>Battery-Electric Bus Supplemental Criteria</i>). Provide a total cost and the annual costs for each year from Substantial Completion until the full transition of the SFMTA’s BEB fleet.</p>	
<p>(b) IFM services specifically for RFP Part III, Division 7, Section 4.4, Item 18 to support community and/or special/media events as requested by the</p>	
<p>(c) IFM insurance—differentiated for (c.1) the BYC and (c.2) the Common Infrastructure</p>	

G3.7 FS Forms G1 and G2 – HCC Detailed Costs

The DB and Property Management costs of the HCC will be presented in FS Forms G1 and G2. These are not Project-wide and should reflect only the HCC's costs.

G3.7.1 Form G1: HCC DB Cost

If the Proposer’s Proposal includes separate 100% affordable housing, market rate housing and commercial components for the HCC, then provide an additional copy of the table below for each component as well as a sum of total HCC DB Costs. If that is not the case, then present a single Form G1.

I. Total HCC DB Costs (sum of components, as applicable)

Description		Total HCC DB Cost (sum of Parts 1 and 2, as applicable)			
		Unit	QTY	Unit Cost	Sub Total
A	SUBSTRUCTURE				
B	SHELL				
C	INTERIORS				
D	SERVICES				
E	EQUIPMENT & FURNISHINGS				
F	SPECIAL CONSTRUCTION				
G	BUILDING SITE WORK				
				Total Direct Cost =	
1	General Requirements / General Conditions				
2	Overhead & Profit				
3	Design Cost (excluding design cost prior to Commercial Close) ⁽³⁾				
4	Other Soft Costs [provide list – for example, insurance]				
5	Design Contingency				
6	Construction Contingency and Market Risk				
7	Escalation				
Total Housing and Commercial Component DB Cost =					

Notes:

1. The categories and figures reported in this form must clearly coordinate and link with the detailed estimates (electronic files) in Financial Submittal 12.
2. The costs reported in this form must match the inputs to the Preliminary Pro Forma presented in Financial Submittal 14.
3. Design costs during the PDA Term are reported in FS Form A5.
4. Include all taxes applicable to design-build contracts (e.g., sales taxes on materials and equipment, labor / payroll taxes, gross receipts taxes, etc.)

G3.7.2 Form G2: Property Management Cost

HCC's Property Management Cost			
Operating Year ⁽¹⁾	OpEx ⁽²⁾	Maintenance CapEx ⁽³⁾	Total Property Management Cost ⁽⁴⁾
1			
2			
3			
4			
5			
6			
7			
8			
9			
10			
11			
12			
13			
14			
15			
16			
17			
18			
19			
20			
21			
22			
23			
24			
25			
26			
27			
28			
29			
30			
Total 30-year Housing Property Management Cost =			

Notes:

1. Twelve-month periods, starting with the first twelve-month period following Substantial Completion of the HCC.
2. OpEx refers to the operational expenses associated with the Property Management scope of work set forth in RFP Part III, Division 7 (*Asset Management Program Requirements*).
3. Maintenance CapEx refers capital expenses necessary to maintain the operating capacity or asset base of the HCC on a life-cycle basis, based on the requirements set forth in the Property Management scope of work defined in RFP Part III,

Division 7 (*Asset Management Program Requirements*), inclusive of capital expenses necessary for any Handback Requirements.

4. Sum of the annual OpEx and Maintenance CapEx.
5. All Property Management costs shown in this table must be in dollars of the Base Date year - do not include inflation or escalation in the figures reported in this table.
6. The costs reported in this form must match the inputs to the Preliminary Pro Forma presented in Financial Submittal 14.
7. Include all taxes applicable to property management contracts (e.g., sales taxes on materials and equipment, labor /payroll taxes, gross receipts taxes, etc.)

Attachment 3 - Public Outreach and Engagement Plan Guide



v.1.0

POETS
Public Outreach
& Engagement
Team Strategy



Table of Contents

Introduction.....	3
Guide to the Public Outreach and Engagement Plan.....	4
Project Overview.....	4
Project Needs Assessment	4
Goals and Objectives.....	5
Key Messages.....	7
Outreach and Engagement Techniques.....	7
Schedule and Responsibilities	8
Budget.....	8
Plan Review.....	9
Plan Evaluation	9
Report Back to Stakeholders	10
Tips for Developing a Public Outreach and Engagement Plan.....	10
Tip 1: Determine the Kind of Plan the Project Requires	10
Tip 2: Scale the Plan to Fit the Project.....	11
Tip 3: Begin Outreach and Engagement as Early as Necessary	11
Tip 4: Coordinate with Other SFMTA Projects and City Partners	12
Tip 5: Comply with Language Access Requirements.....	12
Tip 6: Make Outreach and Engagement Accessible and Equitable....	13
Tip 7: Be Thoughtful about Stakeholder Notification	13
Tip 8: Plan for Outreach during Detailed Design and Construction...	14
Tip 9: Consider Opportunities to Expand Engagement.....	14
Tip 10: Update the Plan between Project Phases	14
The Spectrum of Public Participation.....	15

Introduction

The San Francisco Municipal Transportation Agency (SFMTA) moves nearly a quarter million people daily within the city of San Francisco. To fulfill the agency's mission to "connect San Francisco through a safe, equitable, and sustainable transportation system" the agency undertakes more than 200 projects at any given time, including major transit corridor investments, safer designs for local streets, and improvements to all modes of transportation throughout the city.

As the transportation agency for the City and County of San Francisco, the SFMTA has a responsibility to keep the public informed as part of our work. The agency is committed to fulfilling these responsibilities and going above and beyond to engage the public in our work. We are committed to strengthening and sustaining our relationships with the community and to ensuring that the agency delivers quality transportation projects to those who need them. This commitment is expressed in the SFMTA's [Strategic Plan](#) and through our ongoing investment in the Public Outreach and Engagement Team Strategy (POETS).

The purpose of this document is to guide those staff members who conduct public outreach and engagement and clarify the agency's expectations for what must be included as part of the public outreach and engagement planning process. This guide is a companion to the [Public Outreach and Engagement Plan Template](#), which project teams can use to develop a plan that meets our agency's requirements for conducting public outreach and engagement. The [Public Outreach and Engagement Requirements](#) outline what is expected to occur as part of agency outreach to the public on any given project.

The first section of this document provides instructions for using the fillable Template to create a Public Outreach and Engagement Plan. The second section presents general principles, practices and tips to consider when developing a plan. The final section summarizes the "Spectrum of Public Participation," a helpful framework for thinking about your plan's purpose and goals.

The process of developing the SFMTA's requirements and guidance involved extensive feedback from the community. The agency heard from a range of diverse voices – those who both benefit from our work and are impacted by our projects. A summary of this valuable community input is included in the [Appendix](#).

Guide to Public Outreach and Engagement Planning

This section provides a step-by-step guide to develop a project-level Public Outreach and Engagement Plan in accordance with the agency's [Public Outreach and Engagement Requirements](#). Each heading below corresponds to the [Public Outreach and Engagement Plan Template](#), which provides a format for writing a project-level plan. This section supplements the instructions in the Template.

When a project's Public Outreach and Engagement Plan is complete, it is mandatory to submit it to the POETS webpage on the SFMTA intranet [here](#). Note that each division determines its own process for deciding when a plan is ready to be uploaded and who is responsible for doing so. Keep in mind that the Public Outreach and Engagement Plan is a public document and may be reviewed by SFMTA leadership and staff, city partners and members of the public.

Project Overview

The purpose of the Project Overview is to summarize the project scope, purpose, benefits and timeline. It also includes some early considerations about decision space – constraints and decisions that have already been made, and decisions that are yet to be made. When preparing this information, take into consideration that the overview may be used for the project webpage, fliers, etc. Note that the next step (Project Needs Assessment) adds valuable information – project impacts, stakeholders, opportunities for public input – that can be added later to the basic information in the Project Overview.

Project Needs Assessment

A Project Needs Assessment is critical to the planning process. It is your chance to think carefully about those who will be affected by the project, the purpose of your outreach and engagement strategy, and the relationships that will matter most for the success of the project.

The Project Needs Assessment should help to identify three things: stakeholders, impacts and decision space. Note that while the Template presents the identification of these as sequential steps, they are in

fact interdependent, and the assessment should be more iterative than linear. As you complete the following steps, consider how each of the components informs the others. For example, understanding what decisions the public can influence might affect the potential impacts and identification of stakeholders.

Public participation is based on the belief that those who are affected by a decision have a right to be involved in the decision-making process.

- IAP2 Core Value

Within the Project Needs Assessment, the **stakeholder analysis** identifies those audiences that need to be informed and/or engaged. It also suggests a method of gauging the level of outreach that is required. Research on stakeholders should clarify their roles, the degree to which they are organized, their capacity to participate, and specific considerations for ensuring an inclusive and culturally appropriate public process (language, accessibility, barriers to participation, etc.). The Template helps to

identify which key stakeholders should be contacted early on, to make them aware that the project team will be reaching out to the community. Valuable internal resources to help gather the information for the stakeholder analysis include the Public Outreach and Engagement Team, District Liaisons, POETS Division Leads, and the Regulatory Affairs Manager (for help with language access).

The **impact and interest analysis** in the Project Needs Assessment suggests how extensive the outreach and engagement effort should be, and the level of resources that will be needed to carry it out. The table in the Template is designed to be a starting point for discussion among members of the project team. Once you answer the ten questions about anticipated impacts and the level of public interest in your project, you will end up with an average score on a scale of very low to very high. While there is no hard and fast rule about how to interpret this number, a higher score generally suggests that more effort and resources will be needed for community outreach. Answering the diagnostic questions as a team (including the project manager, communications lead, relevant consultants and any staff members who will be doing outreach and engagement) will give you the best chance possible to accurately gauge the public's response to your project.

The **decision space analysis** in the Project Needs Assessment identifies the opportunities for stakeholders to provide input and potentially influence the project. Decision space is normally limited by a variety of constraints: agency goals, direction from policymakers, previous decisions, legal requirements, technical feasibility, available budget, etc. Within these constraints, it is always important to consider whether the decision space can be expanded beyond simply telling the public what is going to happen. Even during construction, when decision space is typically most limited, there might be room to consider input on timing, sequencing or mitigation to address community concerns. One reason for seeking to expand the decision space is to demonstrate the agency's commitment to listen to the public. Another is that community members often have good ideas that can strengthen the project and help you deliver it successfully.

The analysis of impacts and interests is closely connected to decision space. In general, greater impacts and higher levels of concern will raise expectations and put pressure on the project team to give the public a say in shaping the project. It is much easier to suggest that the purpose of outreach is only to inform the public when there are few negative impacts and minimal interest in the project. Therefore, given the constraints that limit decision space, there is a tendency for a higher score on the impact and interest analysis to be associated with a higher level of engagement on the spectrum of public participation described below. In other words, the project impacts and level of public concern are not the only factors that determine decision space, but they are critical to consider in the analysis.

Goals and Objectives

The Project Needs Assessment provides the information needed to establish goals and objectives for the Public Outreach and Engagement Plan. This can be the most difficult task in developing the Public Outreach and Engagement Plan, for at least two reasons. First, it only makes sense to establish goals and objectives if they can be measured. This means that metrics need to be realistic, so that information and data can be gathered to evaluate the success of the plan. Second, it is important to have goals and objectives that are meaningful. The key metrics should measure not only the activities of outreach and engagement (How many people did we reach? How many people attended our meetings?) but also measure the results that matter (How did public input affect the final project? Did our outreach and engagement provide helpful input to decision makers?).

This section provides a brief guide to setting goals and objectives for a Public Outreach and Engagement Plan. The approach is to (1) Keep in mind the agency's goals for working with the public, (2) Establish project goals that correspond to the "levels of participation" on the IAP2 Spectrum, and (3) Establish project objectives that can be realistically measured and related to the project goals.

Every Public Outreach and Engagement Plan should consider the broader agency goals for communication and public participation as expressed in the SFMTA's [Strategic Plan](#) and [Public Participation Plan](#). Keep this agency-wide context in mind as you develop project-level goals and objectives.

Strategic Plan Goal 4.0, Objective 4.3 commits the agency to enhance customer service, public outreach, and engagement: "Effective communications and consistent messaging can create meaningful opportunities for community input, give policymakers the information they need to support their communities, and improve the agency's projects and service delivery. Not only is community engagement critical in developing near-term projects that serve the community, it can also benefit long-term, comprehensive efforts related to safety, transit service, and mode choice. Placing this objective in Goal 4 underscores the agency's commitment to not only improve agency communications and engagement processes, but to also overhaul the agency's internal communications processes to better serve the public and agency staff."

The SFMTA [Public Participation Plan](#) emphasizes the agency's commitment to inclusion, equity and accessibility. Planning for every SFMTA project should meet these expectations. In practice, this means that project teams should consciously address barriers to participation and should make deliberate efforts to reach out to communities that have been historically underrepresented in the public process.

The **goals** of public outreach and engagement for a specific project should correspond to the four levels of public participation on the IAP2 Spectrum: Inform, Consult, Involve or Collaborate. The identification of goals comes directly from the Decision Space analysis in the Project Needs Assessment. Every Public Outreach and Engagement Plan should have the goal to **inform** the public about the project. In addition to informing, most projects will also have an opportunity for the public to provide input that might influence the project. Therefore, most projects will also **consult** to some extent as a goal of the project, with the parameters for potential public influence (the Decision Space) clearly defined. Some projects will also present further opportunities for public partnership and influence, meaning that the goals for public participation might be to **involve** the community or to **collaborate** with stakeholders.

"Reach out and listen to people, don't just 'educate' them."

- Stakeholder Feedback

The **objectives** of public outreach and engagement for a specific project should be meaningful and measurable. Objectives should have a meaningful relationship to the goals of the Public Outreach and Engagement Plan (How do we know that the public was informed or consulted? What did we hear that would be helpful to decision makers?). Objectives should also be measurable. Measures can be quantitative (How many people did we reach through various communications channels?) or qualitative (How did the project change as a result of public input?). The key is to create objectives that are linked to the goals for the plan, and that can be documented and communicated to decision makers and the public.

Some examples of Objectives that could correspond to Goals:

- Number of those reached through communications channels and attending meetings
- Number of users accessing the project webpage; number providing online feedback
- Percentage of stakeholders surveyed at meetings who feel informed about the project
- Specific ways that public input influenced the project (a “We Listened” category)

Key Messages

Design your key messages about the project for both general and specific audiences, building on the Project Overview. Keep in mind that the most important consideration is the desired impact of the communication effort within the overall Public Outreach and Engagement Plan. For every project, the goal of communication is to inform the community about the project, its benefits, its impacts, and opportunities for formal public comment. Plans that also call for consulting or involving the community during project planning will require additional information and communication to support an engagement strategy. Successful messaging is not just about content, but also the impact of communication. In all cases, it is important to be consistent and transparent in messaging – providing the community with a clear path to information and staff contacts – in order to build trust throughout the life of the project.

For almost any project, key messages include:

- Purpose and benefits of the project
- Anticipated impacts of the project
- Project timeline and current phase
- Opportunities for public participation
- Project contacts (who and how to reach them)
- Project webpage (how to access further information online)
- Specific messages for specific audiences

In general, key messages should be concise (a few short statements that are easily understood), relevant (limit information to what is essential), compelling (lead with benefits and highlight opportunities for public input) and tailored to the audience (with special consideration of language needs). Use plain language and avoid jargon and acronyms. It is always advisable to check your messages with representatives of the audiences you are trying to reach.

Outreach and Engagement Techniques

The selection of outreach and engagement techniques should be based on the Project Needs Assessment and the project goals and objectives. When the goal is to inform, the techniques used should be tailored to specific audiences. When the goal is to invite feedback from stakeholders, the plan should include techniques and tools designed to gather and compile public input, and it should be specific about the kind of feedback that could affect the project.

The field of practice offers a wide variety of techniques and tools to choose from. The key is to think carefully about the intended purpose of public participation at each phase of the project, and to select

techniques, tools and meeting designs that fit the project goals while getting information to stakeholders in the way they prefer to receive it. Regardless of other considerations, our stakeholders report that all flyers and posters should use large print and plain language, and they should be placed in multiple locations and at various heights. In addition, all electronic communication should be reviewed for accessibility.

The [Appendix](#) provides several resources to help you think about techniques: (a) a summary of communication techniques that are commonly used for SFMTA projects, (b) a description of various outreach techniques, engagement strategies and meeting formats that correspond to different goals on the public participation spectrum, and (c) guidance for making meetings accessible.

Schedule and Responsibilities

Once the goals for public outreach and engagement have been determined and the methods have been selected, the next step in developing the Public Outreach and Engagement Plan is to create a schedule of activities and assign responsibility for implementation tasks.

The schedule should be detailed enough to be useful to the project team, but also appropriate as a tool to report to stakeholders, agency partners and decision makers. It should include the timing of specific communications efforts, outreach to key stakeholders, and key meetings or events. It should also note those activities that are ongoing throughout the duration of the plan, as distinct from communications for a specific meeting or event.

Project teams may use their own formats (or those provided by consultants) to track detailed tasks, individuals responsible, and due dates. The format for your project's outreach and engagement strategy can be a single spreadsheet, or a combination of tables for different tasks. The format is less important than the content: When do activities need to happen and who is responsible for carrying them out? When planning public meetings, the action plan should highlight dates for inviting participants, arranging meeting logistics, producing meeting materials, recruiting facilitators, etc. One approach is to create a summary timeline and a separate, more detailed production schedule for individual tasks.

Budget

The budget for Public Outreach and Engagement can be estimated based on the size and scope of the project, as well as the extent of activities in the Public Outreach and Engagement Plan. Costs can vary widely based on staff time, communications collateral, language support, online engagement, and the number of public meetings held.

As noted above, it might be necessary to estimate the budget for public outreach and engagement before the plan is fully developed. To ensure adequate resources are devoted to outreach and engagement (including for language translation and interpretation), it is critical to conduct a Project Needs Assessment as early as possible. If your project requires a budget estimate before the Public Outreach and Engagement Plan is complete, the POETS team or your POETS Division Lead can provide guidance.

Plan Review

Once the Public Outreach and Engagement Plan has been drafted, it is important to review it within the SFMTA before moving to implementation. As a practical matter, the plan should be developed in concert with all of the team members responsible for carrying it out (including staff and consultants), and ideally in consultation with key stakeholders. As noted at the outset of this Guide, one of the first steps in developing the Public Outreach and Engagement Plan should be to identify all of those individuals and groups who should be part of the conversation before the plan is developed and approved.

Any project that will transition from the SFMTA to another city agency (e.g., between legislative approval and construction) must address this transition in its Public Outreach and Engagement Plan. As early as possible, the project lead should meet with city partners to establish roles and budget responsibilities.

The project lead should meet with the District Liaison for the project area to be aware of any other SFMTA projects that might affect your project. If there are intersecting projects, the outreach and engagement activities for both should be coordinated to the extent feasible.

It is always a good idea to review the draft plan with an experienced colleague. Consider reaching out to your POETS Division Lead, a public information officer, or the POETS team if you have questions or challenges while completing your plan.

Once the Public Outreach and Engagement Plan is reviewed internally and with city partners, it must be approved by the project manager and then uploaded to the POETS webpage. At the end of each project phase, the evaluation section of the plan should be filled out and submitted to the same link.

Prior to implementation, the project lead should provide a summary of the project and the Public Outreach and Engagement Plan to the SFMTA's Media Relations Manager and should consider whether to reach out to elected officials (District Supervisors' Aides, State delegation offices).

Plan Evaluation

The Public Outreach and Engagement Plan should be viewed as a living document. Adaptation to changing or unforeseen circumstances is a basic principle of good public engagement. The implementation of the Public Outreach and Engagement Plan should be carefully documented, with records kept on who was contacted and who participated in any meetings held. Ideally, any meeting other than a public hearing should include a feedback form from participants. The [Appendix](#) has an example of a meeting evaluation survey. At a minimum, the project outreach and engagement lead should submit a brief report at the end of each phase of the project. The plan should be reviewed and updated every six months if the project phase lasts longer than this.

Review of the Public Outreach and Engagement Plan should include answers to the following questions outlined in the [Public Outreach and Engagement Plan Template](#):

- Was the Public Outreach and Engagement Plan implemented as planned?
- If there were changes in practice from the original plan, please explain.
- How did the plan perform on its identified goals and objectives?
- What were the key lessons learned during implementation?

- What changes would you recommend to the plan going forward?
- How did you document public input and take it into account?

Report Back to Stakeholders

After evaluating the Public Outreach and Engagement Plan, the project team should also report back to stakeholders (including partners and decision makers) at the end of each project phase. What was the purpose of outreach and engagement at this phase of the project? Who was contacted and/or engaged in the public process? What feedback did the public provide? If applicable, how did the project team take public input into account? How was it conveyed to decision makers and how did it affect the project?

The project brief created at the beginning of the Public Outreach and Engagement Plan, along with the evaluation conducted at the end of the plan, provides the information needed to complete this report back to the community at the end of each project phase. All stakeholders engaged in the process should receive this summary report, which completes the “feedback loop” described in the Public Outreach and Engagement Requirements.

Tips for Developing a Public Outreach and Engagement Plan

The SFMTA established our Public Outreach and Engagement Requirements to ensure that project teams are thoughtful in their approach to working with the communities we serve. This section offers general guidance to help you think about your Public Outreach and Engagement Plan. These tips do not correspond directly to the planning steps outlined in the Template. Instead, they emphasize that the development of your plan is not a mechanical process, but is instead an iterative and reflective effort.

Tip 1: Determine the Kind of Plan the Project Requires

The SFMTA’s Public Outreach and Engagement Requirements mandate that every SFMTA project must have a Public Outreach and Engagement Plan. For the purpose of this requirement, a “project” is defined as, “A one-time effort to construct, acquire, replace, improve, expand, or rehabilitate the transportation system in the City and County of San Francisco.” The assumption is that “one-time” includes projects that occur in multiple phases. In cases where the distinction between a “project” and “operations” is not clear, the key question is whether the agency’s action impacts the public. If there are community impacts from an action, then the agency should plan for some level of public outreach and/or engagement.

If a project needs a plan, the first question to address is whether the project team needs to create a new, customized Public Outreach and Engagement Plan, or whether this is a smaller, routine project that can use a template developed within each Division. POETS refers to the latter as a **Programmatic Public Outreach and Engagement Plan**. The kinds of projects that are appropriate for Programmatic Plans are determined by each Division, and each Division is responsible for developing a Programmatic Plan for each category of projects. Examples might include stop signs or signal adjustments. Every small project must still consider community impacts, but the Programmatic Plan can be used as a template for each project that falls within the program category. The Programmatic Plan should be on file with POETS, and if so,

individual projects in the program category do not need to file separate plans (e.g., there's one Programmatic Plan on file for stop sign changes, so it's not necessary to file a separate plan for every stop sign change).

In addition to determining the kind of plan your project requires, it is essential to determine WHO needs to be involved in the development of the plan. Planning for outreach and engagement is not a solitary exercise in the office, but instead should involve collaboration among a team of staff members (and any consulting members of the team), informed by conversations with SFMTA colleagues, key community stakeholders, partner agencies, and decision makers. Given all the information and judgements that are necessary to create a Public Outreach and Engagement Plan, one of the first steps in planning is to identify who should be part of the process.

Tip 2: Scale the Plan to Fit the Project

The Public Outreach and Engagement Plan should be appropriate to the scale of the project. Plans for large projects will be detailed and complex, while those for smaller, simpler projects can be more standardized, as described above. The templates are designed to be helpful for all projects regardless of their size, and they are intended to be flexible. If the Project Needs Assessment determines that project impacts are minimal or that there is no opportunity for public influence, then the purpose of the plan might only be to inform stakeholders. On the other hand, even the simplest project might offer some opportunity for public influence.

Tip 3: Begin Outreach and Engagement as Early as Necessary

Planning for outreach and engagement should always begin as early as possible, ideally at the conceptual or pre-planning phase of a project. This does not necessarily mean that public outreach should be the first step in project implementation, only that an early Project Needs Assessment should identify WHEN is the best time to begin outreach and engagement with the public. In general, opportunities for the public to provide input on a project are greater during the early stages of a project (versus during post-legislation or construction). However, it can be counterproductive to reach out to the public too early, before relevant questions are addressed in the Project Needs Assessment (scope of the project, decision space, etc.). You get one chance to make a first impression, so it is critical to be prepared before going to the community. The point is to begin planning for public outreach and engagement at the outset of the project, and to include early outreach to key stakeholders in the plan whenever appropriate.

From the stakeholder's standpoint, "early" generally means before key decisions have been made, and in time for the public to have meaningful input on the project to the extent possible.

Realistic planning for outreach and engagement also includes early consideration of funding. As a practical matter, the Project Needs Assessment must be done soon enough to estimate the budget for outreach and engagement before the plan is fully developed. The POETS team can help with budget estimates.

Tip 4: Coordinate with Other SFMTA Projects and City Partners

The Project Needs Assessment identifies stakeholders, including those who will work on the project within the SFMTA and the city of San Francisco. When planning for public outreach and engagement for your project, it is important to know which other teams within the SFMTA might be working in the same geographic area. Project teams working in the same community should connect with one another as early as possible to share information, formulate communications strategies, and coordinate activities in a way that facilitates community understanding and input opportunities for intersecting projects.

“Nobody cares if it’s MTA or PUC or DPW. To us, it’s the city.”

- Stakeholder Feedback

It is also essential to think forward about all phases of the project during initial planning. It is common for a project to be handled by different SFMTA divisions at different phases, or for a project to be handed off by the SFMTA to another agency (e.g., Public Works, Public Utilities Commission) at some phase. In either case, it is essential to coordinate with those agency and city partners to maintain a consistent standard of outreach and engagement, even if the SFMTA is not the lead during a particular phase of the project. From the community point of view, it doesn’t matter which agency is working on a particular phase of a project. If it was seen as an SFMTA project from the beginning, then the SFMTA will be held responsible for how the project is carried out.

Tip 5: Comply with Language Access Requirements

As a city department that receives federal funding, the SFMTA must follow both local rules (San Francisco’s Language Access Ordinance) and federal rules (Title VI of the Civil Rights Act of 1964 and supporting guidance) regarding accessibility to our programs and services to ensure that all customers, regardless of their ability to read, speak, write and understand English (“limited-English proficient” or “LEP”), are informed and able to participate in our agency’s decision-making processes. The SFMTA’s 2016 Language Assistance Plan (LAP) details the agency’s policies about providing both written (translations) and verbal (via interpreters or bilingual employees) language assistance for our limited-English proficient customers and other stakeholders.

The Language Assistance Plan includes maps detailing concentrations of limited-English proficient communities by language, which can be used as a resource when determining the language needs of those who are affected by the project. In general, and at a minimum, most public information pieces should be translated into Chinese, Spanish and Filipino (Tagalog), and all public communications and meeting notices must include the 311 “Free Language Assistance” tagline (included in the Public Outreach and Engagement Plan Guide). Public meeting and hearing notices and agendas, including those posted at SFMTA.com, must include the four-language 48 hours’ notice and a staff member’s phone number to request language assistance; LanguageLine telephonic interpretation services can be used to process requests from limited-English proficient customers via phone. The [Appendix](#) includes a LanguageLine reference sheet, all language assistance taglines, and tips for providing language assistance. Depending on content, transit related public information pieces might require additional translation support.

The agency provides resources and training to assist with language assistance. Specific questions and requests for individual consultation or staff training should be directed to SFMTA Regulatory Affairs Manager Kathleen Sakelaris at Kathleen.Sakelaris@sfmta.com or 415.701.4339.

Tip 6: Make Outreach and Engagement Accessible and Equitable

All activities outlined in the Public Outreach and Engagement Plan must be implemented in a way that is inclusive and equitable. Activities should include methods for soliciting feedback that meet communities on their own terms, and that are accessible to youth, seniors, people with disabilities, and underrepresented community members, regardless of ability. The goal of the SFMTA is to inform anyone affected by our projects about their benefits and impacts, and to include anyone in the public process who has an interest in participating. The purpose of making communications and meetings accessible is not to “check a box,” but to ensure that opportunities for public participation are open to all.

All communication materials should be provided in accessible formats. As noted above, the [Appendix](#) provides guidance on making meetings accessible. For assistance on making your materials and meetings accessible, contact Annette.Williams@sfmta.com or 415.701.4444.

The [Muni Service Equity Strategy](#) takes a neighborhood-based approach to address disparities on transit routes that are most critical to people from low-income households and people of color. As of 2018, there are eight neighborhoods covered by the Equity Strategy: Bayview, Chinatown, Mission, Tenderloin/SOMA, Oceanview, Outer Mission/Excelsior, Visitacion Valley, and Western Addition. Project teams working in any of the neighborhoods named in the Equity Strategy should review the documents at the link above and think carefully about how to apply the strategy to their own projects.

Regardless of whether your project falls within these eight neighborhoods, your Public Outreach and Engagement Plan should have a strategy to include those community members who have historically been underrepresented in the planning and decision-making process. While it may be more difficult and require more resources to reach and engage members of these communities, it is essential to make a deliberate effort to do so. The agency offers resources and support to help you plan for inclusive, equitable and accessible outreach and engagement.

“Public Participation” refers to the role of community members in planning and decision-making processes. It involves a two-way relationship in which the agency consults the public.

“Outreach” refers to agency efforts to inform stakeholders about the project and opportunities to participate in the public process.

“Engagement” refers to the agency’s strategy to encourage public participation and consider public input.

Tip 7: Be Thoughtful about Stakeholder Notification

The goal of outreach and engagement is to be inclusive and equitable. Consider the full range of stakeholders who might be impacted by, or interested in, the project. As a general rule, it is advisable to expand rather than limit the geographic scope of project notification and updates, and to consider non-geographically defined communities that might also have an interest in the project. In cases where notification is legally required within a specified distance, consider doing outreach beyond the minimum legal requirement if indicated by the Project Needs Assessment.

One of the most consistent messages we have heard from community members is that notification should not be limited to the immediate neighborhood in which a project is taking place. Residents and other stakeholders in surrounding neighborhoods can be affected in sometimes unanticipated ways, so it is always advisable to err on the side of doing wider notification and outreach.

Tip 8: Plan for Outreach during Detailed Design and Construction

It is critical to maintain ongoing communication across all phases of the project, including those periods when there are no public meetings or legally required notices. Most large projects face a period between legislation and construction when the project has been approved but construction has not yet begun. Often, this phase can take years and can result in the community not knowing or understanding that the project has been even been approved, let alone that it is going to be implemented after a period of inactivity. In such cases, when construction begins, community members can be caught unaware. The approval process may be a distant memory for those who were involved, and newer residents may feel alarmed that they did not have an opportunity to participate during the early project phases.

For this reason, the Public Outreach and Engagement Plan must include a strategy to keep the public informed during these “quiet” or “inactive” periods. Examples of plans specifically tailored to the detailed design phase of a project can be found in the [Appendix](#).

Tip 9: Consider Opportunities to Expand Engagement

There is always an obligation to inform the public about a given project. But despite the temptation to think our work ends here, it is rare that our only obligation is to inform through one-way communication. In almost every case, there is also an opportunity to engage stakeholders more deeply on some aspect of the project and to consider how public input might affect the project. Even during construction, there might be choices about sequencing, scheduling or mitigation that stakeholders can influence. While the minimum goal is always to inform the public about a project, good practice requires thinking carefully about how the “decision space” for public influence can be defined and potentially expanded at each phase of the project’s delivery. The next section on the “Spectrum of Public Participation” provides a framework for thinking about decision space.

Tip 10: Update the Plan between Project Phases

The Public Outreach and Engagement Plan should lay out a strategy for the life of the project, with the understanding that the plan will be reviewed and updated at the end of each phase based on lessons learned and changing conditions. As a general rule, it is advisable to update the Public Outreach and Engagement Plan approximately every six months, even if a project phase lasts longer.

The Public Outreach and Engagement Requirements call for documentation of the how the Public Outreach and Engagement Plan was implemented. The templates for creating the Public Outreach and Engagement Plan provide space to record whether the plan was implemented as expected during a particular phase, the lessons learned, and the recommended revisions to the plan going forward.

The Spectrum of Public Participation

A key step in developing the Public Outreach and Engagement Plan is identifying the purpose of public participation at each phase of the project. Is the purpose simply to inform stakeholders, or is it also to ask for public feedback that might shape the project? Public participation practitioners refer to this as the project's **Decision Space**. To what extent can the public influence the project? What has already been decided, and what is on the table for consideration? The SFMTA makes a commitment about how public participation can influence each of our projects. Defining the "decision space" gives the community clear expectations about the purpose of public participation and helps planners understand how public input that can potentially influence the project.

The SFMTA has worked closely with the International Association of Public Participation (IAP2), whose **Spectrum of Public Participation** is a useful framework for helping to think about the decision space for a project. The Spectrum defines the project sponsor's commitment to public participation during each phase of project delivery. Once the goal of public participation has been defined, the Spectrum helps the project team choose the outreach and engagement methods that are appropriate for the project. The agency can reach out to stakeholders just to inform them about a project, or also to engage them in higher levels of participation along the Spectrum. Any level of public participation beyond "inform" requires some level of "engagement" by the agency in addition to communications "outreach."

The figure below defines four levels of public participation on the IAP2 Spectrum and suggests methods that correspond to each level. It is important to note that the correspondence between the level of participation and the methods used is suggestive rather than definitive. Different methods can be used for different purposes. For example, while we have heard from our stakeholders that "open houses" are forums for staff to speak, and "town halls" are opportunities for the public to speak, it is certainly true that staff can listen and take valuable feedback at open houses. Similarly, a walking tour or an ambassador can be methods to inform and/or involve the community in planning for a project.

THE SPECTRUM OF PUBLIC PARTICIPATION

The following levels of participation describe different roles of the public in the planning and decision-making process, and the commitment made by the agency at each level. The agency's outreach and engagement strategy should correspond to the goal of public participation at each project phase.

LEVEL →	INFORM	CONSULT	INVOLVE	COLLABORATE
Goal of Outreach and Engagement	We will keep you informed about the project and the decision-making process.	We will keep you informed, listen to and acknowledge concerns and aspirations, and provide feedback on how public input influenced the project and decision.	We will work with you to ensure that your concerns and aspirations are directly reflected in the alternatives developed and provide feedback on how public input influenced the project and decision.	We will look to you for advice and innovation in formulating solutions, and we will incorporate your advice and recommendations into the project and decision to the maximum extent possible.
Example Tactics	<ul style="list-style-type: none"> • Open house • Newsletter • Webpage • Factsheet • Email • Social media • Mailer • Poster • Phone hotline • Ambassador 	<ul style="list-style-type: none"> • Town hall • Public meeting • Comment form • Survey • Focus group • Interview • Tour • Pop-up booth 	<ul style="list-style-type: none"> • Workshop • Charrette • Deliberative poll • Recurrent conversations 	<ul style="list-style-type: none"> • Advisory committee • Participatory budgeting • Collaborative problem-solving • Small group dialogue

Adapted from the International Association for Public Participation (IAP2)

The spectrum is helpful in thinking about the purpose of public outreach and engagement at different phases of a project. Typically, there is more decision space – more opportunity for meaningful public input – at earlier stages of a project (although, as noted above, even the construction phase generally allows some room for public input, even if it is more limited than at earlier phases).

At the same time, if outreach occurs too early, the project might not be well defined, and it might not be clear to the public how to provide input. The key is to think carefully about the goals of public outreach and engagement, and to time the work appropriately. It is critical for the Public Outreach and Engagement Plan to allow enough time to inform and/or engage the public before legal milestones for public comment are reached and decisions are made.

Attachment 4 – Best-value Contractor Recommendation Form and Final Price and Cost Savings Form

Best-value Contractor Recommendation Form

Description		Total Best-value Price
		Sub Total
1	DB contract price for the Bus Yard	
2	DB contract price for the Common Infrastructure <i>x PCIC</i>	
3	IFM contract price for the Bus Yard	
4	IFM contract price for the Common Infrastructure <i>x PCIC</i>	
5	LD Predevelopment Cost <i>x PCIC</i> (see note 4 below)	
Total Best-value Price =		

Notes:

1. The DB contract bid prices for the BYC and the Common Infrastructure must be inclusive of all Allowances, insurance, and escalation on a comparable basis as is included in FS Form A8.
2. The IFM contract bid prices for the BYC and the Common Infrastructure must be inclusive of all Allowances and insurance on a comparable basis as is included in FS Form A8. IFM contract bid prices must be in dollars of the Base Date year and must not include inflation or escalation.
3. For items (3) and (4) reported in this Best-value Bid Form, if the Lead Developer proposes for the PPC to self-perform the IFM scope of work, then those amounts must be included instead than bid process, subject to a transparent and robust method for market testing and benchmarking of all IFM costs to ensure that the pricing is competitive in the market.
4. Item (5) shall be the amount shown in FS Form A5, except that the LD Predevelopment Cost in this line item must deduct (a) any Continuation Payment defined in article 4.2(d) of the PDA and (b) any other payment during the PDA Term by City to Lead Developer under the PDA.

Final Price and Cost Savings Form

Part I. Calculation of the cost savings or cost overage

Description		Cost savings or cost overage
1	FBL + Escalation + Insurance (from FS Form A8 submitted at Performance Milestone 27A)	
2	Total Best-value Price (from the Best-value Contractor Recommendation Form submitted at Performance Milestone 31)	
A	If item (2) ≤ item (1), then cost savings = item (1) minus item (2) =	
B	If item (2) > item (1), then the cost overage = item (2) minus item (1) =	

Notes:

- Report either item (A) or (B), but not both, based on the if/then statements noted therein. For the other item insert "N/A".
- Only with respect to IFM re-basing cost items (4) and (5) in FS Form A8, to account for inflation include the cost re-basing amounts from PDA Performance Milestone 27A to PDA Performance Milestone 30. The appropriate rate of inflation shall be mutually agreed by the City and the Lead Developer during the PDA Term. These IFM cost re-basing amounts shall be included in item (1) above.

Part II. Calculation of Final Price

Description		Final Price
1	Total Best-value Price (from the Best-value Contractor Recommendation Form submitted at Performance Milestone 31)	
2	Cost savings (from Final Price Form, Part I, item (A)) x 30%	
Final Price = sum of items (1) and (2) =		

Notes:

- Use Part II only in case there is a cost savings reported in item (A) of Part I.
- In case there is a cost overage, refer to the provisions in article 6.15(c) of the PDA.

APPENDIX C
PROPOSAL COMMITMENTS

[To be developed based on Proposal]

APPENDIX D PROJECT OBJECTIVES

All initially-capitalized, undefined terms or abbreviations used in this Appendix that are not otherwise defined in the Predevelopment Agreement will have the meanings given to them in the RFP.

I. Primary Objectives

The proposed Project would replace the SFMTA's obsolete two-story maintenance building and bus yard with a single, integrated facility consisting of the BYC, HCC, and Common Infrastructure. The City seeks a private-sector partner to deliver the Project and achieve the following primary objectives:

1. Construct the replacement bus maintenance and storage transit facility (i.e., the BYC) by 2026. 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).
2. 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%.
3. 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.
4. 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.

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.

The SFMTA has invested over 3 years of intensive project planning and conceptual design and is proud to release this RFP as a major stride toward realizing this ambitious Project. As a core facility for the SFMTA's citywide transit operations, the Project represents an operationally critical public infrastructure project for the City.

II. Specific Project Objectives

In addition to the overarching primary objectives listed above, the specific objectives of the Project, as expressed in the Draft EIR, are outlined below.

Modernized Potrero Yard Transit Facility

1. Rebuild, expand, and modernize the SFMTA's Potrero Yard by June 30, 2026 to efficiently maintain and store a growing Muni bus fleet according to the SFMTA Fleet Plan and Facilities Framework schedule and the requirements set forth in Division 5 (Battery-Electric Bus Supplemental Criteria) of the Technical Requirements.
2. Construct the first SFMTA transit facility with infrastructure for battery electric buses to facilitate Muni's transition to an all-electric fleet, in accordance with San Francisco and California policy.
3. Construct a new public asset that is resilient to earthquakes and projected climate change effects, and provides a safe, secure environment for the SFMTA's employees and assets.
4. Improve working conditions for the SFMTA's workforce of transit operators, mechanics,

and front-line administrative staff through a new facility at Potrero Yard.

SFMTA Facilities Framework and Building Progress Program

5. Achieve systemwide master plan priorities by consolidating 2 currently scattered transit support functions at Potrero Yard, as described in items 6 and 7 as follows.

6. Improve and streamline transit operator hiring by consolidating the SFMTA's operator training function in a new, state-of-the-art facility.

7. Support efficient Muni operations by consolidating the Street Operations division in a modern, convenient facility.

Community Input

8. Implement inclusive and transparent stakeholder engagement in designing this project and completing the CEQA process.

Responsible Public Investment

9. Create a development that is financially feasible, meaning that the public asset can be funded by public means and public transportation funds are used only for the BYC and the functions of the Common Infrastructure supporting the BYC.

Additional Objectives

Streetscape and Urban Design

10. Enhance safety and reduce conflicts between transit, commercial vehicles, bicyclists, drivers, and pedestrians in the Project Site vicinity.

11. Improve the architectural and urban design character of the Project Site by replacing the existing fences and blank walls with more active, transparent street walls, to the extent feasible.

12. Maximize the reuse of this 4.4-acre site in a central, mixed-use neighborhood by creating a mixed-use development and providing dense housing and striving to maximize the number of affordable units on the site.

Mixed Use Development and Housing

13. Increase the City's supply of housing by contributing to the Mayor's Public Lands for Housing goals, the San Francisco General Plan Housing Element goals, and the Association of Bay Area Governments' Regional Housing Needs Allocation for San Francisco by optimizing the number of dwelling units, including affordable housing, particularly near transit.

14. Support transit-oriented development and promote the use of public transportation through an innovative and comprehensive Transportation Demand Management (TDM) program.

15. Ensure that joint development is able to fund its own construction and ongoing management without reliance on any City subsidy other than a \$35 million residual receipts gap loan from MOHCD, subject to all MOHCD policies, guidelines, and discretionary approvals.

Procurement Objectives

1. Deliver a Project that meets the performance criteria of the Bus Yard Component and the Common Infrastructure defined in the Technical Requirements and utilize the competitive bidding process to control the cost of the Project and deliver the Infrastructure Facility within the Fixed Budget Limit.

2. Complete the Infrastructure Facility by no later than June 30, 2026 to accommodate the SFMTA's growing bus fleet and support the transition to a Battery-Electric Bus (BEB) fleet.

3. Generate value from the HCC to offset a part of the costs of the Infrastructure Facility.

4. Allocate design, construction, financing, maintenance, and real estate market risks to the Principal Project Company as stated in the Risk Allocation Matrix to preserve budget and schedule certainty for the Project.

5. Jointly develop the BYC with an HCC that includes approximately 525–575 housing units and maximizes the percentage of affordable units even up to 100% (minimum 50% affordable).
6. Deliver public benefit for the Potrero neighborhood and the community in general to the greatest extent feasible, as described in Division 8 (Public Benefit Principles) to the Technical Requirements.
7. Continue the current environmental review as bound by the existing analysis to leverage entitlement schedule savings, and proceed with Project design review in accordance with the guidelines developed in consultation with stakeholders. Continue and enhance the Project's robust community engagement to solicit ongoing input.
8. Implement a robust inclusivity program to maximize the participation of LBEs and comply with the requirements of other City programs, such as local hire in construction. Develop a Project that is committed to the principles of equitable development and does not exacerbate racial inequity.

APPENDIX E
TECHNICAL REQUIREMENTS

All initially-capitalized, undefined terms or abbreviations used in this Appendix that are not otherwise defined in the Predevelopment Agreement will have the meanings given to them in the RFP.

[To be attached from RFP]

APPENDIX F
PRELIMINARY TERM SHEET

All initially-capitalized, undefined terms or abbreviations used in this Appendix that are not otherwise defined in the Predevelopment Agreement will have the meanings given to them in the RFP.

[To be attached from Proposal]

APPENDIX G
FINANCIAL SUBMITTAL

All initially-capitalized, undefined terms or abbreviations used in this Appendix that are not otherwise defined in the Predevelopment Agreement will have the meanings given to them in the RFP.

[To be attached from Proposal]

APPENDIX H
TECHNICAL SUBMITTAL

All initially-capitalized, undefined terms or abbreviations used in this Appendix that are not otherwise defined in the Predevelopment Agreement will have the meanings given to them in the RFP.

[To be attached from Proposal]

APPENDIX I
DEVELOPMENT TEAM AND KEY PERSONNEL

[To be attached from Proposal]

APPENDIX J
GUARANTY

[EXECUTED COPIES OF GUARANTEES TO REPLACE THIS FORM PRIOR TO EXECUTION OF THE AGREEMENT]

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, 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.

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.

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 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 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, 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.

IA. [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
FEDERAL TRANSIT ADMINISTRATION REQUIREMENTS
DESIGN/BUILD CONTRACTS

I. DEFINITIONS

A. Approved Project Budget means the most recent statement, approved by the FTA, of the costs of the Project, the maximum amount of Federal assistance for which the City is currently eligible, the specific tasks (including specified contingencies) covered, and the estimated cost of each task.

B. Contractor means the individual or entity awarded a third party contract financed in whole or in part with Federal assistance originally derived from FTA.

C. Cooperative Agreement means the instrument by which FTA awards Federal assistance to a specific Recipient to support a particular Project or Program, and in which FTA takes an active role or retains substantial control.

D. Federal Transit Administration (FTA) is an operating administration of the U.S. DOT.

E. FTA Directive includes any FTA circular, notice, order or guidance providing information about FTA's programs, application processing procedures, and Project management guidelines. In addition to FTA directives, certain U.S. DOT directives also apply to the Project.

F. Grant Agreement means the instrument by which FTA awards Federal assistance to a specific Recipient to support a particular Project, and in which FTA does not take an active role or retain substantial control, in accordance with 31 U.S.C. § 6304.

G. Government means the United States of America and any executive department or agency thereof.

H. Project means the task or set of tasks listed in the Approved Project Budget, and any modifications stated in the Conditions to the Grant Agreement or Cooperative Agreement applicable to the Project. In the case of the formula assistance program for urbanized areas, for elderly and persons with disabilities, and non-urbanized areas, 49 U.S.C. §§ 5307, 5310, and 5311, respectively, the term "Project" encompasses both "Program" and "each Project within the Program," as the context may require, to effectuate the requirements of the Grant Agreement or Cooperative Agreement.

I. Recipient means any entity that receives Federal assistance directly from FTA to accomplish the Project. The term "Recipient" includes each FTA "Grantee" as well as each FTA Recipient of a Cooperative Agreement. For the purpose of this Agreement, Recipient is the City.

J. Secretary means the U.S. DOT Secretary, including his or her duly authorized designee.

K. Third Party Contract means a contract or purchase order awarded by the Recipient to a vendor or contractor, financed in whole or in part with Federal assistance awarded by FTA.

L. Third Party Subcontract means a subcontract at any tier entered into by Contractor or third party subcontractor, financed in whole or in part with Federal assistance originally derived from FTA.

M. U.S. DOT is the acronym for the U.S. Department of Transportation, including its operating administrations.

II. FLY AMERICA

The Contractor agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provide

that recipients and subrecipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

III. BUY AMERICA

The Contractor agrees to comply with 49 U.S.C. 5323(j) and 49 CFR Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 CFR 661.7, and include microcomputer equipment, software, and small purchases (\$150,000 or less) made with capital, operating, or planning funds. Contractor agrees to be solely responsible for all costs relating to compliance with the Buy America requirements. Failure to comply with these requirements constitutes a material breach of this contract. See 49 CFR § 661.17. Contractors who intentionally or wilfully fail to comply with the Buy America requirements may also be subject to debarment or suspension proceedings. 49 CFR §§ 661.18, 661.19.

IV. CARGO PREFERENCE REQUIREMENTS - Use of United States-Flag Vessels

The Contractor agrees: (a) to use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels; (b) to furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of leading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described above to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA recipient (through the contractor in the case of a subcontractor's bill-of-lading.); and (c) to include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

V. Seismic Safety Requirements

The Contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 CFR Part 41 and Contractor will certify to compliance to the extent required by the regulation. The Contractor also agrees to ensure that all work performed under this contract, including work performed by a subcontractor, is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the project.

VI. ENERGY CONSERVATION REQUIREMENTS

The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in any state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

VII. ACCESS TO RECORDS AND REPORTS

A. The Contractor agrees to provide the City and County of San Francisco, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C.F.R. 633.17, to provide the FTA Administrator or his or her authorized representatives, including any PMO Contractor, access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving Federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.

B. In all contracts between the City and County of San Francisco and the Contractor for a capital project or improvement (defined at 49 U.S.C. 5302(a)1) entered into through other than competitive bidding, the Contractor shall make available records related to the contract to the Purchaser, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.

C. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

D. The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the City and County of San Francisco, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. 2 CFR § 200.333.

VIII. CLEAN AIR REQUIREMENTS (Applicable to all contracts exceeding \$100,000, including indefinite quantities where the amount is expected to exceed \$100,000 in any year)

A. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The Contractor agrees to report each violation to the City and County of San Francisco and understands and agrees that the City and County of San Francisco will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

B. The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

IX. CLEAN WATER REQUIREMENTS (Applicable to contracts that exceed \$100,000)

A. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The Contractor agrees to report each violation to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

B. The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

X. RECYCLED PRODUCTS

The Contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

XI. DAVIS-BACON AND COPELAND ANTI-KICKBACK ACTS

For all prime construction, alteration or repair contracts in excess of \$2,000 awarded by FTA, the Contractor shall comply with the Davis-Bacon Act and the Copeland "Anti-Kickback" Act. Under 49 U.S.C. § 5333(a), prevailing wage protections apply to laborers and mechanics employed on FTA assisted construction, alteration, or repair projects. The Contractor will comply with the Davis-Bacon Act, 40 U.S.C. §§ 3141-3144, and 3146-3148 as supplemented by DOL regulations at 29 C.F.R. part 5, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction." In accordance with the statute, the Contractor shall pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, the Contractor agrees to pay wages not less than once a week. The Contractor shall also comply with the Copeland "Anti-Kickback" Act (40 U.S.C. § 3145), as supplemented by DOL regulations at 29 C.F.R. part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States." The Contractor is prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled.

XII. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT (applies to any construction contract over \$100,000)

A. For all contracts in excess of \$100,000 that involve the employment of mechanics or laborers, the Contractor shall comply with the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 3701-3708), as supplemented by the DOL regulations at 29 C.F.R. part 5. Under 40 U.S.C. § 3702 of the Act, the Contractor shall compute the wages of every mechanic and laborer, including watchmen and guards, on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchase of supplies or materials or articles ordinarily available on the open market, or to contracts for transportation or transmission of intelligence.

B. In the event of any violation of the clause set forth herein, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, the Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of this clause in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by this clause.

C. The FTA shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same prime Contractor, or any federally assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in this

section.

XIII. NO GOVERNMENT OBLIGATION TO THIRD PARTIES

A. The City and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the City, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

B. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

XIV. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS

A. The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §§ 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA-assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

B. The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

C. The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

XV. CIVIL RIGHTS REQUIREMENTS

A. Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 41 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

B. Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:

1. Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of

U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project.

2. During the performance of this contract the Contractor agrees as follows:

a. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

b. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.

c. The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

d. The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, as amended, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

e. In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, as amended, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, as amended, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

f. The Contractor will include the provisions of subsections 1 and 2 in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, as amended, so that such provisions will be binding upon each Subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a Subcontractor or vendor as a result of such direction by the administering agency, the Contractor may request the City and the United States to enter into such litigation to

protect the interests of the City and the United States.

3. Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

4. Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

C. Equal Opportunity Clauses

1. As used in these specifications:

a. "Covered area" means the geographical area described in the solicitation from which this contract resulted;

b. "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;

c. "Employer identification number" means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941.

d. "Minority" includes:

i. Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);

ii. Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);

iii. Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and

iv. American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

2. Whenever the Contractor, or any Subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.

3. If the Contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor or Subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors or Subcontractors toward a goal in an approved Plan does not excuse any covered Contractor's or Subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.

4. The Contractor shall implement the specific affirmative action standards provided in paragraphs 7.a through p of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered Construction contractors performing construction work in geographical areas where they do not have a Federal or federally assisted construction contract shall apply the minority and female goals established for the geographical area where the work is being performed. Goals are published periodically in the Federal Register in notice form, and such notices may be obtained from any Office of Federal Contract Compliance Programs office or from Federal procurement contracting officers. The Contractor is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.

5. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women, shall excuse the Contractor's obligations under these specifications, Executive Order 11246, as amended, or the regulations promulgated pursuant thereto.

6. In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.

7. The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:

a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.

b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.

c. Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefor, along with whatever additional actions the Contractor may have taken.

d. Provide immediate written notification to the Director when the union or unions with

which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.

e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under 7.b above.

f. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.

g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions, including specific review of these items with onsite supervisory personnel such as Superintendents, General Foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

h. Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other Contractors and Subcontractors with whom the Contractor does or anticipates doing business.

i. Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a Contractor's work force.

k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.

l. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.

m. Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.

n. Ensure that all facilities and company activities are non-segregated, except that separate

or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.

p. Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.

8. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (7.a through p). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the Contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under 7.a through p of these Specifications provided that the Contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.

9. A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).

10. The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.

11. The Contractor shall not enter into any Subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.

12. The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.

13. The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.

14. The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade,

union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, Contractors shall not be required to maintain separate records.

15. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

D. Veterans Hiring Preference

1. To the extent practicable, Contractor shall give a hiring preference to veterans (as defined in 5 U.S.C. § 2108) who have the requisite skills and abilities to perform the construction work required under the Contract. This paragraph shall not be understood, construed or enforced in any manner that would require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee.

2. Contractor shall include this provision in any Third Party Subcontract for the Project.

E. DBE/SBE Assurances. Pursuant to 49 C.F.R. Section 26.13, the Contractor is required to make the following assurance in its agreement with SFMTA and to include this assurance in any agreements it makes with subcontractors in the performance of this contract:

The Contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 C.F.R. Part 26 in the award and administration of DOT-assisted contracts. Failure by the Contractor or Subcontractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as SFMTA deems appropriate.

XVI. SUBSTANCE ABUSE

Contractor shall comply with U.S. DOT regulations, "Drug Free Workplace Requirements (Grants)," 49 C.F.R. Part 29, Subpart F, and other applicable U.S.DOT and FTA regulations and guidance pertaining to substance abuse (drugs and alcohol) that may be promulgated.

XVII. BONDING REQUIREMENTS

See Section 10.02 of the General Provisions.

XVIII. DEBARMENT AND SUSPENSION (applicable to contracts greater than or equal to \$25,000)

See Certification Regarding Debarment, Suspension, and Other Responsibility Matters, which is incorporated by reference as though fully set forth herein.

XIX. TERMINATION FOR CONVENIENCE OF CITY (required for all contracts in excess of \$10,000)

See Section 14.03 of the General Provisions.

XX. TERMINATION FOR DEFAULT (required for all contracts in excess of \$10,000)

See Section 14.01 of the General Provisions.

XXI. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

The preceding provisions include, in part, certain Standard Terms and Conditions required by

DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, are incorporated by reference. Anything to the contrary herein notwithstanding, all FTA-mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any (name of grantee) requests which would cause (name of grantee) to be in violation of the FTA terms and conditions.

XXII. NATIONAL ITS ARCHITECTURE POLICY (Applicable to contracts for ITS projects)

If providing Intelligent Transportation Systems (ITS) property or services, Contractor shall comply with the National ITS Architecture and standards to the extent required by 23 U.S.C. § 512, FTA Notice, "FTA National ITS Architecture Policy on Transit Projects," 66 FR 1455, et seq., January 8, 2001, and later published policies or implementing directives FTA may issue.

XXIII. TEXTING WHILE DRIVING; DISTRACTED DRIVING

Consistent with Executive Order 13513 "Federal Leadership on Reducing Text Messaging While Driving", Oct. 1, 2009 (available at <http://edocket.access.gpo.gov/2009/E9-24203.htm>) and DOT Order 3902.10 "Text Messaging While Driving", Dec. 30, 2009, SFMTA encourages Contractor to promote policies and initiatives for employees and other personnel that adopt and promote safety policies to decrease crashes by distracted drivers, including policies to ban text messaging while driving, and to include this provision in each third party subcontract involving the project.

XXIV. SEAT BELT USE

In compliance with Executive Order 13043 "Increasing Seat Belt Use in the United States", April 16, 1997 23 U.S.C. Section 402 note, the SFMTA encourages Contractor to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company owned, rented, or personally operated vehicles, and to include this provision in each third party subcontract involving the project.

XXV. FEDERAL CHANGES

Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between the City and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

FTA REQUIREMENTS FOR PROCUREMENT CONTRACTS

I. DEFINITIONS

A. Approved Project Budget means the most recent statement, approved by the FTA, of the costs of the Project, the maximum amount of Federal assistance for which the City is currently eligible, the specific tasks (including specified contingencies) covered, and the estimated cost of each task.

B. Contractor means the individual or entity awarded a third party contract financed in whole or in part with Federal assistance originally derived from FTA.

C. Cooperative Agreement means the instrument by which FTA awards Federal assistance to a specific Recipient to support a particular Project or Program, and in which FTA takes an active role or retains substantial control.

D. Federal Transit Administration (FTA) is an operating administration of the U.S. DOT.

E. FTA Directive includes any FTA circular, notice, order or guidance providing information about FTA's programs, application processing procedures, and Project management guidelines. In addition to FTA directives, certain U.S. DOT directives also apply to the Project.

F. Grant Agreement means the instrument by which FTA awards Federal assistance to a specific Recipient to support a particular Project, and in which FTA does not take an active role or retain substantial control, in accordance with 31 U.S.C. § 6304.

G. Government means the United States of America and any executive department or agency thereof.

H. Project means the task or set of tasks listed in the Approved Project Budget, and any modifications stated in the Conditions to the Grant Agreement or Cooperative Agreement applicable to the Project. In the case of the formula assistance program for urbanized areas, for elderly and persons with disabilities, and non-urbanized areas, 49 U.S.C. §§ 5307, 5310, and 5311, respectively, the term "Project" encompasses both "Program" and "each Project within the Program," as the context may require, to effectuate the requirements of the Grant Agreement or Cooperative Agreement.

I. Recipient means any entity that receives Federal assistance directly from FTA to accomplish the Project. The term "Recipient" includes each FTA "Grantee" as well as each FTA Recipient of a Cooperative Agreement. For the purpose of this Agreement, Recipient is the City.

J. Secretary means the U.S. DOT Secretary, including his or her duly authorized designee.

K. Third Party Contract means a contract or purchase order awarded by the Recipient to a vendor or contractor, financed in whole or in part with Federal assistance awarded by FTA.

L. Third Party Subcontract means a subcontract at any tier entered into by Contractor or third party subcontractor, financed in whole or in part with Federal assistance originally derived from FTA.

M. U.S. DOT is the acronym for the U.S. Department of Transportation, including its operating administrations.

II. FEDERAL CHANGES

Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between the City and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

III. ACCESS TO RECORDS

A. The Contractor agrees to provide the City and County of San Francisco, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts and transcriptions.

B. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

C. The Contractor agrees to maintain all books, records, accounts and reports required under this Agreement for a period of not less than three years after the date of termination or expiration of this Agreement, except in the event of litigation or settlement of claims arising from the performance of this Agreement, in which case Contractor agrees to maintain same until the City, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. See 2 CFR § 300.333.

IV. DEBARMENT AND SUSPENSION (Contracts over \$25,000)

Grantees and subgrantees must not make any award or permit any award (subgrant or contract) at any tier to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, "Debarment and Suspension." Therefore, by signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by the San Francisco Municipal Transportation Agency ("SFMTA"). If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to the SFMTA, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 2 CFR Parts 180, Subpart C and 1200, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

V. NO FEDERAL GOVERNMENT OBLIGATIONS TO CONTRACTOR

A. The City and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the City, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

B. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

VI. CIVIL RIGHTS

A. Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 41 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

B. Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:

1. Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOT) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 CFR Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

2. Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

3. Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 CFR Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

C. The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

VII. DBE/SBE ASSURANCES

Pursuant to 49 C.F.R. Section 26.13, the Contractor is required to make the following assurance in its agreement with SFMTA and to include this assurance in any agreements it makes with subcontractors in the performance of this contract:

The Contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 C.F.R. Part 26 in the award and administration of DOT-assisted contracts. Failure by the Contractor or subcontractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as SFMTA deems appropriate.

VIII. CONTRACT WORK HOURS AND SAFETY STANDARDS (*applicable to non-construction contracts in excess of \$100,000 that employ laborers or mechanics on a public work*)

A. Overtime requirements - No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

B. Violation; liability for unpaid wages; liquidated damages - In the event of any violation of the clause set forth in paragraph A of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph A of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph A of this section.

C. Withholding for unpaid wages and liquidated damages - The City and County of San Francisco shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

D. Subcontracts - The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs A through D of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs A through D of this section.

IX. ENERGY CONSERVATION REQUIREMENTS

The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

X. CLEAN WATER REQUIREMENTS (*applicable to all contracts in excess of \$100,000*)

A. The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. §§ 1251 et seq. Contractor agrees to report each violation of these requirements to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA regional office.

B. The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

XI. CLEAN AIR (*applicable to all contracts and subcontracts in excess of \$100,000, including indefinite quantities where the amount is expected to exceed \$100,000 in any year.*)

A. Contractor agrees to comply with applicable standards, orders, or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The Contractor agrees to report each violation to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

B. The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

XII. PRIVACY

If Contractor or its employees administer any system of records on behalf of the Federal Government, Contractor and its employees agree to comply with the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a (the Privacy Act). Specifically, Contractor agrees to obtain the express consent of the Federal Government before

the Contractor or its employees operate a system of records on behalf of the Government. Contractor acknowledges that the requirements of the Privacy Act, including the civil and criminal penalties for violations of the Privacy Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of this Agreement. The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

XIII. DRUG AND ALCOHOL TESTING

To the extent Contractor, its subcontractors or their employees perform a safety-sensitive function under the Agreement, Contractor agrees to comply with, and assure compliance of its subcontractors, and their employees, with 49 U.S.C. § 5331, and FTA regulations, "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations," 49 CFR Part 655.

XIV. TERMINATION FOR CONVENIENCE OF CITY (required for all contracts in excess of \$10,000)

See Agreement Terms and Conditions.

XV. TERMINATION FOR DEFAULT (required for all contracts in excess of \$10,000)

See Agreement Terms and Conditions.

XVI. CARGO PREFERENCE - USE OF UNITED STATES FLAG VESSELS

The Contractor agrees: (a) to use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying Agreement to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels; (b) to furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of leading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described above to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA recipient (through the Contractor in the case of a subcontractor's bill-of-lading.); and (c) to include these requirements in all subcontracts issued pursuant to this Agreement when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

XVII. RECYCLED PRODUCTS

The Contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including, but not limited to, the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

XVIII. BUS TESTING (applies to contracts for rolling stock)

To the extent applicable, the Contractor (or Manufacturer) agrees to comply with the requirements of 49 U.S.C. § 5323(c) and FTA implementing regulations at 49 CFR Part 665, and shall perform the following:

A. A manufacturer of a new bus model or a bus produced with a major change in components or configuration shall provide a copy of the final test report to the Recipient at a point in the procurement process specified by the Recipient which will be prior to the Recipient's final acceptance of the first vehicle.

B. A manufacturer who releases a report under paragraph 1 above shall provide notice to the operator of the testing facility that the report is available to the public.

C. If the manufacturer represents that the vehicle was previously tested, the vehicle being sold should have the identical configuration and major components as the vehicle in the test report, which must be provided to the Recipient prior to Recipient's final acceptance of the first vehicle. If the configuration or components are not identical, the manufacturer shall provide a description of the change and the manufacturer's basis for concluding that it is not a major change requiring additional testing.

D. If the manufacturer represents that the vehicle is "grandfathered" (has been used in mass transit service in the United States before October 1, 1988, and is currently being produced without a major change in configuration or components), the manufacturer shall provide the name and address of the recipient of such a vehicle and the details of that vehicle's configuration and major components.

XIX. PRE-AWARD AND POST-DELIVERY AUDIT REQUIREMENTS (*applies to contracts for rolling stock*)

To the extent applicable, Contractor agrees to comply with the requirements of 49 U.S.C. § 5323(l) and FTA implementing regulations at 49 CFR Part 663, and to submit the following certifications:

A. Buy America Requirements: The Contractor shall complete and submit a declaration certifying either compliance or noncompliance with Buy America. If the Bidder/Offeror certifies compliance with Buy America, it shall submit documentation which lists (1) component and subcomponent parts of the rolling stock to be purchased identified by manufacturer of the parts, their country of origin and costs; and (2) the location of the final assembly point for the rolling stock, including a description of the activities that are planned to take place and actually took place at the final assembly point and the cost of final assembly.

B. Solicitation Specification Requirements: The Contractor shall submit evidence that it will be capable of meeting the bid specifications and provide information and access to Recipient and its agents to enable them to conduct post-award and post-delivery audits.

C. Federal Motor Vehicle Safety Standards (FMVSS): The Contractor shall submit (1) manufacturer's FMVSS self-certification sticker information that the vehicle complies with relevant FMVSS or (2) manufacturer's certified statement that the contracted buses will not be subject to FMVSS regulations.

XX. FALSE OR FRAUDULENT STATEMENTS AND CLAIMS

A. The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §§ 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 CFR Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying Agreement, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA-assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

B. The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

C. The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

XXI. BUY AMERICA

The Contractor agrees to comply with 49 U.S.C. 5323(j) and 49 CFR Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded Projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 CFR 661.7, and include microcomputer equipment, software, and small purchases (\$150,000 or less) made with capital, operating, or planning funds. Contractor agrees to be solely responsible for all costs relating to compliance with the Buy America requirements. Failure to comply with these requirements constitutes a material breach of this contract. See 49 CFR § 661.17. Contractors who intentionally or wilfully fail to comply with the Buy America requirements may also be subject to debarment or suspension proceedings. 49 CFR §§ 661.18, 661.19.

XXII. FLY AMERICA

The Contractor agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provide that recipients and subrecipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

XXIII. NATIONAL ITS ARCHITECTURE POLICY (*Applicable to contracts for ITS projects*)

If providing Intelligent Transportation Systems (ITS) property or services, Contractor shall comply with the National ITS Architecture and standards to the extent required by 23 U.S.C. § 512, FTA Notice, "FTA National ITS Architecture Policy on Transit Projects," 66 FR 1455, et seq., January 8, 2001, and later published policies or implementing directives FTA may issue.

XXIV. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this

Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any (name of grantee) requests which would cause (name of grantee) to be in violation of the FTA terms and conditions.

XXV. TEXTING WHILE DRIVING; DISTRACTED DRIVING

Consistent with Executive Order 13513 “Federal Leadership on Reducing Text Messaging While Driving”, Oct. 1, 2009 (available at <http://edocket.access.gpo.gov/2009/E9-24203.htm>) and DOT Order 3902.10 “Text Messaging While Driving”, Dec. 30, 2009, SFMTA encourages Contractor to promote policies and initiatives for employees and other personnel that adopt and promote safety policies to decrease crashes by distracted drivers, including policies to ban text messaging while driving, and to include this provision in each third party subcontract involving the project.

XXVI. SEAT BELT USE

In compliance with Executive Order 13043 “Increasing Seat Belt Use in the United States”, April 16, 1997 23 U.S.C. Section 402 note, the SFMTA encourages Contractor to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company owned, rented, or personally operated vehicles, and to include this provision in each third party subcontract involving the project.

APPENDIX L
FORM OF ACCESS AGREEMENT

PERMIT TO ENTER AND INVESTIGATE PROPERTY

This Permit to Enter and Investigate Property (this "Permit") is entered into this ____ day of _____, 20__, 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 _____ ("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), which entry and investigation shall be further subject to coordination with City's staff at the Property pursuant to Section 6. 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. 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), 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 below 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) 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) and 7(f), or to provide evidence of the required insurance coverage described in Section 14 below, 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 2(f) 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 2(e) 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)) 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). 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)), 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 above, 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, 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 10 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 10 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 14 (Insurance) 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) below.
- (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 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 14 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: Licinia Iberri
Telephone: (415) 646-2715
email: Licinia.iberri@sfmta.com

With a copy to: San Francisco Municipal Transportation Agency
Facilities & Real Property Management
1 S. Van Ness Ave, 7th Floor
Attn: Kerstin Magary
Telephone: (415) 608-3004
email: Kerstin.magary@sfmta.com

To Permittee: _____

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) above. 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.

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. 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 REQUIREMENTS FOR TRANSACTION DOCUMENTS

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 25 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.

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 5.1 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 5.1 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

- 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 dated June 30, 2021
- 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 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