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OF THE CITY AND COUNTY OF SAN FRANCISCO

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

AND WHEN RECORDED MAIL TO:

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

DEVELOPMENT AGREEMENT

BY AND BETWEEN

THE CITY AND COUNTY OF SAN FRANCISCO

AND 5M PROJECT, LLC

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- C Youth Development Program
- D Community Benefits Schedule
- E Affordable Housing Program
- F Workforce Agreement
- G Transportation Program
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- I List of Approvals
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- K Form of Assignment and Assumption Agreement
- L Notice of Completion and Termination

DEVELOPMENT AGREEMENT

BY AND BETWEEN

THE CITY AND COUNTY OF SAN FRANCISCO

AND 5M, LLC

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

RECITALS

This Agreement is made with reference to the following facts:

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

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

to 807,600, gross square feet of office uses (including ground floor uses), up to 821,300 gross square feet of residential uses (including both rental and ownership units), approximately 68,700 gross square feet of other active ground floor uses, and collectively up to 1,697,600 gross square feet of new construction and renovated existing building space, approximately 463 associated parking spaces in three subterranean levels, approximately 429 Class 1 bicycle parking spaces, approximately 66 Class 2 bicycle parking spaces, and approximately 59,500 square feet of public and private open space, all as more particularly described on Exhibit B (the "**Project**").

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

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

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

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

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

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

susceptible to feasible mitigation. The information in the FEIR and the CEQA Findings were considered by the City in connection with approval of this Agreement.

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

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

J. On _____, 2015, the Board adopted Ordinance Nos. _____, amending the Planning Code, Zoning Map, and General Plan, and adopted Ordinance No. _____, approving this Agreement (File No. _____) and authorizing the Planning Director to execute this Agreement on behalf of the City (the "**Enacting Ordinance**"). The Enacting Ordinance took effect on _____, 2015.

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

AGREEMENT

1. DEFINITIONS

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

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

1.2 **"5M SUD"** means Planning Code Section 249.____ as adopted by the Board in Ordinance No. ____.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1.54 Intentionally left blank.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1.69 Intentionally left blank.

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

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

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

1.73 "**Subdivision Code**" means the San Francisco Subdivision Code.

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

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

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

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

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

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

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

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

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

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

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

2. EFFECTIVE DATE; TERM

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

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

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

3. GENERAL RIGHTS AND OBLIGATIONS

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

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

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

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

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

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

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

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

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

- (a) the 5M Community Benefit Fee;
- (b) the Housing Program benefits as further described in Exhibit E;
- (c) the Workforce Agreement benefits including the Workforce Jobs Readiness Training as further described in Exhibit F;
- (d) the Transportation Program benefits as further described in Exhibit G;
- (e) the transfer of the Dempster Building to CAST, as described in Section 3.2.2 and in Section 7.8;
- (f) the Arts Program benefits as described in Section 5.4.2.1 and Exhibit H;
- (g) the Youth Development Program benefits, as described in Exhibit C; and
- (h) a One Million Dollar (\$1,000,000) contribution for capital improvements to and associated technical studies for the San Francisco Old Mint building at the time and as provided in Exhibit D.

Developer shall pay the 5M Community Benefits Fee or complete each of the Community Benefits on or before the dates provided in this Agreement (including the Community Benefits Schedule attached hereto as Exhibit D) and the Approvals. Any payments

or property received by the City as part of the Community Benefits shall be used by the City as described in this Agreement. Upon Developer's request, the City shall provide to Developer evidence of the use of the funds by the City consistent with the requirements of this Agreement.

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

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

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

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

4.3.1 Compliance with CEQA Mitigation Measures. Developer shall comply with all Mitigation Measures imposed as applicable to each Project component, except for any Mitigation Measures that are expressly identified as the responsibility of a different party or entity. Without limiting the foregoing, Developer shall be responsible for the completion of all Mitigation Measures identified as the responsibility of the "owner" or the "project sponsor".

The Parties expressly acknowledge that the FEIR and the associated MMRP are intended to be used in connection with each of the Approvals and any Subsequent Approvals to the extent appropriate and permitted under applicable Law. Nothing in this Agreement shall limit the ability of the City to impose conditions on any new, discretionary permit resulting from Material Changes as such conditions are determined by the City to be necessary to mitigate adverse environmental impacts identified through the CEQA process and associated with the Material Changes or otherwise to address significant environmental impacts as defined by CEQA created by an approval or permit; provided, however, any such conditions must be in accordance with applicable Law.

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

4.5 City Cost Recovery

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

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

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

4.5.4 OEWD shall provide Developer on a quarterly basis (or such alternative period as agreed to by the Parties) a reasonably detailed statement showing costs incurred by OEWD, the City Agencies and the City Attorney's Office, including the hourly rates for each City staff member at that time, the total number of hours spent by each City staff member during the invoice period, any additional costs incurred by the City Agencies and a brief non-confidential description of the work completed (provided, for the City Attorney's Office, the billing statement will be reviewed and approved by OEWD but the cover invoice forwarded to Developer will not include a description of the work). OEWD will use reasonable efforts to provide an accounting of time and costs from the City Attorney's Office and each City Agency in each invoice; provided, however, if OEWD is unable to provide an accounting from one or more of such parties OEWD may send an invoice to Developer that does not include the charges of such party or parties without losing any right to include such charges in a future or supplemental invoice. Developer's obligation to pay the City Costs shall survive the termination of this Agreement. Developer shall have no obligation to reimburse the City for any City Cost that is

not invoiced to Developer within eighteen (18) months from the date the City Cost was incurred. The City will maintain records, in reasonable detail, with respect to any City Costs and upon written request of Developer, and to the extent not confidential, shall make such records available for inspection by Developer.

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

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

4.7 Indemnification of City. Developer shall indemnify, reimburse, and hold harmless the City and its officers, agents and employees (the "**City Parties**") from and, if requested, shall defend them against any and all loss, cost, damage, injury, liability, and claims

("Losses") arising or resulting directly or indirectly from (i) any third party claim arising from a default by Developer under this Agreement, (ii) Developer's failure to comply with any Approval, Subsequent Approval or Non-City Approval, (iii) the failure of any improvements constructed pursuant to the Approvals or Subsequent Approvals to comply with any Federal or State Laws, the Existing Standards or any permitted Future Changes to Existing Standards, (iv) any accident, bodily injury, death, personal injury or loss of or damage to property occurring on a Project Site (or off-site, with regard to the Public Improvements) in connection with the construction by Developer or its agents or contractors of any improvements pursuant to the Approvals, Subsequent Approvals or this Agreement, (v) a Third-Party Challenge instituted against the City or any of the City Parties, (vi) any dispute between Developer, its contractors or subcontractors relating to the construction of any part of the Project, and (vii) any dispute between Developer and any Transferee or any subsequent owner of any of the Project Site relating to any assignment of this Agreement or the obligations that run with the land, or any dispute between Developer and any Transferee or other person relating to which party is responsible for performing certain obligations under this Agreement, each regardless of the negligence of and regardless of whether liability without fault is imposed or sought to be imposed on the City or any of the City Parties, except to the extent that such indemnity is void or otherwise unenforceable under applicable Law, and except to the extent such Loss is the result of the negligence or willful misconduct of the City Parties. The foregoing indemnity shall include, without limitation, reasonable attorneys' fees and costs and the City's reasonable cost of investigating any claims against the City or the City Parties. All indemnifications set forth in this Agreement shall survive the expiration or termination of this Agreement, to the extent such indemnification obligation arose from an event occurring before the expiration or termination of

this Agreement. To the extent the indemnifications relate to Developer's obligations that survive the expiration or termination of this Agreement, the indemnifications shall survive for the term of the applicable obligation plus four years.

5. VESTING AND CITY OBLIGATIONS

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

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

Changes to Existing Standards as set forth in Section 5.3, and (iii) this Agreement (collectively, "**Applicable Laws**").

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

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

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

(b) limit or reduce the height or bulk of the Project, or any part thereof, or otherwise require any reduction in the height or bulk of individual proposed Buildings or other improvements that are part of the Project from that permitted under this Agreement, the Existing Standards, or the Approvals;

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

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

- (e) change or limit the Approvals or Existing Uses;
- (f) materially limit or control the rate, timing, phasing, or sequencing of the approval, development, or construction of all or any part of the Project in any manner, including the demolition of existing Buildings at the Project Site;
- (g) require the issuance of permits or approvals by the City other than those required under the Existing Standards, except as otherwise provided in Section 5.4.2;
- (h) limit or control the availability of public utilities, services or facilities or any privileges or rights to public utilities, services, or facilities for the Project as contemplated by the Approvals;
- (i) materially and adversely limit the processing or procuring of applications and approvals of Subsequent Approvals that are consistent with Approvals; or,
- (j) impose or increase any Impact Fees and Exactions, as they apply to the Project, except as permitted under Section 5.4.2 of this Agreement.

5.3.2 Developer may elect to have a Future Change to Existing Standards that conflicts with this Agreement and the Approvals applied to the Project or the Project Site by giving the City notice of its election to have a Future Change to Existing Standards applied, in which case such Future Change to Existing Standards shall be deemed to be an Existing Standard; provided, however, if the application of such Future Change to Existing Standards would be a Material Change to the City's obligations hereunder, the application of such Future Change to Existing Standards shall require the concurrence of any affected City Agencies. Nothing in this Agreement shall preclude the City from applying Future Changes to Existing Standards to the Project Site for any development not within the definition of the

"**Project**" under this Agreement. In addition, nothing in this Agreement shall preclude Developer from pursuing any challenge to the application of any Future Changes to Existing Standards to all or part of the Project Site.

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

5.3.4 Developer shall have the right, from time to time and at any time, to file subdivision map applications (including phased final map applications and development-specific condominium map or plan applications) with respect to some or all of the Project Site, to subdivide, reconfigure or merge the parcels comprising the Project Site as may be necessary or desirable in order to develop a particular part of the Project as shown generally in Exhibit B. The specific boundaries of parcels shall be set by Developer and approved by the City during the subdivision process. Nothing in this Agreement shall authorize Developer to subdivide or use any of the Project Site for purposes of sale, lease or financing in any manner that conflicts with the Subdivision Map Act or with the Subdivision Code. Nothing in this Agreement shall prevent

the City from enacting or adopting changes in the methods and procedures for processing subdivision and parcel maps so long as such changes do not conflict with the provisions of this Agreement or with the Approvals.

5.4 Fees and Exactions.

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

5.4.2 Impact Fees and Exactions. During the first ten (10) years of the Term, as extended by the Litigation Extension (if any), no Impact Fees and Exactions shall apply to the Project or components thereof except for (i) the SFPUC Capacity Charges in effect at the time of assessment and (ii) those in effect as of the Effective Date. Starting on the tenth (10th) anniversary of the Effective Date, as extended by the Litigation Extension (if any), all Impact Fees and Exactions in effect at the time of assessment shall apply to any development on the Project Site under this Agreement. For the purposes of this Section 5.4.2, any sums payable as part of the Community Benefits Fee shall not be considered Impact Fees and Exactions.

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

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

5.4.4 Recognition of Project Review Process/No Conditional Use Fee. In recognition of the extensive Design for Development and 5M SUD process, notwithstanding any other provision of Applicable Law, no Processing Fee has been charged under Planning Code Section 352 in connection with the conditional use portions of the Approvals nor shall a Processing Fee be charged or be due for any Conditional Use application filed in connection with any Subsequent Approval, modification of any Approval, or any implementation action in connection with the Project under Section 249.74(e) of the 5M SUD.

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

5.5 Limitation on City's Future Discretion. In accordance with Section 4.3, the City in granting the Approvals and, as applicable, vesting the Project through this Agreement is limiting its future discretion with respect to the Project and Subsequent Approvals to the extent that they are consistent with the Approvals and this Agreement. For elements included in a request for a Subsequent Approval that have not been reviewed or considered by the applicable City Agency previously (including but not limited to additional details or plans for a proposed building), the City Agency shall exercise its discretion consistent with the provisions of the 5M SUD and the other Approvals and otherwise in accordance with customary practice. In no event shall a City Agency deny issuance of a Subsequent Approval based upon items that are consistent with the Approvals and this Agreement. Consequently, the City shall not use its discretionary authority to change the policy decisions reflected by the Approvals and this Agreement or otherwise to prevent or to delay development of the Project as contemplated in the Approvals and this Agreement. Nothing in the foregoing shall impact or limit the City's discretion with respect to: (i) proposed Subsequent Approvals that seek a Material Change to the Approvals, or (ii) Board of Supervisor approvals of subdivision maps, as required by Law, not contemplated by the Approvals.

5.6 Changes in Federal or State Laws.

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

5.6.2 Changes in Federal or State Laws. If Federal or State Laws issued, enacted, promulgated, adopted, passed, approved, made, implemented, amended, or interpreted after the Effective Date have gone into effect and (i) preclude or prevent compliance with one or more provisions of the Approvals or this Agreement, or (ii) materially and adversely affect Developer's or the City's rights, benefits or obligations, such provisions of this Agreement shall be modified or suspended as may be necessary to comply with such Federal or State Law. In

such event, this Agreement shall be modified only to the extent necessary or required to comply with such Law, subject to the provisions of Section 5.6.4, as applicable.

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

5.6.4 Termination of Agreement. If any of the modifications, amendments or additions described in Section 5.3.3 or this Section 5.6 or any changes in Federal or State Laws described above would materially and adversely affect the construction, development, use, operation or occupancy of the Project as currently contemplated by the Approvals, or any material portion thereof, such that the Project becomes economically infeasible (a “**Law Adverse to Developer**”), then Developer shall notify the City and propose amendments or solutions that would maintain the benefit of the bargain (that is this Agreement) for both Parties. If any of the modifications, amendments or additions described in Sections 5.6.2 or 5.6.3 or any changes in Federal or State Laws described thereunder would materially and adversely affect or limit the Community Benefits (a “**Law Adverse to the City**”), then the City shall notify Developer and propose amendments or solutions that would maintain the benefit of the bargain (that is this Agreement) for both Parties. Upon receipt of a notice under this Section 5.6.4, the Parties agree to meet and confer in good faith for a period of not less

than ninety (90) days in an attempt to resolve the issue. If the Parties cannot resolve the issue in ninety (90) days or such longer period as may be agreed to by the Parties, then the Parties shall mutually select a mediator at JAMS in San Francisco for nonbinding mediation for a period of not less than thirty (30) days. If the Parties remain unable to resolve the issue following such mediation, then (i) Developer shall have the right to terminate this Agreement following a Law Adverse to Developer upon not less than thirty (30) days prior notice to the City, and (ii) the City shall have the right to terminate this Agreement following a Law Adverse to the City upon not less than thirty (30) days prior notice to Developer; provided, notwithstanding any such termination, Developer shall be required to complete the Community Benefits for development commenced in connection with a particular new Building as set forth in Section 4.1.

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

5.8 Criteria for Approving Subsequent Approvals. The City shall not disapprove applications for Subsequent Approval based upon any item or element that is consistent with this Agreement and the Approvals, and shall consider all such applications in accordance with its customary practices (subject to the requirements of this Agreement). The City may subject a Subsequent Approval to any condition that is necessary to bring the Subsequent Approval into compliance with Applicable Laws. The City shall in no event be obligated to approve an application for a Subsequent Approval that would effect a Material

Change. If the City denies any application for a Subsequent Approval that implements a Project as contemplated by the Approvals, the City must specify in writing the reasons for such denial and shall suggest modifications required for approval of the application. Any such specified modifications shall be consistent with Applicable Laws and City staff shall approve the application if it is subsequently resubmitted for City review and corrects or mitigates, to the City's reasonable satisfaction, the stated reasons for the earlier denial in a manner that is consistent and compliant with Applicable Laws and does not include new or additional information or materials that give the City a reason to object to the application under the standards set forth in this Agreement. The City agrees to rely on the FEIR, to the greatest extent possible, as more particularly described in Section 4.3. With respect to any Subsequent Approval, the City agrees to rely on the General Plan Consistency Findings to the greatest extent possible in accordance with applicable Laws; provided, however, that nothing shall prevent or limit the discretion of the City in connection with any Subsequent Approvals that, as a result of amendments to the Approvals, require new or revised General Plan consistency findings.

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

recent annual review performed pursuant to Section 8. The Planning Director, acting on behalf of the City, shall execute and return such certificate within forty-five (45) days following receipt of the request.

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

5.11 Costa-Hawkins Rental Housing Act.

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

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

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

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

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

6. NO DEVELOPMENT OBLIGATION

There is no requirement under this Agreement that Developer initiate or complete development of the Project, or any portion thereof. There is also no requirement that development be initiated or completed within any period of time or in any particular order, subject to the requirement to complete applicable Community Benefits with each portion of the Project started by Developer as set forth in Section 4.2. The development of the Project is subject to numerous factors that are not within the control of Developer or the City, such as availability of financing, interest rates, access to capital, and similar factors. Except as expressly required by this Agreement, the City acknowledges that Developer may develop the Project in such order and at such rate and times as Developer deems appropriate within the exercise of its

sole and subjective business judgment. In *Pardee Construction Co. v. City of Camarillo*, 37 Cal.3d 465 (1984), the California Supreme Court ruled that the failure of the parties therein to provide for the timing of development resulted in a later adopted initiative restricting the timing of development and controlling the parties' agreement. It is the intent of the Parties to avoid such a result by acknowledging and providing for the timing of development of the Project in the manner set forth herein. The City acknowledges that such a right is consistent with the intent, purpose and understanding of the Parties to this Agreement, and that without such a right, Developer's development of the Project would be subject to the uncertainties sought to be avoided by the Development Agreement Statute, Chapter 56 and this Agreement.

7. MUTUAL OBLIGATIONS

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

7.2 General Cooperation Agreement to Cooperate. The Parties agree to cooperate with one another to expeditiously implement the Project in accordance with the Approvals, any Subsequent Approvals and this Agreement, and to undertake and complete all actions or proceedings reasonably necessary or appropriate to ensure that the objectives of this

Agreement, the Approvals and any Subsequent Approvals are implemented. Except for ordinary administrative costs of the City, nothing in this Agreement obligates the City to spend any sums of money or incur any costs other than City Costs or costs that Developer must reimburse through the payment of permitted Processing Fees. The Parties agree that the Planning Department (or such other department to whom the obligation is delegated by the Director of the Planning Department after notice to Developer) will act as the City's lead agency to facilitate coordinated City review of applications for the Project. As such, Planning Department (or such other department) staff will: (i) work with Developer to ensure that all such applications to the City are technically sufficient and constitute complete applications and (ii) interface with City staff responsible for reviewing any application under this Agreement to facilitate an orderly, efficient approval process that avoids delay and redundancies.

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

all submissions and applications by Developer on all permits, approvals, construction or occupancy permits for the Project subject to the acceptance of the same as complete.

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

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

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

(c) The City shall have no duty to cooperate with public utilities and communication service providers to the extent that the cooperation efforts requested

by Developer are materially in excess of the City's typical efforts in connection with other major development and construction projects in the City.

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

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

7.4.1 Developer shall assist and cooperate with the City at Developer's own expense in connection with any Third-Party Challenge. The City Attorney's Office may use its own legal staff or outside counsel in connection with defense of the Third-Party Challenge, at the City Attorney's sole discretion. Developer shall reimburse the City for its actual costs in defense of the action or proceeding, including but not limited to the time and expenses of the City Attorney's Office (at the non-discounted rates then charged by the City Attorney's Office)

and any consultants; provided, however, Developer shall have the right to monthly invoices for all such costs.

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

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

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

7.6 Good Faith and Fair Dealing. The Parties shall cooperate with each other and act in good faith in complying with the provisions of this Agreement and implementing the Approvals and any Subsequent Approvals. In their course of performance under this Agreement, the Parties shall cooperate and shall undertake such actions as may be reasonably necessary to implement the Project as contemplated by this Agreement, including such actions as may be necessary to satisfy or effectuate any applicable conditions precedent to the performance of the Community Benefits.

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

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

7.8 Dempster Building. Subject to Section 4.2(a), Developer shall transfer the Dempster Building in accordance with the provisions of Section 3.2.2, provided, however, if the transfer of the Dempster Building to CAST or another nonprofit is not completed before issuance of a certificate of occupancy for Building N-1 or H-1, whichever occurs first, despite

Developer's good faith efforts to do so; then, the City shall either (1) extend the period for the transfer of the Dempster Building and waive such transfer as a condition of the issuance of a certificate of occupancy for Building N-1 or H-1, as applicable, or (2) accept the transfer of the fee interest in the Dempster Building and assume the transferor's obligations under the Dempster MOU with respect thereto and the condition shall be deemed satisfied. If CAST fails to close escrow when required under the Dempster MOU for any reason other than a Developer default, the City and Developer shall promptly and in good faith meet and confer and select a substitute nonprofit organization to receive the donation of the Dempster Building and the applicable portion of the Public Art Fee to be used for renovation or operation of the Dempster Building. If the City and Developer are not able to reach agreement on a substitute nonprofit arts organization within ninety (90) days, the City shall have the right to designate a substitute nonprofit organization or to accept the donation of the Dempster Building itself upon the same basis and conditions provided in the Dempster MOU. Upon Developer's transfer to CAST or another nonprofit as set forth in this Section 7.8, or upon the City's election not to take title to the Dempster Building (which election must occur within one hundred twenty (120) days after satisfaction of all conditions to transfer and Developer's offer of the Dempster Building to the City as set forth above), Developer and the City shall have no further obligation under this Agreement for the transfer of the Dempster Building and the provisions of Section 4.1.1(e) shall be deemed satisfied.

8. PERIODIC REVIEW OF DEVELOPER'S COMPLIANCE

8.1 Annual Review. Pursuant to Section 65865.1 of the Development Agreement Statute and Section 56.17 of the Administrative Code (as of the Effective Date), at the beginning of the second week of each January following final adoption of this Agreement

and for so long as the Agreement is in effect (the "**Annual Review Date**"), the Planning Director shall commence a review to ascertain whether Developer has, in good faith, complied with the Agreement. The failure to commence such review in January shall not waive the Planning Director's right to do so later in the calendar year; provided, however, that such review shall be deferred to the following January if not commenced on or before August 1st. The Planning Director may elect to forego an annual review if no significant construction work occurred on the Project Site during that year, or if such review is otherwise not deemed necessary.

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

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

8.2.2 City Report. Within sixty (60) days after Developer submits such letter, the Planning Director shall review the information submitted by Developer and all other available evidence regarding Developer's compliance with this Agreement, and shall consult with applicable City Agencies as appropriate. All such available evidence including final staff reports shall, upon receipt by the City, be made available as soon as possible to Developer. The Planning Director shall notify Developer in writing whether Developer has complied with the

terms of this Agreement (the “**City Report**”), and post the City Report on the Planning Department’s website. If the Planning Director finds Developer not in compliance with this Agreement, then the City may pursue available rights and remedies in accordance with this Agreement and Chapter 56. The City's failure to initiate or to timely complete the annual review shall not be a default and shall not be deemed to be a waiver of the right to do so at a later date. All costs incurred by the City under this Section shall be included in the City Costs.

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

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

9. ENFORCEMENT OF AGREEMENT; DEFAULT; REMEDIES

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

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

9.3 Default. The following shall constitute a "Default" under this Agreement: (i) the failure to make any payment within sixty (60) days following notice that such payment was not made when due and demand for compliance; and (ii) the failure to perform or fulfill any other material term, provision, obligation, or covenant of this Agreement and the continuation of such failure for a period of sixty (60) days following notice and demand for compliance. Notwithstanding the foregoing, if a failure can be cured but the cure cannot reasonably be

completed within sixty (60) days, then it shall not be considered a Default if a cure is commenced within said 60-day period and diligently prosecuted to completion thereafter. Any notice of default given by a Party shall specify the nature of the alleged failure and, where appropriate, the manner in which said failure satisfactorily may be cured (if at all). Notwithstanding any other provision in this Agreement to the contrary, if Developer conveys or transfers some but not all of the Project and there is more than one Party that assumes obligations of "Developer" under this Agreement, there shall be no cross-default between the separate Parties that assumed Developer obligations. Accordingly, if a Transferee Defaults, it shall not be a Default by any other Transferee or Party that owns a different portion of the Project Site.

9.4 Remedies.

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

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

9.4.3 Limited Damages. The Parties have determined that except as set forth in this Section 9.4.3, (i) monetary damages are generally inappropriate, (ii) it would be extremely difficult and impractical to fix or determine the actual damages suffered by a Party as

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

9.4.4 City Processing/Certificates of Occupancy. The City shall not be required to process any requests for approval or take other actions under this Agreement during any period in which payments from Developer are past due. The City shall have the right to withhold a final certificate of occupancy for a Building until all of the Community Benefits tied to that Building have been completed. Subject to the conditions as to offsite obligations in Exhibit G, for a Building to be deemed completed Developer shall have completed all of the streetscape and open space improvements described in Exhibit B for that Building; provided, if the City issues a final certificate of occupancy before such items are completed, then Developer shall promptly complete such items following issuance.

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

injunctive relief or other expedited judicial and/or administrative relief to prevent irreparable harm.

9.6 Attorneys' Fees. Should legal action be brought by either Party against the other for a Default under this Agreement or to enforce any provision herein, the prevailing Party in such action shall be entitled to recover its reasonable attorneys' fees and costs. For purposes of this Agreement, "**reasonable attorneys' fees and costs**" means the reasonable fees and expenses of counsel to the Party, which may include printing, duplicating and other expenses, air freight charges, hiring of experts and consultants, and fees billed for law clerks, paralegals, librarians and others not admitted to the bar but performing services under the supervision of an attorney. The term "**reasonable attorneys' fees and costs**" shall also include, without limitation, all such reasonable fees and expenses incurred with respect to appeals, mediation, arbitrations, and bankruptcy proceedings, and whether or not any action is brought with respect to the matter for which such fees and costs were incurred. For the purposes of this Agreement, the reasonable fees of attorneys of City Attorney's Office shall be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of the Law for which the City Attorney's Office's services were rendered who practice in the City of San Francisco in law firms with approximately the same number of attorneys as employed by the Office of the City Attorney.

10. FINANCING; RIGHTS OF MORTGAGEES.

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

10.2 Mortgagee Not Obligated to Construct. Notwithstanding any of the provisions of this Agreement, including, but not limited to, those which are or are intended to be covenants running with the land, a Mortgagee, including any Mortgagee who obtains title to the Project Site or any part thereof as a result of foreclosure proceedings, or conveyance or other action in lieu thereof, or other remedial action, shall in no way be obligated by the provisions of this Agreement to construct or complete the Project or any part thereof or to guarantee such construction or completion. The foregoing provisions shall not be applicable to any party who, after a foreclosure, conveyance or other action in lieu thereof, or other remedial action, obtains title to some or all of the Project Site from or through the Mortgagee, or any other purchaser at a foreclosure sale other than the Mortgagee itself, on which certain Community Benefits must be completed as set forth in Section 4.2. Nothing in this Section or any other Section or provision of this Agreement shall be deemed or construed to permit or authorize any Mortgagee or any other person or entity to devote the Project Site or any part thereof to any uses other than uses consistent with this Agreement and the Approvals, and nothing in this Section shall be deemed to give any Mortgagee or any other person or entity the right to construct any improvements under this Agreement (other than as needed to conserve or protect improvements or construction already made) unless or until such person or entity assumes Developer's obligations under this Agreement.

10.3 Copy of Notice of Default and Notice of Failure to Cure to Mortgagee. Whenever the City shall deliver any notice or demand to the Developer with respect to any breach or default by the Developer in its obligations under this Agreement, the City shall at the same time forward a copy of such notice or demand to each Mortgagee having a Mortgage on the real property which is the subject of the breach or default who has previously made a written

request to the City therefor, at the last address of such Mortgagee specified by such Mortgagee in such notice. In addition, if such breach or default remains uncured for the period permitted with respect thereto under this Agreement, the City shall deliver a notice of such failure to cure such breach or default to each such Mortgagee at such applicable address. A delay or failure by the City to provide such notice required by this Section shall extend for the number of days until notice is given, the time allowed to the Mortgagee for cure. In accordance with Section 2924 of the California Civil Code, the City requests that a copy of any notice of default and a copy of any notice of sale under any Mortgage be mailed to the City at the address for notices under this Agreement.

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

notice by the City. Any such Mortgagee or Transferee of a Mortgagee who shall properly complete the improvements relating to the Project Site or applicable part thereof shall be entitled, upon written request made to the Agency, to a Certificate of Completion.

10.5 Mortgagee's Obligations with Respect to the Property. Notwithstanding anything to the contrary in this Agreement, no Mortgagee shall have any obligations or other liabilities under this Agreement unless and until it acquires title by any method to all or some portion of the Project Site (referred to hereafter as "**Foreclosed Property**"). A Mortgagee that acquires title by foreclosure to any Foreclosed Property shall take title subject to all of the terms and conditions of this Agreement, to the extent applicable to the Foreclosed Property, including any claims for payment or performance of obligations which are due as a condition to enjoying the benefits of this Agreement. Upon the occurrence and continuation of an uncured default by a Mortgagee or Transferee in the performance of any of the obligations to be performed by such Mortgagee or Transferee pursuant to this Agreement, the City shall be afforded all its remedies for such uncured default as provided in this Agreement.

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

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

11. AMENDMENT; TERMINATION; EXTENSION OF TERM

11.1 Amendment or Termination. This Agreement may only be amended with the mutual written consent of the City and Developer, provided following a Transfer, the City and Developer or any Transferee may amend this Agreement as it affects Developer or the Transferee and the portion of the Project Site owned by Developer or the Transferee without affecting other portions of the Project Site or other Transferees. Other than upon the expiration of the Term and except as provided in Sections 2.2, 5.6.4, 7.4.3, 9.4.2 and 11.2, this Agreement may only be terminated with the mutual written consent of the Parties. Any amendment to this Agreement that does not constitute a Material Change may be agreed to by the Planning Director (and, to the extent it affects any rights or obligations of a City department, with the approval of that City Department). Any amendment that is a Material Change will require the approval of the Planning Director, the Planning Commission and the Board of Supervisors (and, to the extent it affects any rights or obligations of a City department, after consultation with that City department).

11.2 Early Termination Rights. Developer shall, upon thirty (30) days prior notice to the City, have the right, in its sole and absolute discretion, to terminate this Agreement in its entirety at any time if Developer does not Commence Construction on any part of the Project Site by the date which is five (5) years following the Effective Date. Thereafter, the City shall, upon sixty (60) days prior notice to Developer, have the right, in its sole and absolute discretion, to terminate this Agreement if the Developer has not Commenced Construction; provided Developer can prevent any such termination by the City by providing to the City notice, within the above sixty (60) day period, of Developer's intent to start construction and the Developer thereafter Commences Construction within one hundred twenty (120) days following

delivery of Developer's notice to the City, or, if unable to actually Commence Construction within said time period, demonstrates reasonable, good faith and continuing efforts to Commence Construction, such as by pursuing all necessary Subsequent Approvals, and thereafter promptly Commences Construction upon receipt of the Subsequent Approvals. Any termination under this Section 11.2 shall result in the termination of the entirety of this Agreement affecting all of the Project Site, and any Transferee shall assume the risk of a termination of this Agreement by Developer or the City under this Section 11.2.

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

11.4 Amendment Exemptions. No issuance of a Subsequent Approval, or amendment of an Approval or Subsequent Approval, shall by itself require an amendment to this Agreement. And no change to the Project that is permitted under the 5M SUD shall by itself require an amendment to this Agreement. Upon issuance or approval, any such matter shall be deemed to be incorporated automatically into the Project and vested under this Agreement

(subject to any conditions set forth in the amendment or Subsequent Approval). Notwithstanding the foregoing, if there is any direct conflict between the terms of this Agreement and a Subsequent Approval, or between this Agreement and any amendment to an Approval or Subsequent Approval, then the Parties shall concurrently amend this Agreement (subject to all necessary approvals in accordance with this Agreement) in order to ensure the terms of this Agreement are consistent with the proposed Subsequent Approval or the proposed amendment to an Approval or Subsequent Approval. The Planning Department and the Planning Commission, as applicable, shall have the right to approve changes to the Project as described in the Exhibits in keeping with its customary practices and the 5M SUD, and any such changes shall not be deemed to conflict with or require an amendment to this Agreement or the Approvals so long as they do not constitute a Material Change. If the Parties fail to amend this Agreement as set forth above when required, however, then the terms of this Agreement shall prevail over any Subsequent Approval or any amendment to an Approval or Subsequent Approval that conflicts with this Agreement.

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

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

“**Litigation Extension**”). The Parties shall document the start and end of a Litigation Extension in writing within thirty (30) days from the applicable dates.

11.5.2 "**Excusable Delay**" means the occurrence of an event beyond a Party's reasonable control which causes such Party's performance of an obligation to be delayed, interrupted or prevented, including, but not limited to: changes in Federal or State Laws; strikes or the substantial interruption of work because of labor disputes; inability to obtain materials; freight embargoes; civil commotion, war or acts of terrorism; inclement weather, fire, floods, earthquakes or other acts of God; epidemics or quarantine restrictions; litigation; unforeseen site conditions (including archaeological resources or the presence of hazardous materials); or the failure of any governmental agency, public utility or communication service provider to issue a permit, authorization, consent or approval required to permit construction within the standard or customary time period for such issuing authority following Developer's submittal of a complete application for such permit, authorization, consent or approval, together with any required materials. Excusable Delay shall not include delays resulting from failure to obtain financing or have adequate funds, changes in market conditions, or the rejection of permit, authorization or approval requests based upon Developer's failure to satisfy the substantive requirements for the permit, authorization or approval request. In the event of Excusable Delay, the Parties agree that (i) the time periods for performance of the delayed Party's obligations impacted by the Excusable Delay shall be strictly limited to the period of such delay, interruption or prevention and the delayed Party shall, to the extent commercially reasonable, act diligently and in good faith to remove the cause of the Excusable Delay or otherwise complete the delayed obligation, and (ii) following the Excusable Delay, a Party shall have all rights and remedies available under this Agreement, if the obligation is not completed within the time period as extended by the

Excusable Delay. If an event which may lead to an Excusable Delay occurs, the delayed Party shall notify the other Party in writing of such occurrence as soon as possible after becoming aware that such event may result in an Excusable Delay, and the manner in which such occurrence is likely to substantially interfere with the ability of the delayed Party to perform under this Agreement.

12. TRANSFER OR ASSIGNMENT; RELEASE; CONSTRUCTIVE NOTICE

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

12.2 Notice of Transfer. Developer shall provide not less than ten (10) days' notice to the City before any proposed Transfer of its interests, rights and obligations under this Agreement, together with a copy of the assignment and assumption agreement for that parcel (each, an “**Assignment and Assumption Agreement**”) with a legal description of the parcel. Each Assignment and Assumption Agreement shall be in recordable form, in substantially the form attached as Exhibit K (including the indemnifications, the agreement and covenant not to challenge the enforceability of this Agreement, and not to sue the City for disputes between Developer and any Transferee) and any material changes to the attached form will be subject to the review and approval of the Director of Planning not to be unreasonably withheld or delayed. Notwithstanding the foregoing any Transfer of Community Benefit obligations to a CMA as set forth in Section 12.1 shall not require the transfer of land to the CMA.

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

12.4 Responsibility for Performance. The City is entitled to enforce each and every such obligation assumed by each Transferee directly against the Transferee as if the Transferee were an original signatory to this Agreement with respect to such obligation. Accordingly, in any action by the City against a Transferee to enforce an obligation assumed by the Transferee, the Transferee shall not assert as a defense against the City's enforcement of performance of such obligation that such obligation (i) is attributable to Developer's breach of any duty or obligation to the Transferee arising out of the Transfer or the Assignment and Assumption Agreement or any other agreement or transaction between Developer and the Transferee, or (ii) relates to the period before the Transfer. The foregoing notwithstanding, the Parties acknowledge and agree that a failure to complete a Mitigation Measure may, if not completed, delay or prevent a different party's ability to start or complete a specific Building or improvement under this Agreement if and to the extent the completion of the Mitigation Measure is a condition to the other party's right to proceed as specifically described in the Mitigation Measure, and Developer and all Transferees assume this risk. Accordingly, in some circumstances the City may withhold Subsequent Approvals based upon the acts or omissions of a different party.

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

to, and is obligated by all of the terms and conditions of this Agreement, whether or not any reference to this Agreement is contained in the instrument by which such person acquired an interest in the Project Site.

12.6 Rights of Developer. The provisions in this Section 12 shall not be deemed to prohibit or otherwise restrict Developer from (i) granting easements or licenses to facilitate development of the Project Site, (ii) encumbering the Project Site or any portion of the improvements thereon by any Mortgage, (iii) granting an occupancy leasehold interest in portions of the Project Site, (iv) entering into a joint venture agreement or similar partnership agreement to fulfill its obligations under this Agreement, or (v) transferring all or a portion of the Project Site pursuant to a foreclosure, conveyance in lieu of foreclosure, or other remedial action in connection with a Mortgage.

12.7 Transfers to REITs and UPREITs. The Parties recognize that there are no limitations on transfer of constituent membership interests in Developer. Nevertheless, in the interests of clarity the Parties agree that reappportionments and transfers by Forest City Enterprises, Inc. or any of its direct or indirect subsidiaries or affiliates (“**FCE**”) of beneficial interests in Developer shall be permitted without prior notice to or review or consent from City, notwithstanding any provisions in this Article 12, so long as such reappportionments or transfers are to (1) affiliates or wholly-owned subsidiaries of FCE, or (2) any real estate investment trust sponsored by FCE or any successor, by operation of law or otherwise (a “**REIT**”), and/or any umbrella limited partnership related to any such REIT and in which the REIT has an ownership interest (an “**UPREIT**”), or any entity that is an affiliate of either the UPREIT or the REIT. In no event or circumstance shall any City consent or approval be required with respect to the trading or issuance of shares or other securities of FCE or a REIT or UPREIT in the public or

private markets or where such Transfers are a part of a merger, consolidation or sale of all or substantially all of the assets or stock of FCE, a REIT, an UPREIT or any of their respective affiliates. The provisions of this Section 12.7 shall similarly apply to permit the transfer of any other constituent member interest in Developer. Reapportionments or transfers of membership interests under this Section 12.7 shall not require an Assignment and Assumption Agreement, and the rights and obligations Developer (or Transferee) and the City under this Agreement shall not be affected in any way by such reapportionment or transfer.

13. DEVELOPER REPRESENTATIONS AND WARRANTIES

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

13.2 No Inability to Perform; Valid Execution. Developer represents and warrants that it is not a party to any other agreement that would conflict with Developer's obligations under this Agreement and it has no knowledge of any inability to perform its obligations under this Agreement. The execution and delivery of this Agreement and the agreements contemplated hereby by Developer have been duly and validly authorized by all

necessary action. This Agreement will be a legal, valid and binding obligation of Developer, enforceable against Developer in accordance with its terms.

13.3 Conflict of Interest. Through its execution of this Agreement, Developer acknowledges that it is familiar with the provisions of Section 15.103 of the City's Charter, Article III, Chapter 2 of the City's Campaign and Governmental Conduct Code, and Section 87100 *et seq.* and Section 1090 *et seq.* of the California Government Code, and certifies that it does not know of any facts which constitute a violation of said provisions and agrees that it will immediately notify the City if it becomes aware of any such fact during the Term.

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

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

13.6 No Bankruptcy. Developer represents and warrants to the City that Developer has neither filed nor is the subject of any filing of a petition under the federal bankruptcy law or any federal or state insolvency laws or Laws for composition of indebtedness or for the reorganization of debtors, and, to the best of Developer's knowledge, no such filing is threatened.

14. MISCELLANEOUS PROVISIONS

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

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

14.3 Binding Covenants; Run With the Land. Pursuant to Section 65868 of the Development Agreement Statute, from and after recordation of this Agreement, all of the provisions, agreements, rights, powers, standards, terms, covenants and obligations contained in

this Agreement shall be binding upon the Parties and, subject to Section 12, their respective heirs, successors (by merger, consolidation, or otherwise) and assigns, and all persons or entities acquiring the Project Site, any lot, parcel or any portion thereof, or any interest therein, whether by sale, operation of law, or in any manner whatsoever, and shall inure to the benefit of the Parties and their respective heirs, successors (by merger, consolidation or otherwise) and assigns. Subject to the provisions on Transfers set forth in Section 12, all provisions of this Agreement shall be enforceable during the Term as equitable servitudes and constitute covenants and benefits running with the land pursuant to applicable Law, including but not limited to California Civil Code Section 1468.

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

14.5 Construction of Agreement. The Parties have mutually negotiated the terms and conditions of this Agreement and its terms and provisions have been reviewed and revised by legal counsel for both the City and Developer. Accordingly, no presumption or rule that ambiguities shall be construed against the drafting Party shall apply to the interpretation or enforcement of this Agreement. Language in this Agreement shall be construed as a whole and in accordance with its true meaning. The captions of the paragraphs and subparagraphs of this Agreement are for convenience only and shall not be considered or referred to in resolving questions of construction. Each reference in this Agreement to this Agreement or any of the

Approvals shall be deemed to refer to this Agreement or the Approvals as amended from time to time pursuant to the provisions of this Agreement, whether or not the particular reference refers to such possible amendment. In the event of a conflict between the provisions of this Agreement and Chapter 56, the provisions of this Agreement will govern and control.

14.6 Project Is a Private Undertaking; No Joint Venture or Partnership. The development proposed to be undertaken by Developer on the Project Site is a private development. The City has no interest in, responsibility for, or duty to third persons concerning any of said improvements. Developer shall exercise full dominion and control over the Project Site, subject only to the limitations and obligations of Developer contained in this Agreement.

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

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

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

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

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

14.11 Notices. Any notice or communication required or authorized by this Agreement shall be in writing and may be delivered personally or by registered mail, return receipt requested. Notice, whether given by personal delivery or registered mail, shall be deemed to have been given and received upon the actual receipt by any of the addressees designated below as the person to whom notices are to be sent. Either Party to this Agreement may at any time, upon notice to the other Party, designate any other person or address in substitution of the person and address to which such notice or communication shall be given. Such notices or communications shall be given to the Parties at their addresses set forth below:

To City:

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

with a copy to:

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

To Developer:

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

with a copy to:

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

14.12 Limitations on Actions. Pursuant to Section 56.19 of the Administrative Code, any decision of the Board of Supervisors made pursuant to Chapter 56 shall be final. Any court action or proceeding to attack, review, set aside, void, or annul any final decision or determination by the Board of Supervisors shall be commenced within ninety (90) days after such decision or determination is final and effective. Any court action or proceeding to attack, review, set aside, void or annul any final decision by (i) the Planning Director made pursuant to Administrative Code Section 56.15(d)(3) or (ii) the Planning Commission pursuant to Administrative Code Section 56.17(e) shall be commenced within ninety (90) days after said decision is final.

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

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

the MacBride Principles. Developer acknowledges that it has read and understands the above statement of the City concerning doing business in Northern Ireland.

14.15 Tropical Hardwood and Virgin Redwood. The City urges companies not to import, purchase, obtain or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood, or virgin redwood wood product, except as expressly permitted by the application of Sections 802(b) and 803(b) of the San Francisco Environment Code.

14.16 Sunshine. Developer understands and agrees that under the City's Sunshine Ordinance (Administrative Code, Chapter 67) and the California Public Records Act (California Government Code Section 250 *et seq.*), this Agreement and any and all records, information, and materials submitted to the City hereunder are public records subject to public disclosure. To the extent that Developer in good faith believes that any financial materials reasonably requested by the City constitutes a trade secret or confidential proprietary information protected from disclosure under the Sunshine Ordinance and other Laws, Developer shall mark any such materials as such. When a City official or employee receives a request for information that has been so marked or designated, the City may request further evidence or explanation from Developer. If the City determines that the information does not constitute a trade secret or proprietary information protected from disclosure, the City shall notify Developer of that conclusion and that the information will be released by a specified date in order to provide Developer an opportunity to obtain a court order prohibiting disclosure.

14.17 Waiver of Personal Liability Non-Liability of City Officials and Others. Notwithstanding anything to the contrary in this Agreement, no individual board member, director, commissioner, officer, employee, official or agent of City or other City Parties shall be personally liable to Developer, its successors and assigns, in the event of any default by City, or

for any amount which may become due to Developer, its successors and assigns, under this Agreement.

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

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

[signatures follow on next page]

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

CITY:

Approved as to form:

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation

DENNIS J. HERRERA, City Attorney

By: _____
John Rahaim
Director of Planning

By: _____
Charles Sullivan, Deputy City Attorney

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

Approved and Agreed:

By: _____
Naomi Kelly, City Administrator

By: _____
Mohammad Nuru,
Director of Public Works

Developer:

5M PROJECT, LLC,
a Delaware limited liability company

By: _____
Martin Cepkauskas
Vice President

CONSENT TO DEVELOPMENT AGREEMENT

San Francisco Municipal Transportation Agency

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

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

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

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

By: _____
EDWARD D. REISKIN,
Director of Transportation

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

By: _____
Deputy City Attorney

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

**CONSENT TO DEVELOPMENT AGREEMENT
Arts Commission**

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

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

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

By: _____
Mr. Tom DeCaigny, Director

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

By: _____
Susan Dawson, Deputy City Attorney

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

IMPACT FEES & EXACTIONS AND 5M COMMUNITY FEES PER BUILDING	Approvals Finally Granted	H1 Building*	M2 Building	N1 Building	Examiner Building	M1 Chronicle Building	TOTAL FEES
IMPACT FEES & EXACTIONS							
Transit (TIDF)		\$ 8,025,275	\$ 99,212	\$ 69,058	\$ 172,162	\$ 517,351	\$ 8,883,058
Jobs Housing Linkage Fee (JHL)		\$ 13,801,013	\$ 152,456	\$ 103,132	\$ 264,556	\$ 896,319	\$ 15,217,476
Affordable Housing In-Lieu Fee				\$ 27,290,432			\$ 27,290,432
Art Fee	\$ 150,000	\$ 1,926,301	\$ 1,140,101	\$ 2,224,732			\$ 5,441,134
Downtown Open Space Fee		\$ 1,436,859				\$ 90,639	\$ 1,527,498
Childcare Fee		\$ 715,473				\$ 45,133	\$ 760,606
Schools Fee		\$ 231,741	\$ 731,796	\$ 1,660,811	\$ 2,867	\$ 14,510	\$ 2,641,726
TOTAL BASE FEES	\$ 150,000	\$ 26,136,662	\$ 2,123,565	\$ 31,348,165	\$ 439,585	\$ 1,563,952	\$ 61,761,930
5M COMMUNITY BENEFIT FEES	\$ 350,000	\$ 4,587,355	\$ 2,094,180	\$ 4,763,675			\$ 11,795,210
TOTAL IMPACT FEES & EXACTIONS AND 5M COMMUNITY FEES	\$ 500,000	\$ 30,724,017	\$ 4,217,745	\$ 36,111,840	\$ 439,585	\$ 1,563,952	\$ 73,557,140
IMPACT FEES & EXACTIONS AND 5M COMMUNITY BENEFIT FEES ALLOCATED PER BUILDING							
IMPACT FEES & EXACTIONS							
<i>In Accordance with Exhibit E, Affordable Housing Funding & Transit Fees</i>							
Transit (TIDF)			\$ 99,212	\$ 8,094,333	\$ 172,162	\$ 517,351	\$ 8,883,058
Eddy & Taylor		\$ 18,000,000					\$ 18,000,000
Senior Housing Parcel		\$ 3,826,288	\$ 152,456	\$ 19,368,289	\$ 264,556	\$ 896,319	\$ 24,507,909
		<i>Credit for Land</i>	\$ (3,500,000)				
		<i>Predev Payment for Senior Parcel</i>	\$ 326,288				
1% Arts Fee Allocation							
In Accordance with Exhibit H, Public Arts Fee	\$ 150,000	\$ 1,926,301	\$ 1,140,101	\$ 2,224,732			\$ 5,441,134
		<i>Arts Capital Funds</i>	\$ 150,000	\$ 1,926,301	\$ 48,278		
		<i>Arts Programming Funds</i>		\$ 2,176,454			
Downtown Open Space Fee		\$ 1,436,859				\$ 90,639	\$ 1,527,498
Childcare Fee		\$ 715,473				\$ 45,133	\$ 760,606
Schools Fee		\$ 231,741	\$ 731,796	\$ 1,660,811	\$ 2,867	\$ 14,510	\$ 2,641,726
TOTAL IMPACT FEES & EXACTIONS	\$ 150,000	\$ 26,136,662	\$ 2,123,565	\$ 31,348,165	\$ 439,585	\$ 1,563,952	\$ 61,761,931
5M COMMUNITY BENEFIT FEES							
In Accordance with Exhibit C, Youth Development Program		\$ 2,500,000	\$ 930,230	\$ 69,770			\$ 3,500,000
		<i>DCYF Funding for SOMA Youth Programming</i>	\$ 500,000	\$ 430,230	\$ 69,770		
		<i>MOHCD for Non-Profit Capital Funds</i>	\$ 1,000,000	\$ 500,000			
		<i>Rec Park Funding for Gene Friend Recreation Center</i>	\$ 1,000,000				
In Accordance with Exhibit H, Non-Profit Arts Facilities Funds			\$ 600,000				\$ 600,000
In Accordance with Exhibit F, Workforce Agreement		\$ 937,355	\$ 563,950				\$ 1,500,000
		<i>Barrier Removal Funds</i>	\$ 250,000				
		<i>Job Seeking Resources for Disadvantaged Adults</i>	\$ 250,000				
		<i>Internships, Training and Certification Programs</i>	\$ 437,355	\$ 563,950			
Mint Capital Improvements	\$ 350,000	\$ 650,000					\$ 1,000,000
In Accordance with Exhibit G, Transportation Program		\$ 500,000		\$ 2,900,000			\$ 3,400,000
In Accordance with Exhibit E, Senior Housing Gap Funding				\$ 1,793,905			\$ 1,793,905
TOTAL 5M COMMUNITY BENEFIT FEE	\$ 350,000	\$ 4,587,355	\$ 2,094,180	\$ 4,763,675			\$ 11,795,210
TOTAL ALLOCATION OF IMPACT FEES & EXACTIONS AND 5M COMMUNITY FEES	\$ 500,000	\$ 30,724,017	\$ 4,217,745	\$ 36,111,840	\$ 439,585	\$ 1,563,952	\$ 73,557,140

* Buildings are as defined in the Project Description.

EXHIBIT G

Transportation Program

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

1. Improvements.

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

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

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

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

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

2. Transit Fee and TSP Contribution.

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

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

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

2.2 SoMa Street Streetscape, Pedestrian Safety and Related Improvements. SFMTA shall use the remaining TSP Contributions for the purpose of designing and constructing streetscape, pedestrian safety, pedestrian realm and related improvements within the impact area identified on Schedule 2 hereto.

3. Fifth Street East Sidewalk and Related Improvements.

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

3.1 Sidewalk extension of the east sidewalk on Fifth Street between Minna and Mission Streets by 10 to 15 feet;

3.2 Restriping and widening of the east crosswalk at the intersection of Fifth/Mission Streets to 25 feet;

3.3 Traffic and pedestrian signal upgrades at the intersection of Fifth/Mission Streets;

3.4 Restriping of the Minna Street travel lanes between Fifth Street and the Project's garage entrances; and

3.5 New and more visible "Minna Street Garage Entrance" and Garage Full" signs at the Fifth and Mission Garage.

4. TDM Plan.

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

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

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

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

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

improvements related to the Project traffic impact area as determined by SFMTA. The format of the survey and TDM Report will be developed in consultation with the SFMTA.

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

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

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

SCHEDULE 1 - IMPROVEMENTS MAP

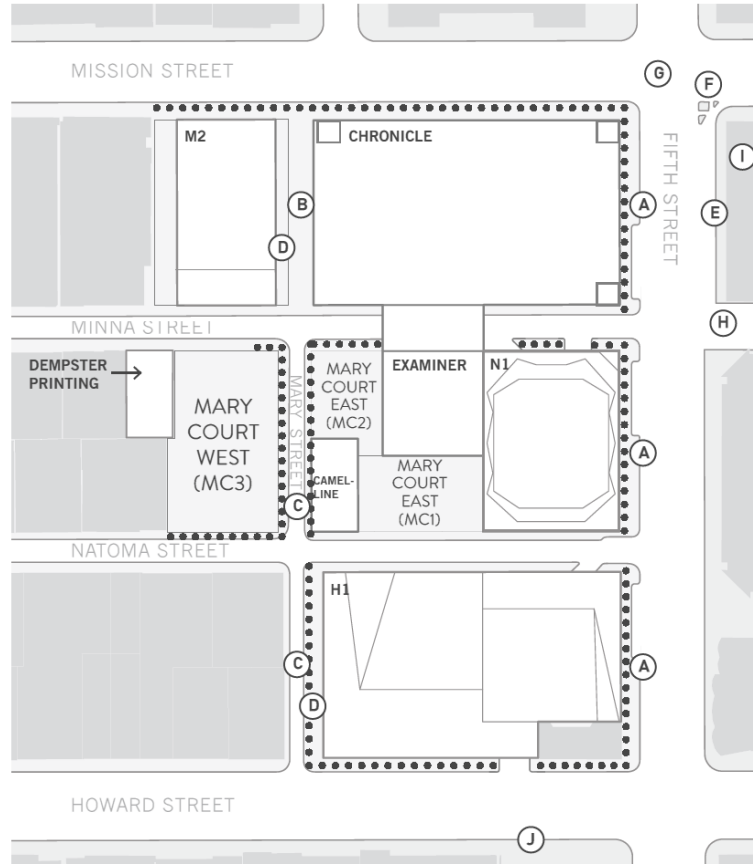
DRAFT -- 07/07/15

TO BE CONSTRUCTED BY THE PROJECT¹

- Building-related streetscape improvements (including street trees)
- (A) West sidewalk widening between Mission and Howard Streets (from 10 feet to 18 feet, with 8-foot inset for loading)
- (B) Conversion to North Mary Pedestrian-Only Alley
- (C) Conversion to Shared Public Way (including West sidewalk widening of Mary Street between Minna and Natoma, from 5 feet to 10 feet)
- (D) Privately-owned pedestrian improvement

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

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

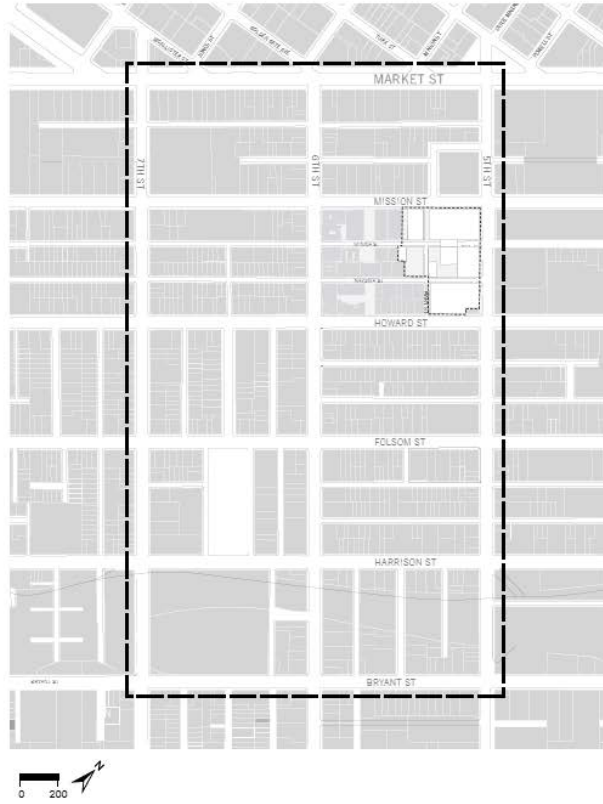


¹All depicted improvements are more particularly described in the Transportation Program

SCHEDULE 2 - TSP CONTRIBUTION IMPACT AREA MAP

DRAFT -- 07/07/15

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



5M PROJECT SAN FRANCISCO

Schedule 3 -- TDM Menu

Category	#	Strategy Name	Developer or Property Management Role	Expected Reduction to Auto Trips	Order of Magnitude Cost	Required in Code?	Included in Project Description?	Assumptions
Parking	1	Parking Management - Pricing and Regulation	Price parking to encourage employees to consider alternatives to driving, promote regular turnover and discourage visitors from driving.	6.0%	Medium	Yes	No	Assumes parking prices at market rate, applies to employee & visitor trips only. Dampened somewhat to reflect urban context of San Francisco.
	2	Unbundled Parking	Separate cost of residential unit from cost of parking spaces. Require residential tenants and condo purchasers to pay extra for a reserved parking space.	1.7%	-	Yes	Yes	Assumes monthly parking pricing at market rate; applies to residential trips. Effect dampened to reflect partial inclusion in SF Guidelines.
	3	Real-time Info on parking availability	Provide displays showing real-time garage occupancy in order to reduce traffic circling while searching for a space.	Project Amenity for Tenants	Medium	No	No	
Trip Reduction from Parking Strategies				8%				
Bicycle and Pedestrian	4	Bike Share Availability	Location within 1,000 walking feet of a bike share station OR dedicate space for a future bike share station.	0.1%	None to Low	No	Yes	
	5	Bicycle Parking/Bike Room/Secure Bike Parking	Provide secure space for cyclists to store their bikes.	Project Amenity for Tenants	-	Yes	Yes	
	6	Showers and Lockers	Provide showers and lockers for bicycle commuters.	Project Amenity for Tenants	-	Yes	Yes	
	7	Bike Repair Station or Bike Repair Services	Provide a bike repair shop or facility within the development.	Project Amenity for Tenants	Medium	No	No	
Trip Reduction from Bike/Ped Amenities				0.1%				
Carshare	8	Subsidized Carshare Membership	Provide residents with subsidized carshare membership under terms of lease / as part of COA/HOA dues. Encourage employers to subsidize carshare for employees.	1.1%	Medium	No	No	Assumes one year of subsidized carshare membership, which leads to an increased adoption rate for residential trips only.
	9	Carshare Parking	Provide dedicated parking spaces for carsharing vehicles.	0.9%	-	Yes	Yes	Assumes 8 spaces are dedicated for carsharing as included in the project description. Effect is partially dampened to reflect fact that measure is included in code.
Trip Reduction from Carshare				2%				
TDM Program & Other Amenities	10	TDM Coordinator	Designate individual for each property manager / building to coordinate and market all programs and facilities in this list.	1.0%	Medium	Yes	No	
	11	Transit Subsidy (Office)	Include requirement in lease for employer tenants to provide a tax-deductible transit subsidy to employees.	3.6%	Low to Medium	No	No	Transit subsidy is generally in form of "commuter check" participation, allowing employees to use up to \$130/month toward any qualified transit pass or Clipper Card value. Assumes 75% of employees are reimbursed \$65/month.
	12	Rideshare Program + Preferential Carpool Parking	Provide preferential spaces and/or promotional parking rates for individuals who carpool to work at the project site.	1.4%	Low	No	No	
	13	Web-based ridesharing	Encourage use of ride-matching apps and/or \$11.org ride-matching service. Explore solutions to offer site-specific ride-matching services.	Project Amenity for Tenants	Low	No	No	
	14	Real-time Information for motorists / transit riders	Provide "transit screen" style displays showing estimated arrival times of transit routes, potentially showing traffic conditions and alerts.	Project Amenity for Tenants	Medium	No	No	
	15	On-Site Daycare/Daycare Brokerage Services	Provide on-site childcare facility or childcare brokerage service.	Project Amenity for Tenants	Medium	Yes	No	
	16	Multimodal Wayfinding Signage	Provide signage directing pedestrians and cyclists to relevant transit stops, building entrances and facilities, as well as to popular destinations.	Project Amenity for Tenants	Low	No	Yes	
17	Provide/Facilitate Delivery Services	Provide consolidated pick-up/drop-off schedule or arrangements with package carriers.	Project Amenity for Tenants	Low	No	Yes		
Trip Reduction from TDM Program & Other Amenities				6%				
Trip Reduction from Full TDM Plan:				14%				

Note: The empirically developed travel demand rates included in the SF Guidelines predate current code and thus do not assume mode split adjustments based on Code compliance. Code-based measures are included because they are a part of what would be implemented to reduce project auto mode share. The City has recently indicated their preference that any mode split adjustment due to Code-required measures be dampened by 50% to account for potential variation in effectiveness of these measures. The 14% above includes Code-required measures but the menu also calls those out separately to show what the sponsor is committing to above and beyond Code.

TDM Menu - Chronicle/Examiner

Category	#	Strategy Name	Developer or Property Management Role	Expected Reduction to Auto Trips	Order of Magnitude Cost	Required in Code?	Included in Project Description?	Assumptions
Parking	1	Parking Management - Pricing and Regulation	Price parking to encourage employees to consider alternatives to driving, promote regular turnover and discourage visitors from driving.	8.3%	Medium	Yes	No	Assumes parking prices at market rate, applies to employee & visitor trips only. Dampened somewhat to reflect urban context of San Francisco.
	5	Real-time info on parking availability	Provide displays showing real-time garage occupancy in order to reduce traffic circling while searching for a space.	Project Amenity for Tenants	Medium	No	No	
Trip Reduction from Parking Strategies				8%				
Bicycle and Pedestrian	4	Bike Share Availability	Location within 1,000 walking feet of a bike share station OR dedicate space for a future bike share station.	0.1%	None to Low	No	Yes	
	5	Bicycle Parking/Bike Room/Secure Bike Parking	Provide secure space for cyclists to store their bikes.	Project Amenity for Tenants	-	Yes	Yes	
	6	Showers and Lockers	Provide showers and lockers for bicycle commuters.	Project Amenity for Tenants	-	Yes	Yes	
	7	Bike Repair Station or Bike Repair Services	Provide a bike repair shop or facility within the development.	Project Amenity for Tenants	Medium	No	No	
Trip Reduction from Bike/Ped Amenities				0.1%				
Carshare	8	Subsidized Carshare Membership	Encourage employers to subsidize carshare for employees.	0.5%	Medium	No	No	Assumes one year of subsidized carshare membership, which leads to an increased adoption rate for residential and office trips.
	9	Carshare Parking	Provide dedicated parking spaces for carsharing vehicles.	0.5%	-	Yes	Yes	Assumes 8 spaces are dedicated for carsharing as included in the project description. Effect is partially dampened to reflect fact that measure is included in code.
Trip Reduction from Carshare				1%				
TDM Program & Other Amenities	10	TDM Coordinator	Designate individual for each property manager / building to coordinate and market all programs and facilities in this list.	1.0%	Medium	Yes	No	
	11	Transit Subsidy (Office)	Include requirement in lease for employer tenants to provide a tax-deductible transit subsidy to employees.	5.3%	Low to Medium	No	No	Transit subsidy is generally in form of "commuter check" participation, allowing employees to use up to \$130/month toward any qualified transit pass or Clipper Card value. Assumes 75% of employees are reimbursed \$65/month.
	12	Rideshare Program + Preferential Carpool Parking	Provide preferential spaces and/or promotional parking rates for individuals who carpool to work at the project site.	2.1%	Low	No	No	
	13	Web-based ridesharing	Encourage use of ride-matching apps and/or 511.org ride-matching service. Explore solutions to offer site-specific ride-matching services.	Project Amenity for Tenants	Low	No	No	
	14	Real-time Information for motorists / transit riders	Provide "transit screen" style displays showing estimated arrival times of transit routes, potentially showing traffic conditions and alerts.	Project Amenity for Tenants	Medium	No	No	
	15	On-Site Daycare/Daycare Brokerage Services	Provide on-site childcare facility or childcare brokerage service.	Project Amenity for Tenants	Medium	Yes	No	
	16	Multimodal Wayfinding Signage	Provide signage directing pedestrians and cyclists to relevant transit stops, building entrances and facilities, as well as to popular destinations.	Project Amenity for Tenants	Low	No	Yes	
17	Provide/Facilitate Delivery Services	Provide consolidated pick-up/drop-off schedule or arrangements with package carriers.	Project Amenity for Tenants	Low	No	Yes		
Trip Reduction from TDM Program & Other Amenities				8%				
Trip Reduction from Full TDM Plan:				17%				

Note: The empirically developed travel demand rates included in the SF Guidelines predate current code and thus do not assume mode split adjustments based on Code compliance. Code-based measures are included because they are a part of what would be implemented to reduce project auto mode share. The City has recently indicated their preference that any mode split adjustment due to Code-required measures be dampened by 50% to account for potential variation in effectiveness of these measures. The 17% above includes Code-required measures but the menu also calls those out separately to show what the sponsor is committing to above and beyond Code.

TDM Menu - M2

Category	#	Strategy Name	Developer or Property Management Role	Expected Reduction to Auto Trips	Order of Magnitude Cost	Required in Code?	Included in Project Description?	Assumptions
Parking	1	Parking Management - Pricing and Regulation	Price parking to encourage patrons to consider alternatives to driving and promote regular turnover	4.5%	Medium	Yes	No	Assumes parking prices at market rate, applies to employee & visitor trips only. Dampened somewhat to reflect urban context of San Francisco.
	2	Unbundled Parking	Separate cost of residential unit from cost of parking spaces. Require residential tenants and condo purchasers to pay extra for a reserved parking space.	3.0%	-	Yes	Yes	Assumes monthly parking pricing at market rate; applies to residential trips. Effect dampened to reflect partial inclusion in SF Guidelines.
	3	Real-time info on parking availability	Provide displays showing real-time garage occupancy in order to reduce traffic circling while searching for a space.	Project Amenity for Tenants	Medium	No	No	
Trip Reduction from Parking Strategies				7%				
Bicycle and Pedestrian	4	Bike Share Availability	Location within 1,000 walking feet of a bike share station OR dedicate space for a future bike share station.	0.1%	None to Low	No	Yes	
	5	Bicycle Parking/Bike Room/Secure Bike Parking	Provide secure space for cyclists to store their bikes.	Project Amenity for Tenants	-	Yes	Yes	
	7	Bike Repair Station or Bike Repair Services	Provide a bike repair shop or facility within the development.	Project Amenity for Tenants	Medium	No	No	
Trip Reduction from Bike/Ped Amenities				0.1%				
Carshare	8	Subsidized Carshare Membership	Provide residents with subsidized carshare membership under terms of lease / as part of COA/HOA dues. Encourage employers to subsidize carshare for employees.	0.7%	Medium	No	No	Assumes one year of subsidized carshare membership, which leads to an increased adoption rate for residential and office trips.
	9	Carshare Parking	Provide dedicated parking spaces for carsharing vehicles.	0.5%	-	Yes	Yes	Assumes 8 spaces are dedicated for carsharing as included in the project description. Effect is partially dampened to reflect fact that measure is included in code.
Trip Reduction from Carshare				1%				
TDM Program & Other Amenities	10	TDM Coordinator	Designate individual for property manager / building to coordinate and market all programs and facilities in this list.	1.0%	Medium	Yes	No	
	14	Real-time Information for motorists / transit riders	Provide "transit screen" style displays showing estimated arrival times of transit routes, potentially showing traffic conditions and alerts.	Project Amenity for Tenants	Medium	No	No	
	16	Multimodal Wayfinding Signage	Provide signage directing pedestrians and cyclists to relevant transit stops, building entrances and facilities, as well as to popular destinations.	Project Amenity for Tenants	Low	No	Yes	
	17	Provide/Facilitate Delivery Services	Provide consolidated pick-up/drop-off schedule or arrangements with package carriers.	Project Amenity for Tenants	Low	No	Yes	
Trip Reduction from TDM Program & Other Amenities				1%				
Trip Reduction from Full TDM Plan:				9%				

Note: The empirically developed travel demand rates included in the SF Guidelines predate current code and thus do not assume mode split adjustments based on Code compliance. Code-based measures are included because they are a part of what would be implemented to reduce project auto mode share. The City has recently indicated their preference that any mode split adjustment due to Code-required measures be dampened by 50% to account for potential variation in effectiveness of these measures. The 9% above includes Code-required measures but the menu also calls those out separately to show what the sponsor is committing to above and beyond Code.

TDM Menu - N1

Category	#	Strategy Name	Developer or Property Management Role	Expected Reduction to Auto Trips	Order of Magnitude Cost	Required in Code?	Included in Project Description?	Assumptions
Parking	1	Parking Management - Pricing and Regulation	Price parking to encourage patrons to consider alternatives to driving and promote regular turnover	1.2%	Medium	Yes	No	Assumes parking prices at market rate, applies to employee & visitor trips only. Dampened somewhat to reflect urban context of San Francisco.
	2	Unbundled Parking	Separate cost of residential unit from cost of parking spaces. Require residential tenants and condo purchasers to pay extra for a reserved parking space.	5.2%	-	Yes	Yes	Assumes monthly parking pricing at market rate; applies to residential trips. Effect dampened to reflect partial inclusion in SF Guidelines.
Trip Reduction from Parking Strategies				6%				
Bicycle and Pedestrian	4	Bike Share Availability	Location within 1,000 walking feet of a bike share station OR dedicate space for a future bike share station.	0.1%	None to Low	No	Yes	
	5	Bicycle Parking/Bike Room/Secure Bike Parking	Provide secure space for cyclists to store their bikes.	Project Amenity for Tenants	-	Yes	Yes	
	7	Bike Repair Station or Bike Repair Services	Provide a bike repair shop or facility within the development.	Project Amenity for Tenants	Medium	No	No	
Trip Reduction from Bike/Ped Amenities				0.1%				
Carshare	8	Subsidized Carshare Membership	Provide residents with subsidized carshare membership under terms of lease / as part of COA/HOA dues. Encourage employers to subsidize carshare for employees.	1.2%	Medium	No	No	Assumes one year of subsidized carshare membership, which leads to an increased adoption rate for residential and office trips.
	9	Carshare Parking	Provide dedicated parking spaces for carsharing vehicles.	0.5%	-	Yes	Yes	Assumes 8 spaces are dedicated for carsharing as included in the project description. Effect is partially dampened to reflect fact that measure is included in code.
Trip Reduction from Carshare				2%				
TDM Program & Other Amenities	10	TDM Coordinator	Designate individual for each property manager / building to coordinate and market all programs and facilities in this list.	1.0%	Medium	Yes	No	
	14	Information for motorists / transit riders	Provide "transit screen" style displays showing estimated arrival times of transit routes, potentially showing traffic conditions and alerts.	Project Amenity for Tenants	Medium	No	No	
	16	Multimodal Wayfinding Signage	Provide signage directing pedestrians and cyclists to relevant transit stops, building entrances and facilities, as well as to popular destinations.	Project Amenity for Tenants	Low	No	Yes	
	17	Provide/Facilitate Delivery Services	Provide consolidated pick-up/drop-off schedule or arrangements with package carriers.	Project Amenity for Tenants	Low	No	Yes	
Trip Reduction from TDM Program & Other Amenities				1%				
Trip Reduction from Full TDM Plan:				9%				

Note: The empirically developed travel demand rates included in the SF Guidelines predate current code and thus do not assume mode split adjustments based on Code compliance. Code-based measures are included because they are a part of what would be implemented to reduce project auto mode share. The City has recently indicated their preference that any mode split adjustment due to Code-required measures be dampened by 50% to account for potential variation in effectiveness of these measures. The 9% above includes Code-required measures but the menu also calls those out separately to show what the sponsor is committing to above and beyond Code.

TDM Menu - H1

Category	#	Strategy Name	Developer or Property Management Role	Expected Reduction to Auto Trips	Order of Magnitude Cost	Required in Code?	Included in Project Description?	Assumptions
Parking	1	Parking Management - Pricing and Regulation	Price parking to encourage employees to consider alternatives to driving, promote regular turnover and discourage visitors from driving.	8.2%	Medium	Yes	No	Assumes parking prices at market rate, applies to employee & visitor trips only. Dampened somewhat to reflect urban context of San Francisco.
	3	Real-time Info on parking availability	Provide displays showing real-time garage occupancy in order to reduce traffic circling while searching for a space.	Project Amenity for Tenants	Medium	No	No	
Trip Reduction from Parking Strategies				8%				
Bicycle and Pedestrian	4	Bike Share Availability	Location within 1,000 walking feet of a bike share station OR dedicate space for a future bike share station.	0.1%	None to Low	No	Yes	
	5	Bicycle Parking/Bike Room/Secure Bike Parking	Provide secure space for cyclists to store their bikes.	Project Amenity for Tenants	-	Yes	Yes	
	6	Showers and Lockers	Provide showers and lockers for bicycle commuters.	Project Amenity for Tenants	-	Yes	Yes	
	7	Bike Repair Station or Bike Repair Services	Provide a bike repair shop or facility within the development.	Project Amenity for Tenants	Medium	No	No	
Trip Reduction from Bike/Ped Amenities				0.1%				
Carshare	8	Subsidized Carshare Membership	Provide residents with subsidized carshare membership under terms of lease / as part of COA/HOA dues. Encourage employers to subsidize carshare for employees.	0.6%	Medium	No	No	Assumes one year of subsidized carshare membership, which leads to an increased adoption rate for residential and office trips.
	9	Carshare Parking	Provide dedicated parking spaces for carsharing vehicles.	0.5%	-	Yes	Yes	Assumes 8 spaces are dedicated for carsharing as included in the project description. Effect is partially dampened to reflect fact that measure is included in code.
Trip Reduction from Carshare				1%				
TDM Program & Other Amenities	10	TDM Coordinator	Designate individual for each property manager / building to coordinate and market all programs and facilities in this list.	1.0%	Medium	Yes	No	
	11	Transit Subsidy (Office)	Include requirement in lease for employer tenants to provide a tax-deductible transit subsidy to employees.	6.2%	Low to Medium	No	No	Transit subsidy is generally in form of "commuter check" participation, allowing employees to use up to \$130/month toward any qualified transit pass or Clipper Card value. Assumes 75% of employees are reimbursed \$65/month.
	12	Rideshare Program - Preferential Carpool Parking	Provide preferential spaces and/or promotional parking rates for individuals who carpool to work at the project site.	2.5%	Low	No	No	
	13	Web-based ride-matching	Encourage use of ride-matching apps and/or 511.org ride-matching service. Explore solutions to offer site-specific ride-matching services.	Project Amenity for Tenants	Low	No	No	
	14	Real-time information for motorists / transit riders	Provide "transit screen" style displays showing estimated arrival times of transit routes, potentially showing traffic conditions and alerts.	Project Amenity for Tenants	Medium	No	No	
	15	On-Site Daycare/Daycare Brokerage Services	Provide on-site childcare facility or childcare brokerage service.	Project Amenity for Tenants	Medium	Yes	No	
	16	Multimodal Wayfinding Signage	Provide signage directing pedestrians and cyclists to relevant transit stops, building entrances and facilities, as well as to popular destinations.	Project Amenity for Tenants	Low	No	Yes	
17	Provide/Facilitate Delivery Services	Provide consolidated pick-up/drop-off schedule or arrangements with package carriers.	Project Amenity for Tenants	Low	No	Yes		
Trip Reduction from TDM Program & Other Amenities				9%				
Trip Reduction from Full TDM Plan:				18%				

Note: The empirically developed travel demand rates included in the SP Guidelines predate current code and thus do not assume mode split adjustments based on Code compliance. Code-based measures are included because they are a part of what would be implemented to reduce project auto mode share. The City has recently indicated their preference that any mode split adjustment due to Code-required measures be dampened by 50% to account for potential variation in effectiveness of these measures. The 18% above includes Code-required measures but the menu also calls those out separately to show what the sponsor is committing to above and beyond Code.

TDM MEASURE APPLICABILITY BY USE

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

Source: Fehr & Peers, 2015