

**THIS PRINT COVERS CALENDAR ITEM NO. : 10.9**

**SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY**

**DIVISION:** Finance and Information Technology

**BRIEF DESCRIPTION:**

Authorizing the Director of Transportation to issue a Request for Proposals (RFP), containing terms and requirements substantially similar to the RFP presented to this Board, to solicit proposals to develop the Moscone Center Garage Site into a convention hotel and affordable housing.

**SUMMARY:**



- The SFMTA’s Real Estate and Facilities Vision for the 21<sup>st</sup> Century (Vision Report), identified the Moscone Center Garage as a candidate site for Transit Oriented Development (TOD).
- In July 2017, the Board of Supervisors transferred the Moscone Center Garage from the Parking Authority to the SFMTA so that the Site may be developed for non-parking uses.
- The SFMTA completed a study to determine the financial and parking impacts of reducing parking at the Moscone Center Garage Site. Based on that study and the input of the Office of Economic and Workforce Development, Mayor’s Office of Housing and Community Development, and SF Planning, the SFMTA has formulated a development concept for the Site consisting of a convention hotel and affordable housing.
- The RFP solicits proposals for this development concept. Each Proposer to the RFP will be required to submit two proposals—a proposal with no on-Site parking and a proposal with a smaller, replacement public parking garage.

**ENCLOSURES:**

1. SFMTA Board Resolution
2. SFMTA Moscone Center Garage Development RFP
3. Moscone Center Garage Parking Analysis  
<https://www.sfmta.com/sites/default/files/reports/2017/Moscone%20Garage%20Study%20-%20Final%20Report%20-%20Adavant%20LCW%202017%2010%2020.pdf>

**APPROVALS:**

**DATE**

DIRECTOR	 _____	1/25/2018 _____
SECRETARY	 _____	1/25/2018 _____

**ASSIGNED SFMTAB CALENDAR DATE:** February 6, 2018

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### **PURPOSE**

Authorizing the Director of Transportation to issue a Request for Proposals (RFP), containing terms and requirements substantially similar to the RFP presented to this Board, to develop the Moscone Center Garage Site into a convention hotel and affordable housing.

### **STRATEGIC PLAN GOALS AND TRANSIT FIRST POLICY PRINCIPLES**

This item will meet the following goals and objectives of the SFMTA FY2013-18 Strategic Plan and Transit First Policy Principles:

#### Strategic Plan Goals/Objectives

Goal 2: Make transit, walking, bicycling, taxi, ridesharing & car sharing the preferred means of travel

Objective 2.3: Increase use of all non-private auto modes.

Objective 2.4: Improve parking utilization and manage parking demand.

Goal 3: Improve the environment and quality of life in San Francisco

Objective 3.2: Increase the transportation system's positive impact to the economy.

Objective 3.3: Allocate capital resources effectively.

Objective 3.5: Reduce capital and operating structural deficits.

Goal 4: Create a workplace that delivers outstanding service

Objective 4.4: Improve relationships and partnerships with our stakeholders.

#### Transit First Policy Principles

2. Public transit, including taxis and vanpools, is an economically and environmentally sound alternative to transportation by individual automobiles. Within San Francisco, travel by public transit, by bicycle and on foot must be an attractive alternative to travel by private automobile.
3. Decisions regarding the use of limited public street and sidewalk space shall encourage the use of public rights of way by pedestrians, bicycles, and public transit, and shall strive to reduce traffic and improve public health and safety.
5. Pedestrian areas shall be enhanced wherever possible to improve the safety and comfort of pedestrians and to encourage travel by foot.
6. Bicycling shall be promoted by encouraging safe streets for riding, convenient access to transit, bicycle lanes, and secure bicycle parking.
7. Parking policies for areas well served by public transit shall be designed to encourage travel by public transit and alternative transportation.

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8. New transportation investment should be allocated to meet the demand for public transit generated by new public and private commercial and residential developments.
9. The ability of the City and County to reduce traffic congestion depends on the adequacy of regional public transportation. The City and County shall promote the use of regional mass transit and the continued development of an integrated, reliable, regional public transportation system.

## **DESCRIPTION**

The SFMTA's Real Estate and Facilities Vision for the 21<sup>st</sup> Century (Vision Report), completed in 2013, identified the Moscone Center Garage Site as a candidate site for Transit Oriented Development (TOD). The Moscone Center Garage is located at 255 3rd Street in the South of Market (SoMa) neighborhood. The Vision Report cited the Moscone Center Garage's relatively low utilization and its location in a high-demand, transit-rich neighborhood as reasons for its suitability for TOD.

While operated by the SFMTA for many years, the Moscone Center Garage was, until recently, owned by the Parking Authority of the City and County of San Francisco (Parking Authority). State law prohibits development of Parking Authority properties for non-parking purposes. To overcome that prohibition, in November 2016, the SFMTA Board of Directors and Parking Authority Commission passed resolutions recommending that the Board of Supervisors transfer Parking Authority properties to the SFMTA to facilitate development of the properties. In August 2017, the Board of Supervisors unanimously passed an ordinance transferring two Parking Authority properties to the SFMTA—the Performing Arts Garage and the Moscone Center Garage. The transfer of these two properties became effective in September 2017, thereby allowing the SFMTA to explore development of the Moscone Center Garage Site.

The ordinance transferring the two Parking Authority garages mentioned a convention hotel with affordable housing as a potential development concept for the Moscone Center Garage Site. This concept arose from discussions between the SFMTA, the City's Office of Economic and Workforce Development (OEWD), the Mayor's Office of Housing and Community Development (MOHCD), and SF Planning. The SFMTA and these partner City agencies sought a development program for the Site that would achieve multiple goals: 1) providing substantial revenue to the SFMTA consistent with its Charter obligation to "diligently...seek to develop new sources of funding"; and 2) addressing City policy goals in the areas of economic development and affordable housing.

The SFMTA and its City partners have analyzed and refined the convention hotel/affordable housing concept in recent months and have formulated a Request for Proposals (RFP) to implement that development concept. As further detailed in the RFP, development proposals must include a minimum 650-room convention hotel to complement the expansion of the Moscone Center currently underway, a minimum 100 units of affordable housing, a pedestrian oriented design that activates the adjacent streetscapes, and ambitious Transportation Demand Management (TDM) measures. The SFMTA will retain jurisdiction of the Site and will negotiate a 65-year ground lease with the selected development team with the option of a 34-year lease extension.

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In 2005, the SFMTA completed a similar project in partnership with a private developer. Hotel Vitale, an approximately 200-room hotel at the corner of Mission Street and Steuart Street, is situated on SFMTA property. The SFMTA executed a long-term (up to 65-year) lease with a developer to construct the Hotel in 2003. Construction was completed in 2005, and the Hotel has generated ground lease revenue to the SFMTA since then.

The RFP requires that each Proposer submit two proposals for the development concept—one without a public parking garage and one with a smaller parking garage (200 – 300 spaces) that would replace the existing 732 spaces in the Moscone Center Garage. There will not be dedicated parking for the hotel and the housing development under either scenario. A September 2017 parking study examined the parking occupancy patterns of the Moscone Center Garage, development trends in the surrounding SoMa neighborhood, and parking supply and demand trends in the neighborhood. The parking study concluded:

- The average peak occupancy of Moscone Center Garage is 53%. Occupancy is uneven, and weekend occupancy is substantially lower than weekday occupancy.
- At present, reducing or even eliminating Moscone Center Garage parking would displace relatively few parkers. The Fifth & Mission Garage, located two blocks from the Moscone Center Garage and containing nearly 2,600 spaces, could accommodate nearly all of the vehicles that currently park at Moscone Center Garage.
- Growth in the Central SoMa neighborhood is projected to generate a parking shortfall in the area, but the shortfall would occur even if the Moscone Center Garage were untouched. Also, previous projections of parking shortfalls in transit-rich, centrally located areas of San Francisco have not materialized due to changes in the public's use of alternate means of transportation.
- Reducing the number of parking spaces at the Moscone Center Garage Site would reduce parking revenue to the SFMTA, but that would be offset by ground lease and tax revenue from the development of the Site.

Given the current occupancy of the Moscone Center Garage, the capacity of the nearby Fifth & Mission Garage, and the substantial transit investments in the area (including the Central Subway and the TransBay Terminal), the RFP requires proposals for a smaller replacement garage, if any replacement parking is to be included in the development. By asking prospective developers to submit two proposals (one with and another without a parking garage), the SFMTA will be able to evaluate the financial and transportation implications of each approach.

A RFP evaluation panel will score each proposal based on the proposed ground lease to the SFMTA, the proposal's financial feasibility and overall quality, the experience of the development team, and community outreach. The evaluation panel will recommend a Developer to the Director of Transportation, who may recommend the selection of the Developer to the SFMTA Board and request that the Board approve an Exclusive Negotiation Agreement (ENA) with the Developer.

## **STAKEHOLDER ENGAGEMENT**

The SFMTA communicated extensively with all 11 Supervisors and the Mayor's Office about the ordinance that transferred the Moscone Center Garage from the Parking Authority to the SFMTA. The SFMTA has also worked extensively with OEWD, MOHCD, and Planning staff to formulate a development concept that is feasible and that addresses SFMTA and City priorities. As the hotel/affordable housing concept was being developed, the SFMTA presented the concept to the District 6 Supervisor (Supervisor Kim).

In May 2017, the SFMTA received a letter from the Tenants and Owners Development Corporation (TODCO) located in the SoMa neighborhood, expressing concern about the development of the Moscone Center Garage Site, including project design, minimum level of housing affordability, community process, and contribution toward community facilities. The SFMTA responded, indicating an eagerness to work with neighborhood stakeholders to craft a development concept that would be appropriate for the SFMTA, City, and SoMa community.

Before the Board of Supervisors' vote in July 2017 transferring the Moscone Garage to the SFMTA and before a meeting of the Policy and Governance (PAG) Committee in September 2017, SFMTA and City staff reached out to numerous stakeholders, including TODCO, to share the proposed hotel/affordable housing concept. During this round of outreach, stakeholders did not express any concern about the development concept. At the September 2017 PAG meeting, SFMTA staff briefed Board members on the results of the Moscone Center Garage parking study, the proposed development concept, and the development process.

In advance of this meeting of the SFMTA Board, SFMTA, OEWD, and MOHCD staff are conducting further outreach to stakeholders to reiterate the intended development program for the Moscone Center Garage Site and to apprise them of the development timeline and process.

The RFP requires that Proposers submit a detailed community outreach plan including specific outreach strategies, staffing, and Proposers' track record in achieving community consensus. The quality of the Proposer's outreach plan is one of the RFP scoring criteria. The SFMTA will work with the Developer to ensure that the Developer fulfills its outreach commitments.

## **ALTERNATIVES CONSIDERED**

One alternative to developing the Moscone Center Garage Site is to maintain its current use as a parking garage. Given that the Site's zoning allows for a 320 foot building, a parking garage that has an average peak occupancy of 53% may not be the highest and best use of the Site. The present parking use may not provide the highest revenue to the SFMTA. The RFP process will allow the SFMTA to compare the present financial performance of the Garage against anticipated revenues from the development of the Site. If the SFMTA does not receive compelling responses from the development community, the SFMTA may elect to maintain the present parking use.

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Another alternative that the SFMTA and its City partners considered is a different development program for the Site, such as a 100% residential project. However, a residential-only project would not capitalize on the Site's location across from the expanded Moscone Center, would not generate the employment opportunities that a hotel would, and would not necessarily yield more affordable residential units than the proposed hotel/affordable housing concept. For these reasons, a 100% residential project was ultimately rejected.

### **FUNDING IMPACT**

In fiscal year 2016-17, the Moscone Center Garage generated \$2.3 million in net income to the SFMTA. The SFMTA, OEWD, and real estate consultants to OEWD prepared a fiscal impact analysis to determine the income that the SFMTA would realize from developing the Site. This analysis indicated that lease and tax revenue from the development would offset the loss of parking revenue. The SFMTA will have a more precise sense of the potential project revenues when the SFMTA receives development proposals. From a fiscal standpoint, the goal of the development is to generate greater income than the Garage currently generates, and to ensure that the income stream grows over time. The SFMTA will work with OEWD and OEWD's real estate consultant to evaluate the anticipated fiscal impact of each proposal prior to making a recommendation to the SFMTA Board.

The costs associated with developing the Site will be entirely the responsibility of the selected development team. The ENA requires that the Developer furnish a deposit to reimburse the SFMTA for predevelopment costs, such as staff time and analyses by project feasibility consultants.

### **ENVIRONMENTAL REVIEW**

On January 11, 2018, the SFMTA, under authority delegated by the Planning Department, determined that the SFMTA Moscone Center Garage Development Request for Proposals (RFP) is not defined as a "project" under the California Environmental Quality Act (CEQA) pursuant to Title 14 of the California Code of Regulations Sections 15060(c) and 15378(b).

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

### **OTHER APPROVALS RECEIVED OR STILL REQUIRED**

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

The Board of Supervisors approved the transfer of the Moscone Center Garage from the Parking Authority to the SFMTA (and was informed of the proposed development concept for the Site) in July 2017. Final approval of the development will require SFMTA Board and Board of Supervisors approval of the ground lease and related development agreements.

### **RECOMMENDATION**

Staff recommends that the SFMTA Board of Directors authorize the Director of Transportation

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to issue a Request for Proposals (RFP) to solicit proposals to develop the Moscone Center Garage Site into a convention hotel and affordable housing, containing terms and requirements substantially similar to the RFP presented to this Board.

SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY  
BOARD OF DIRECTORS

RESOLUTION No. \_\_\_\_\_

WHEREAS, The SFMTA's Real Estate and Facilities Vision for the 21<sup>st</sup> Century (Vision Report), an extensive study of SFMTA properties issued in 2013, concluded that the sites of some parking facilities may be better utilized if developed for other uses in place of or in addition to public parking, such as transit oriented development; and,

WHEREAS, The Vision Report identified the Moscone Center Garage at 255 3rd Street as one of the sites that would be a candidate site for transit oriented development; and,

WHEREAS, Development of non-parking uses of parking facilities may better serve public needs and may generate revenue to support increasing demands for public transit as required by the Charter; and,

WHEREAS, In November 2016, by Resolutions Nos. 16-155 and 16-156, the SFMTA Board of Directors and the Parking Authority Commission of the City and County of San Francisco, respectively, recommended that the Board of Supervisors transfer ownership of properties owned by the Parking Authority of the City and County of San Francisco (Parking Authority), including the Moscone Center Garage, to the City and County of San Francisco under the jurisdiction of the SFMTA to facilitate the development of non-parking uses on Parking Authority properties; and,

WHEREAS, In July 2017 by Ordinance number 159-17, the Board of Supervisors transferred ownership of two parking facilities owned by the Parking Authority, the Moscone Center Garage and the Performing Arts Garage, from the Parking Authority to the City and County of San Francisco under the jurisdiction of the SFMTA to facilitate the City's exploration of the potential development of non-parking uses on the Moscone Center Garage and Performing Arts Garage sites; and,

WHEREAS, The SFMTA commissioned a parking study, completed in 2017, to evaluate the potential financial and transportation impacts to the Agency of reducing parking at the Moscone Center Garage Site, and based on that study, the SFMTA, the Office of Economic and Workforce Development, Mayor's Office of Housing and Community Development, and SF Planning developed a transit oriented development concept for the Site consisting of a convention hotel and affordable housing; and,

WHEREAS, The development of Moscone Center Garage Site is expected to provide income to the SFMTA exceeding the revenue currently generated by the garage's parking operations, and is also expected to benefit the City's economy, create jobs, and provide affordable housing; and,



WHEREAS, The SFMTA seeks proposals from developers to implement the development concept, which will propose a development concept that does not include on-Site parking and will also propose a development concept that includes a smaller, replacement parking garage at the Site; and,

WHEREAS, On January 11, 2018, the SFMTA, under authority delegated by the Planning Department, determined that the SFMTA Moscone Center Garage Development Request for Proposals (RFP) is not defined as a “project” under the California Environmental Quality Act (CEQA) pursuant Title 14 of the California Code of Regulations Sections 15060(c) and 15378(b); and,

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

RESOLVED, That the San Francisco Municipal Transportation Agency Board of Directors authorizes the Director of Transportation to issue a Request for Proposals (RFP), containing terms and requirements substantially similar to the RFP presented to this Board, to solicit proposals to develop the Moscone Center Garage Site into a convention hotel and affordable housing.

I certify that the foregoing resolution was adopted by the San Francisco Municipal Transportation Agency Board of Directors at its meeting of February 6, 2018.

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Secretary to the Board of Directors  
San Francisco Municipal Transportation Agency

**MOSCONE CENTER GARAGE PROPERTY**

**DEVELOPMENT OPPORTUNITY**

**REQUEST FOR PROPOSALS**

**DRAFT**



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- E. Exclusive Negotiating Agreement

## 1. Summary of Offering

### 1.1. Opportunity

The San Francisco Municipal Transportation Agency (“SFMTA” or “Agency”) in partnership with the San Francisco Office of Economic and Workforce Development (“OEWD”) is seeking proposals from qualified development teams to design and develop a mixed-use hotel and affordable housing project on the SFMTA’s Moscone Center Garage Property (the “Site”) in the South of Market (“SoMa”) neighborhood. The development program consists of a 650-room full-service hotel (the “Hotel Component”), a minimum 100-unit affordable housing residence (the “Housing Component”), and possibly a public parking garage to be constructed by the developer and operated by the SFMTA (the “Garage Component”). This proposed development must be contained within the 320-foot height allowance for the Site.

The primary objectives for this proposed project are:

- I. Provide the SFMTA with competitive market value for this property, as required by the Charter<sup>1</sup>, applicable law, and City policies<sup>2</sup>;
- II. Address the demand for public parking in the vicinity of the Site, while also promoting the City’s Transit First policy;
- III. Serve as a model Transit Oriented Development (“TOD”) with Transportation Demand Management (“TDM”) measures that encourage non-automotive modes of transportation;
- IV. Provide a full-service convention-style hotel to support the city’s demand for lodging and convention business, and particularly to support the Moscone Convention Center (the “Moscone Center”);
- V. In accordance with the City’s Public Lands for Housing Program<sup>3</sup>, develop a housing component that increases San Francisco’s permanent affordable housing stock for low and moderate-income San Franciscans; and
- VI. Develop the Site in the context of the surrounding neighborhood to enhance the quality of life and opportunities for those who live in, work in, and visit the surrounding area.

### 1.2. Development Site

The Site is located at 255 3<sup>rd</sup> Street (Block 3735 / Lot 060) between Howard and Folsom

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1 See Sec. 8A.109 of the San Francisco Charter

2 See Sec. 23.33 of the San Francisco Administrative Code

3 Public Lands for Housing Program: [sf-planning.org/public-land-housing-formerly-public-sites-portfolio](http://sf-planning.org/public-land-housing-formerly-public-sites-portfolio)

Streets, directly adjacent to the Moscone Center and Yerba Buena Gardens, in the South of Market (SoMa) neighborhood. The Site is a 40,655 square foot parcel bordered by Clementina Street to the south and Kaplan Lane to the east. The Site is currently operated by the SFMTA as a 732-space public parking facility. See Attachment A, Site Map.

### **1.3. Roles of the SFMTA and the City and County of San Francisco**

The SFMTA identified the Site as an opportunity for TOD in its 2013 *Real Estate and Facilities Vision for the 21<sup>st</sup> Century*<sup>4</sup>. The SFMTA seeks to enhance revenue to support and upgrade transportation services and facilities through successful development of this Site. The SFMTA will maintain fee interest in the Site and will issue a long-term lease to the selected proposer to develop, own the improvements, and operate the mixed-use project. If the SFMTA elects to include a public parking garage as a component of the development, the garage would be constructed by the developer and operated by the SFMTA. (If the final project includes a parking garage, all revenues from the garage will belong to the SFMTA.)

The City and County of San Francisco (“CCSF” or the “City”), represented by OEWD, seeks to promote three policy goals with this project. The first is to develop new affordable housing for the residents of San Francisco. The second is to promote the development of employment and small business opportunities to all segments of the community including low income persons, minorities, and women. The third goal is to promote the city’s convention and tourism sector by ensuring adequate lodging supply to support the Moscone Center and its current expansion project that will create over 515,000 square feet of new exhibition space.

### **1.4. Development Team**

Each proposing development team (Proposer) must identify an experienced developer and a primary architect in its proposal. In addition, the Developer will be required to partner with a 501(c)3 qualified non-profit affordable housing developer that has a successful track record of financing, building, and managing affordable housing. A Proposer must identify its developer partner in its proposal. To support the Housing Component, the development team must also identify a property manager and services provider in its proposal. Other consultants and team members may be added after selection. See Section 5 for additional City contracting Terms and Conditions.

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<sup>4</sup> SFMTA Vision Report, available in full at: <https://www.sfmta.com/about-sfmta/reports/sfmtas-real-estate-and-facilities-vision-21st-century>

### **1.5. Financial Requirements**

Each development team must demonstrate its ability to successfully finance, design, construct, and operate the project, as well as its capacity to perform predevelopment and development consistent with the schedule contained in this Request for Proposals (“RFP”). Proposals shall include a ground rent offer to the SFMTA and a maximum requested gap subsidy amount per housing unit to be funded by the Mayor’s Office of Housing and Community Development (“MOHCD”).

### **1.6. Selection Process**

Interested development teams must submit qualifications, a design concept and program, and a financial proposal, as further outlined in Section 4 of this RFP. An evaluation panel including the SFMTA, OEWD, the Planning Department (“Planning”), and MOHCD will evaluate the proposals based on the evaluation criteria outlined in this RFP and will make a recommendation regarding the selection of a development team. The final selection of the development team will be at the discretion of, and approved by the SFMTA Board of Directors (“SFMTA Board”).

### **1.7. Exclusive Negotiations**

The SFMTA will work with the selected development team to prepare an Exclusive Negotiations Agreement (“ENA”) that is substantially consistent with the ENA attached to this RFP. The ENA will remain in effect until the execution of a lease disposition and development agreement (the “LDDA”) with the SFMTA leading to a ground lease agreement with the SFMTA (the “Ground Lease”). The ENA describes any deposits and fees that the selected development team will be required to provide upon and after the execution of the ENA. A deposit of \$100,000 will be due 30 days after the execution of the LDDA, which will be credited against the Ground Lease rent and which shall be refunded if a Ground Lease is not executed by the parties unless the Ground Lease is not executed due to a Developer default under the LDDA.

### **1.8. Predevelopment and Project Entitlement**

The selected Proposer will lead a predevelopment process that includes community outreach, project design, entitlement, and environmental review. This process will be conducted in partnership with the SFMTA and OEWD. The selected Proposer is expected to work with Planning to ensure the project reasonably conforms to all applicable zoning and design parameters, as outlined in Section 2 of this RFP. The Site is not included in the boundaries of the proposed Central SoMa Plan.

### **1.9. Ground Lease Agreement**



The SFMTA and the selected Proposer will negotiate and enter into a long-term Ground Lease for the Site. The ground lease agreement is expected to have a term of 65-years with an option to the SFMTA to extend for an additional 34 years. The selected Proposer and/or subsequently approved entities will construct, own the improvements, and operate the project on the Site for the specified term, except for any Garage Component, which the SFMTA would operate. SFMTA recognizes that there may be a separate lease for the Housing Component in the form of a ground lease or air rights lease, and that such lease would be entered into by the Housing Component developer and SFMTA once a separate legal parcel for the Housing Component is created.

### **1.10. Important Dates and Contact Information**

Proposers may submit questions regarding this RFP to the following email address: Sheila.Layton@sfmta.com. All questions are due by 4:00 p.m. on XX, 2018. Answers to all submitted questions will be posted publicly on [sfmta.com/XXXX](http://sfmta.com/XXXX) and distributed to all questioners by XX, 2018.

Proposals must be received on or before \_\_\_\_\_ XX, 2018 at 4:00 p.m. to the attention of Sheila Layton at SFMTA, 1 South Van Ness Avenue, 6<sup>th</sup> Floor, San Francisco, CA, 94103.

## **2. Development Opportunity**

### **2.1. Background**

San Francisco is a national destination for large-scale conventions and business events. The Moscone Center hosts on average 50 conventions per year for over 950,000 attendees with an average of \$920 million in annual direct spending. San Francisco's destination appeal has resulted in record-breaking attendance and a growing demand for convention space. This demand is being accommodated by a \$500 million expansion of the Moscone Center<sup>5</sup>. Yet San Francisco lacks sufficient large blocks of hotel rooms to accommodate convention visitors. The citywide hotel occupancy rate was 83.8% as of July 2017, well above the national average of 66%. 71% of hotels in San Francisco have fewer than 200 rooms, requiring conventions to book rooms across at least 20 hotels and sometimes across as many as 100 hotels for the largest Moscone Center events. A new full-service convention hotel will help the city keep pace with hotel room demand, and will support Moscone Center convention

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<sup>5</sup> For more on the Moscone Center expansion project, visit: [mosconeexpansion.com](http://mosconeexpansion.com)

customers by offering large room block availability. The Moscone Center Garage site is optimally located to support the city's convention and tourism industry, as it is directly adjacent to Moscone Center and Yerba Buena Gardens. The project would also support San Francisco's economy by providing hotel tax revenue to the City's General Fund and new, high-quality, permanent jobs for San Francisco's workforce.

Moscone Center Garage is centrally located in the South of Market (SoMa) neighborhood, one of San Francisco's most vibrant neighborhoods. The SoMa neighborhood contains many of the city's premier museums and cultural institutions, diverse retail amenities, an active maker and artisan community, a growing office sector and technology start-ups, hotels, and a growing residential community. The Site is well connected to transit and is within easy walking distance to the Muni Metro and BART rail service along Market Street and the future Central Subway station at 4th and Folsom Streets.

## **2.2. Development Concept**

The City seeks qualified development teams to design and develop a high-rise infill project on the Site. This solicitation is for development of a flagship full-service convention style hotel to be operated by a major hotel brand. The project must also include an affordable housing component, and the project may include a new public parking garage, to be owned and operated by the SFMTA. The Site is located at 255 3rd Street between Howard and Folsom Streets in the SoMa neighborhood (Block 3735 / Lot 060). The Site is a 40,655 square foot parcel bordered by Clementina Street to the south and Kaplan Lane to the east, and currently operates as an SFMTA public parking facility.

The SFMTA is offering the Moscone Center Garage property as a joint development opportunity. SFMTA will retain ownership of the land and will enter into a long-term ground lease, or two ground leases or air rights leases, (individually, a "Lease Agreement" and together, "Lease Agreements") to enable development of the project.

## **2.3. Development Program Requirements**

The development program shall consist of the following elements at a minimum:

- a. **Hotel Component.** A full-service convention-style hotel with 650 rooms and associated meeting and event space. The hotel operator will be required to enter into a negotiated room-block agreement with SF Travel for convention business booking at Moscone Center. The hotel component will not be

permitted to have any dedicated on-site automobile parking, and shall conform to the loading and bicycle parking standards in the Planning Code. The hotel operator may negotiate a use agreement with the SFMTA public parking garage, if the City elects to include a Garage Component.

- b. **Housing Component.** An affordable housing component consisting of at least 100 rental units of deed-restricted affordable housing. These rental units shall be income restricted to qualifying residents and shall conform to the underwriting guidelines of MOHCD’s housing program and policies. The affordable housing component will not be permitted to have any on-site automobile parking but shall conform to the loading and bicycle parking standards in the Planning Code. See Section 3.6 of this RFP for details on the required affordable housing component.
- c. **Garage Component.** Each development team shall submit two development proposals—one that includes a public parking garage, and one that does not. For the proposal that includes a public parking garage, the garage shall consist of 200-300 public parking spaces, to be constructed by the developer and subsequently owned and operated by the SFMTA. If the City decides to pursue a development program that includes a public parking garage, the garage shall be designed in coordination with the SFMTA to ensure that the garage layout, ingress/egress, functionality, and amenities meet the demands of garage patrons.
- d. **Active Ground Floor Uses.** The development shall provide active ground floor uses along 3<sup>rd</sup> Street that enhance the streetscape and generate pedestrian traffic. Possible uses include retail and hotel-related uses, such as a hotel restaurant. The City also encourages a development program that creatively activates the three other boundaries of the property—Clementina Street, Kaplan Lane, and the pedestrian promenade on the north side of the Site.
- e. **Other.** The project will be subject to all other use, open space (including Privately-Owned Public Open Space or “POPOS”), streetscape, and development standards contained within the Planning Code, as applicable.

#### **2.4. Zoning, Entitlement, and Environmental Review**

The Site is zoned C-3-S (Downtown Support) and has a height and bulk classification of 320-I. Residential use is permitted, while hotel and public parking garage uses are conditionally permitted. The selected Proposer shall work with Planning to develop a building concept that delivers the required development program while reasonably conforming to the zoning and design parameters identified in this RFP.

The Site is not included in the proposed Central SoMa Plan and will not be rezoned as a result of the Plan, nor will it be subject to the Plan or its associated fees if approved.

The Site is subject to all standard City development impact fees<sup>6</sup>, including the Transportation Sustainability Fee and the Jobs-Housing Linkage Fee, and any area-specific impact fees. Proposers should assume that all impact fees must be paid in full. The selected Proposer shall comply with the City's TDM Program<sup>7</sup>, which is described in Section 2.5, below.

The Site is within the Yerba Buena Community Benefit District ("YBCBD"), which includes over 1,550 properties, and is subject to the YBCBD assessment. The YBCBD collects special assessments from property owners to fund maintenance and improvements in the neighborhood. The YBCBD is focused on fostering a safer and more secure community, enhancing environmental quality and beauty, and supporting businesses in the vibrant cultural district.

The selected Proposer should submit a Preliminary Project Assessment ("PPA") application as soon as possible after execution of the ENA to initiate the planning review and environmental review processes. Through the PPA review, the Planning Department will work with the selected Proposer to identify the range of project design and reasonable zoning modifications that may be considered to achieve the required development program and comply with the environmental review process.

## **2.5. Design Parameters**

Proposers are encouraged to present creative design and development concepts that utilize the Site's characteristics. Proposals shall be consistent with existing zoning, except as those requirements may potentially be modified as described below. A Proposal shall comply with the following design parameters:

- a. **Height/Bulk.** The Site is located within the 320-I height and bulk district. Proposals should comply with the maximum 320 foot height limit and should seek to minimize building bulk as much as possible, while delivering the required development program. Consideration should be given to sculpting building massing to minimize potential shadow impacts (as discussed below), while delivering a building that is elegant on the skyline and creates a comfortable urban environment at the pedestrian scale. Planning

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<sup>6</sup> See Article 4 of the San Francisco Planning Code

<sup>7</sup> See Sec. 169 of the San Francisco Planning Code

has conducted an initial massing study of the Site and concluded that the development program can be met in conformity with this height limit and at a more reduced bulk than the district permits.

- b. Density.** The property is located within the C-3-S Downtown Support zoning district, which permits a basic floor to area ratio (“FAR”) of 5.0:1. The Planning Department’s initial massing study suggests that it is unlikely the required hotel development program can be met within this FAR limit, and that it may be necessary to consider modifications to the FAR limits. Proposers are encouraged to consider the FAR of surrounding uses to determine whether any modification to existing FAR limits should be proposed to meet the required development program. The selected Proposal will achieve the required program while conforming to existing general neighborhood development patterns. Modifications to the permitted zoning for this Site are not guaranteed, and are wholly within the discretion of the Planning Commission and Board of Supervisors. Note that in C-3 districts, the gross square footage of the Housing Component may be exempted from the calculation of project FAR, subject to issuance of a Conditional Use Permit from the Planning Commission.
- c. Ground Floor.** The project shall maximize ground-floor uses that activate the public realm, create vibrancy, complement the neighborhood’s existing commercial and ground-floor uses, and avoid vacancies within any ground-floor space. These uses may include restaurant, retail, services, childcare, arts and cultural facilities, and active entrances to the housing and hotel components. A vibrant, active 3<sup>rd</sup> Street is an essential component of the project, but the project should also activate, to the greatest extent possible, the three other boundaries of the property—Clementina Street, Kaplan Lane, and the pedestrian promenade on the north side of the Site. The City encourages a development program that creatively utilizes privately-owned public open spaces (POPOS) (i.e., in forms of plazas, terraces, atriums, small parks, other publicly accessible spaces) to activate the ground-floor and adjacent streetscapes. Any vehicular loading or passenger pickup and drop-off areas must be designed to minimize disruption to the movement of pedestrians, buses, and bicycles along 3<sup>rd</sup> Street, and must not interfere with the goal of creating a vibrant, pedestrian-oriented ground floor. For development proposals that include a public parking garage, access point(s) to the garage must be designed to minimize any disruption to the movement of pedestrians, buses, and bicycles along 3<sup>rd</sup> Street.
- d. Building Entrances.** The project shall provide separate entrances and lobby/common areas for the Housing Component and Hotel Component, for reasons of building

security, management, residential security, and maintenance. The project shall design the respective entrances in such a way to ensure that each is welcoming, attractive, and prominent.

**e. Transportation Demand Management (TDM).** The project shall have no dedicated, on-site automobile parking for the hotel and residential components. Public parking in an SFMTA-operated parking facility is the only type of on-site parking that may be included in the project.

- i.** The project shall conform to the City's adopted TDM Program. The project shall incorporate, at a minimum, the following TDM measures, which will count towards fulfillment of the TDM Program:
  - (1) Building staff shall educate and assist residents in enrolling in free transportation, such as Lifeline or other eligible reduced-fare programs.
  - (2) The project shall provide real time transit data in heavily trafficked common areas, such as the residential and hotel lobbies.
  - (3) Building staff shall be trained in transit trip planning and shall assist residents and hotel guests in accessing trip planning resources, such as web sites, mobile apps, the 511 phone service, and printed materials. A computer may be made available to residents and hotel guests for this purpose.
  - (4) Secure bike parking shall be provided on-site that includes the provision of cargo bikes for resident use.

In addition to compliance with the TDM ordinance and the specific measures outlined above, the City encourages Proposers to include in their Proposals other sustainable mobility features, either physical, operational, or programmatic, that are suitable to the project and that encourage non-automobile forms of transportation for project employees, residents, and visitors.

**f. Green Design Guidelines.** The City seeks to maximize the overall sustainability of the project to the greatest extent possible through the integrated use of sustainable building elements. Development plans that improve indoor air quality, reduce resource consumption, and approach zero-energy consumption are encouraged. At a minimum, the Project must meet the requirements of the 2013 San Francisco Green Building Code, California Title 24, and the Housing Component must meet California Tax Credit Allocation Committee (CTCAC) regulations regarding sustainable buildings. Buildings

that exceed CTCAC sustainability regulations, achieve net-positive sustainability strategies, and conform to the sustainability goals of the proposed Central SoMa Plan<sup>8</sup> are highly encouraged. The selected Proposal will also be required to comply with Chapter 7 of the Environment Code of the City and County of San Francisco, which specifies green building requirements for City buildings.

- g. **Shadow Impacts.** The Site is located in the vicinity of several public open spaces, most notably Yerba Buena Gardens. An initial shadow impact analysis has been performed. The analysis found no shadow impact on any properties of the San Francisco Recreation and Parks Department, and thus the project is not likely to be subject to Planning Code Section 295. However, consideration of the shadow impact on other heavily used open spaces is important as well. Areas of Yerba Buena Gardens are potentially impacted by shadow from the conceptual building in the shadow impact analysis, but the impact is limited to between five minutes and two hours on any given day and is concluded by 9:00 a.m. in all scenarios.

Proposals shall seek to reasonably limit the shadow impact of the project on all open spaces falling within the project's maximum possible "shadow fan" through thoughtful building orientation, location, and design. Proposals should demonstrate that the project's shadow impact on Yerba Buena Gardens and any other impacted open spaces will not yield a Theoretical Annual Shadow Increase as a percentage of Theoretical Annual Available Sunlight ("TAAS") of greater than 0.5 percent, and that the impact is contained to before 9:00 am on the maximum shadow days.

### 3. Transaction Terms and Requirements

#### 3.1. City Department Roles

The City's work on the project is a collaboration led by the SFMTA, OEWD, MOHCD, and Planning, (collectively the "City Team"). Once a Proposer is selected, the City Team anticipates having the key roles described below. All City agencies will participate as needed in the community engagement process to be led by the selected Proposer through the predevelopment and project approval phases.

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<sup>8</sup> While the Site is not within the boundaries of the Proposed Central SoMa Plan, meeting the sustainability goals of the proposed Plan is encouraged. For more information about the sustainability goals in the proposed Plan, see <http://sf-planning.org/central-soma-plan>

- a. The SFMTA will participate in the negotiation of transaction terms consistent with its Charter obligations and jurisdiction over the property. If the City elects to include a public parking garage in the development program, the SFMTA will be an active partner in the design and development of the public parking garage component, and will have ultimate approval of the specific design features of this portion of the project. The SFMTA will also engage in project design discussions to ensure that the final project is consistent with SFMTA objectives, including TDM requirements and streetscape changes identified in the proposed Central SoMa Plan.
- b. SFMTA Contract Compliance will facilitate compliance with contracting and workforce requirements.
- c. OEWD will serve in an owner's representative capacity on SFMTA's behalf, which typically involves advising on negotiations on overall ground lease and development terms, advising on the development program as it evolves, coordinating among City departments to ensure that the project is consistent with their practices and policy goals, and facilitating the project's regulatory approvals process.
- d. Planning will provide the City's direction on the project's physical form, including the site plan, building scale and massing, and the design of any public realm elements. It will serve as the City's lead in preparing any proposed Planning Code amendments and related land use approval documents, as well as in directing outside consultant preparation of any environmental documents required under the California Environmental Quality Act (CEQA).
- e. MOHCD will be primarily responsible for negotiating and reviewing the terms of the Housing Component of the project, including its size, specifications, financing, and affordability mix. MOHCD will administer the Housing Component units consistent with its affordable housing program and policies.

### **3.2. Exclusive Negotiating Agreement**

The selected Proposer and the City will enter into an ENA that shall remain in effect through project approvals and until the execution of an LDDA leading to a ground lease agreement with the SFMTA. The ENA will establish that the SFMTA will not concurrently negotiate with any other developers and will give the selected Proposer the assurance needed to begin investing predevelopment funds. The ENA describes any deposits and fees that the selected development team will be required to provide upon and after the execution of the ENA. An LDDA deposit of \$100,000 will be due 30 days after the execution of the LDDA. The LDDA Deposit will be credited against Ground Lease rent.



The ENA will specify key predevelopment terms, including performance benchmarks to ensure timely progress, a predevelopment scope of work, the Proposer's commitment to pay for all predevelopment costs, and the Proposer's commitment to reimburse the City for staff costs on the project, as well as detailing the process for invoicing and reimbursement. The ENA will also include equal opportunity contracting requirements, including development-related subcontracting goals for non-construction services and predevelopment/construction workforce requirements. Subcontracting goals for construction work and permanent workforce requirements will be recorded in the LDDA. The ENA is found in Attachment E, Exclusive Negotiating Agreement.

A Proposer should clearly identify any requested substantive changes to the ENA in its Proposal. The ENA will be submitted to the SFMTA Board for its approval as part of the approval of the selected Proposer. If approved, the SFMTA Board will delegate negotiation authority to the Director of Transportation, which will allow the parties to subsequently negotiate and execute a final ENA.

### **3.3. Predevelopment Process**

During the ENA period the selected Proposer (Developer) will lead a predevelopment process that includes project design, entitlement, and environmental review. The Developer will work closely with the City Team to refine its proposed development concept into a more detailed development program.

The Developer will be responsible for conducting community outreach in coordination with the City throughout the predevelopment process. The Developer will conduct a robust community outreach process that involves neighborhood, convention and tourism industry, and contracting stakeholders with an interest in the project and the Site. This process will include a series of public meetings, a method to solicit and incorporate public feedback, and other outreach efforts as proposed by the Developer. The Developer will coordinate with the City Team in formulating and executing this community outreach process.

Prior to commencing the environmental review process for the project, the Developer shall complete a fiscal feasibility report sufficient for the City and County of San Francisco Board of Supervisors to make findings of fiscal feasibility required by San Francisco Administrative Code, Chapter 29. As part of those findings, the Board of Supervisors will consider whether the plan for implementing and undertaking the

project is fiscally feasible and responsible and whether the proposed project merits further evaluation and environmental review.

The Developer shall complete the following predevelopment activities as part of the project approval process:

- a. Detailed designs and description of the of the proposed project, including architectural design, specific program, bulk, massing, and height specifications, a passenger (white zone) and freight (yellow zone) loading plan to address the loading demands generated by the hotel and residential uses, design of required accessory uses such as open space and commercial space, and detailed design of the public parking garage in partnership with the SFMTA (if a public parking garage is part of the project);
- b. A community outreach process to partner with neighborhood, contracting community, and City stakeholders;
- c. All environmental documents and studies as may be required by CEQA and NEPA (as applicable), which may include a shadow impact analysis and an environmental impact report (“EIR”) independently prepared by a qualified environmental consultant under the direction of Planning;
- d. Planning Code amendments and any related documents that would allow the project to be built as intended;
- e. Regulatory approval documents memorializing the developer’s development rights and responsibilities, including its obligation to provide deed-restricted affordable housing and (sub)contracting and workforce opportunities;
- f. A lease disposition and development agreement between the developer and the SFMTA setting the land transaction and project development terms;
- g. A long-term ground lease agreement between the developer and the SFMTA incorporating the land transaction and project development terms;
- h. If necessary, creation of a separate legal parcel for the Housing Component; and
- i. Any other predevelopment scope items as identified by the parties.

After preparation of the required documents and completion of the predevelopment process, the Developer will seek City approval of the project, which is subject to City adoption of environmental findings under CEQA and includes all other regulatory approvals for the project, or “entitlements,” from the SFMTA Board, the Planning Commission, the San Francisco Arts Commission, the San Francisco Board of Supervisors, and other City agencies as may be required.

### **3.4. Ground Lease Agreement**

Provided that the City approves the proposed project, the Developer will execute a ground lease agreement or separate Lease Agreements for the Hotel Component and the Housing Component with the SFMTA after the issuance of project entitlements, in accordance with the terms negotiated during the ENA period and contained in the LDDA. The developer may then begin final design and construction of the project, subject to the negotiated development terms and the City's standard permitting and inspection processes. The Lease Agreements are expected to have terms of 65-years, with an option for the SFMTA to extend the term for an additional 34 years.

The Developer or subsequent owners will own the improvements, operate, and maintain the project for the duration of the Lease Agreement term. (Note, that if a public parking facility is a component of the Project, the Developer will construct the facility, which will be owned, operated and maintained by the SFMTA. The SFMTA would be responsible for all operating expenses for the public parking facility, and would retain all revenues from it). The City makes no commitments to fund the costs of operating and maintaining any publicly accessible open spaces or pedestrian improvements created as part of the project. These open spaces, including ongoing operations and maintenance expenses, will be funded by the project's owner(s).

The SFMTA will provide the Site in an "as is" condition. The Developer shall be responsible for discovery, investigation and remediation of any environmental, geotechnical, title, or other conditions or defects of the Site following execution of the ground lease or any related development agreement.

### **3.5. Ground Rent Offer**

The SFMTA must receive competitive market value for the Site in the form of lease payments to be negotiated between the SFMTA and the selected Developer for its use of the Site. The Developer shall present an offer for the Hotel Component ground lease as part of its Proposal, which may consist of any combination of upfront capitalized rent, recurring base rent payments, participation rent, or other proposed compensation formulae. The developer shall provide a proposed schedule of payments for the term of the lease, which will include the period of project construction, provide justification for the method(s) chosen, and provide projections and assumptions for any performance-based rent payments. Additionally, any proposed compensation terms for the 34 year lease extension shall also be included in the Proposal.

A Proposer's calculation of competitive market value should assume that the Developer will fund the entire project, including: (i) predevelopment costs and (ii) construction of the entire project, including the Hotel Component, the Housing Component, and a public parking facility (if the City pursues a development program that includes public parking). The developer shall leverage public subsidies for the Housing Component to the greatest extent possible (including Low-Income Housing Tax Credits and other state and federal sources) and will receive gap funding from MOHCD on a per unit basis towards the provision of the Housing Component units, as described below.

The City's selection of a Proposal will not mean that the City accepts all of the terms in the Proposal, but instead that such terms will form the basis to commence negotiations under the ENA. The negotiated terms any final agreement may differ from the selection Proposal, based on the City's determination of fair market value, adjustments to reflect the development plan's evolution, or new information about projected costs and revenues.

### **3.6. Housing Component**

**Required Program.** The selected Proposer (Developer) shall provide affordable housing that complies with the following criteria:

- a. **At least 100** rental units of deed-restricted affordable housing; the Developer is encouraged to exceed 100 units, to the extent feasible;
- b. The Housing Component may be provided within the same building as the Hotel Component or provided in a separate building on the Site. In either case, the Housing Component must have a separate and dedicated residential entrance that is well-designed, attractive, prominent, and easily accessible in order to ensure the security, proper management, and maintenance of the Housing Component. The Developer may also choose to provide the units offsite per the Offsite Alternative criteria described below;
- c. 50% of the units shall be restricted to low-income qualifying residents at no higher than 55% of Area Median Income ("AMI");
- d. 30% of the units shall be restricted to formerly homeless families referred by the Department of Homelessness and Supportive Housing ("HSH") at no higher than 30% of AMI;
- e. 20% of the units shall be restricted to moderate-income qualifying residents at no higher than 120% of AMI;

- f. Units should be family-sized such that at least 40% of the total units must have two or more bedrooms; alternately, at least 35% of the total units must have two or more bedrooms, provided that at least 10% of the total units must have three or more bedrooms;
- g. Unit sizes should exceed the minimum unit sizes established by CTCAC. As of issuance of this RFP, the CTCAC minimums are: 450 square feet for a one-bedroom unit, 700 square feet for a two-bedroom unit, and 900 square feet for a three-bedroom unit;
- h. All other Planning Code requirements for residential dwelling units, such as provision of a minimum amount of open space, shall be included;
- i. The Developer shall partner with a 501(c)(3) qualified non-profit affordable housing developer that has a successful track record of financing, building, and managing affordable housing;
- j. Consistent with standard City practice, Notices of Special Restriction must be recorded for the building or portion of the building containing the affordable housing;
- k. The project's affordable housing units must remain affordable for the term of the ground or air rights lease; and
- l. The project's affordable housing will be administered by MOHCD and must be consistent with MOHCD's housing program and policies, except if expressly modified through the project's negotiation and approvals process. Proposers can find detailed information about MOHCD's programs and policies at [sfmohcd.org](http://sfmohcd.org) and included in this RFP as Attachment C, MOHCD Affordable Housing and Underwriting Guidelines.

**Offsite Alternative.** The Developer may choose to fulfill the Housing Component through an offsite alternative. Proposers must identify if they will be pursuing the offsite alternative in their response to the RFP. The offsite alternative shall comply with all of the criteria listed above in the required program, except as modified below:

- a. **At least 133** units of deed-restricted affordable housing; the Developer is encouraged to exceed 133 units, to the extent feasible;
- b. The designated [site](#) for the offsite project must be within a 1 mile radius of the Moscone Center Garage and be currently zoned to allow housing development or otherwise be separately proposed by the Planning Department to allow housing based on published plans (including the proposed Central SoMa Plan);
- c. The offsite alternative may be provided on a dedicated building parcel, or it may be provided within a larger development project, provided that the units

are net additions to any affordable housing already required or proposed within that project;

- d. The project's affordable housing units must remain affordable for the term of the ground lease of the Moscone Center Garage Site; and
- e. If the offsite option is selected, the development team must demonstrate [site](#) control of the proposed location upon execution of the LDDA or in accordance with the specific performance terms and schedule to be described in the LDDA. If the development team is unable to demonstrate [site](#) control of the offsite location per the terms and schedule of the LDDA, the Housing Component must be built at the Moscone Center Garage Site.

**Resident Services.** Whether the Housing Component is provided at the Moscone Site or offsite, the successful provision of support services for residents is critical to the success of the Housing Component. Proposers must provide a trauma-informed services plan ("Services Plan") that demonstrates an understanding of the housing and services needs of extremely low- and low-income households and the specific target population, including formerly homeless households who have experienced chronic trauma. The Services Plan should include:

- a. Access to and coordination with mainstream community services, subcontracted and/or partner services, and a commitment by each service provider to coordinate with onsite supportive services and property management through regularly scheduled meetings to ensure sound operational and building management practices.
- b. A description of the minimum services to be provided that are appropriate to the proposed target population including homeless households, the estimated frequency of the services, and the plan for encouraging resident access to services. Examples of the services activities the supportive services staff perform may include:
  - (1) Early intervention with property management in resident selection to conduct assessments.
  - (2) Ongoing outreach and engagement of the tenant population with the goal of achieving housing stability.
  - (3) Thorough outreach to outside providers to teach, coach and mentor adults and teens on various key areas, including, e.g., mental health needs, substance abuse treatment, domestic violence, and food security.
  - (4) Help accessing benefits, pre-vocational and vocational training, legal services, and/or educational opportunities, as appropriate.

- (5) Referrals and assistance with accessing primary medical care and other community services as needed and connection with neighborhood community clinics.
- (6) Eviction prevention support and referrals.
- c. Specific strategies for addressing the needs of homeless households, e.g.:
  - (1) A description of the way the supportive services staff will engage and assess formerly homeless families and individuals during the resident selection period.
  - (2) The implementation plan for trauma-informed systems, including provisions for ongoing training for services staff and property management teams.
  - (3) Collaboration with other trauma-informed services providers to teach self-reliance and empowerment with adults and teens.
  - (4) Assistance with families' transition out of homelessness, especially regarding mental health concerns and adverse childhood experiences.
  - (5) Conflict resolution among tenants using trauma-informed principles.
  - (6) Recreation, community building, social, and/or other group programming.
- d. Staffing information (number of full time equivalents ("FTEs") or percent thereof, type of services staff, roles of services staff) and a services budget for both the homeless and non-homeless units. Services for the homeless units should be provided through a case manager to unit ratio of no less than 1 case manager for every 35 units; services for the non-homeless households should be provided at 1 services coordinator/connector for every 100 households. The selected development team will be required to work with HSH to determine final staffing ratios and budgets to successfully serve the homeless households. For more information on staffing, funding, and budgeting for resident services, please see Attachment D.

**Affordable Housing Financing.** The Developer is expected to leverage housing finance sources for the affordable component of the project including four percent (4%) Low Income Housing Tax Credits and tax-exempt bonds and conventional debt. MOHCD is willing to contribute gap funding for each affordable unit based on demonstrated need by the Developer after consideration of all other affordable housing finance and conventional debt sources. Whether choosing the on-Site or offsite option, proposers are asked to request a maximum gap subsidy from MOHCD per unit in their response to this RFP. Proposers are encouraged to minimize the MOHCD gap subsidy that they request by leveraging other financing sources and controlling development and

operating costs while not sacrificing the quality of the project. The development must be financially feasible, including realistic development and operating budget projections that conform to industry standards and maximize the use of available financing.

Proposers should develop preliminary financing plans that include the following financing sources:

- a. 4% low-income housing tax credits and tax-exempt bond financing;
- b. Federal Home Loan Bank Affordable Housing Program funds;
- c. MOHCD gap funds (in the form of a 55-year, residual receipts loan), minimized to the greatest extent feasible by other funding sources;
- d. Funding from the City's Local Operating Subsidy Program ("LOSP"), through a 15-year contract with MOHCD, to cover the difference between the costs to operate the homeless set-aside units and the formerly homeless tenants' contributions. (Developers should make this assumption only for the purpose of modeling their submissions; in order to control LOSP contract values, the City may require cross-subsidization from higher-income units to offset operating expenses. See Section 4.3 for more information on accounting for these funds in the proposed operating budget).

Furthermore, proposers should identify, though not assume in their financing plans, additional funding sources that may be utilized to further reduce the MOHCD gap funds requested. The sources include the following:

- a. State of California Housing and Community Development ("HCD") funding and Strategic Growth Council funding ("SGC"), as applicable;
- b. Additional, non-MOHCD sources of funds that meet the City's affordability goals and reduce, to the greatest extent feasible, required MOHCD gap funding;

### **3.7. Project Costs**

Beginning on the date that the SFMTA Board authorizes exclusive negotiations with the Developer and continuing throughout the ENA period, the Developer will fund all predevelopment costs, including costs associated with City staff time and any outside consultant work, appraisals, and other reports secured by the City. The attached ENA includes the City's full terms related to project cost recovery. The Developer will also be responsible for the full cost of the real estate transfer tax and all development costs.



## 4. Submission Requirements and Selection Process

### 4.1. Submission Process

Proposers are encouraged to visit the Site, which is publicly accessible, and conduct due diligence at their own discretion.

A pre-proposal conference will be held at the SFMTA (1 South Van Ness Avenue, xx floor) on XXX, 2018. The purpose of the meeting is to ensure that all teams understand the programmatic design, financing, scoring, and submittal requirements.

Any questions, requests for information, or other clarifications regarding this RFP must be submitted at the pre-proposal conference or in writing by XXX, 2018 at 5:00 PM to: XXX or by email to XXX. No oral inquiries (other than questions asked at the pre-proposal conference), including voicemail messages, will be answered.

Responses to questions posed at the pre-proposal conference and responses to written questions will be posted on the [www.sfgov.org/oca](http://www.sfgov.org/oca) website by XXX, 2018.

All Proposals are due on XXX. Proposals must conform to the submission requirements described in Section 4.3.

### 4.2. RFP Schedule

Milestone	Date
RFP Release	TBD (mid-January/February)
Pre-Proposal Conference	+2 weeks from RFP release
Written Questions Due	+3 weeks from RFP release
Responses to Questions Posted Online	+1 weeks from question deadline
<b>RFP Responses Due</b>	<b>+4 weeks from responses posted</b>
Proposer Interviews	Approx +4 weeks from RFP deadline
Selected Developer Announced	Approx +10 weeks from RFP deadline

### 4.3. Submission Requirements

1. Introduction and Executive Summary (up to three (3) pages).

Submit a letter of introduction with an executive summary of the proposal for developing the Site, including the development's overall size, uses, amenities, design concept, and summarized financing plan. The letter must be executed by the authorized principal(s) or manager(s) of each developer entity or entities (e.g. corporation, limited liability company, non-profit organization). The letter must include each developer entity's address and the phone number and email address of each signatory. Anyone signing a proposal as an agent of a firm or entity shall submit legal evidence of their authority to do so with the proposal.

2. Development Team Description (up to ten (10) pages).

Development teams responding to the RFP may consist of a single development organization or a team comprised of multiple developer partners, including a combination of for-profit and non-profit developers. Regardless of the structure of the development team, each team is required to partner with a 501(c)(3) qualified non-profit affordable housing developer either as part of a single development organization formed with a for-profit development partner (i.e., a joint venture structure), or as one of several development partners in the project's organizational structure. Proposers are required to identify a non-profit affordable housing developer partner in their responses. Proposals must also indicate a lead project architect, residential property manager, and residential service provider and may include other principal consultants expected to be included on the development team.

- A. Include an organizational chart naming all anticipated development team members from all organizations, indicating their roles and including the names and roles of known consultants.
- B. Identify and describe the legal developer entity or entities that will develop the project. Include each entity's name, type of organization (e.g. 501(c)(3), LLC, etc.), anticipated role, and anticipated percentage ownership in the proposed project. If the development team is comprised of multiple development organizations, clearly describe the role of each organization and which organization would be involved in which major tasks, including but not limited to entitlement and environmental review, ENA, LDDA and ground lease negotiations, development and construction, and the Housing Component.

- i. In responding to this RFP, a non-profit affordable housing developer may partner with more than one Proposer. Development of the Housing Component must include a non-profit developer.
  - C. Identify the development team’s key personnel, including the lead negotiator(s) for the hotel development and for the affordable housing development. Include contact information and brief descriptions of each individual’s respective role. Provide resumes for the lead negotiator(s) and key personnel (resumes do not count toward the maximum page count).
  - D. Identify the legal entity that would enter into the ENA and other contractual agreement(s) with the City and list the entity’s partners, members, and equity holders. This should be the same entity for which financial capacity information is provided. Although the Developer may form a new single-purpose entity for ownership of the project, for purposes of this RFP, please provide information for the parent organization(s) currently in existence.
  - E. Describe how any joint development ventures or other partnerships would be structured for the Hotel Component and for the Housing Component, including the partners’ relative levels of financial participation and staffing.
  - F. Lead Architect: Identify the designated lead architect for the project and any other selected consultants that will provide design services for the proposed project. Include each firm’s name and anticipated role in the proposed project. Provide resumes for the key personnel (resumes do not count toward the maximum page count).
  - G. Property Manager: Identify the property management company for the Housing Component of the project. Provide resumes for the key personnel (resumes do not count toward the maximum page count).
  - H. Services Provider: Identify the services provider for the Housing Component of the project. Provide resumes for the key personnel (resumes do not count toward the maximum page count).
- 3. Development Team Experience (up to twenty (20) pages).  
 For each developer entity and for the lead architect, provide high-level descriptions of three (3) prior projects completed within the last 10 years that demonstrate the entity’s experience working on projects of a similar size and scope. Please limit each profile to two (2) pages or fewer and do not submit more than three (3) profiles for each entity. Each profile should include the following information about the project:
  - A. Location

- B. Development program, type, and size; for residential projects, describe the target population by AMI
- C. Name of and role of Developer and project architect
- D. Development cost, financial structure and funding sources, and whether the property was completed on/under/over budget
- E. Description of interaction with any public sector partners
- F. Community engagement strategy and outcomes
- G. Project timeline including date of entity's initial engagement, key project milestones, and completion date (if complete) in relation to original project timeline
- H. Two references for each profile (including names, affiliations, and phone numbers)

Property Manager:

- I. The total number of buildings in the property management company's portfolio and the number of years each building has been managed with a brief summary of how each building has performing during the period.
- J. At least three projects managed by the residential property manager that have the following characteristics. For each of these projects, describe their location, resident population, amenities, size, capital financing sources, and dates of service.
  - i. Located in San Francisco
  - ii. Managed for at least 24 months
  - iii. At least 50 units in size
  - iv. Affordable to families at 60% AMI and below
  - v. Financed in part by Low Income Housing Tax Credits
- K. The residential property manager's experience with formerly homeless tenants, as well as its track record providing sound operational and building management, and its standard procedures regarding resident meetings and resident outreach.

Services Provider:

- L. The service provider's experience providing on-site or off-site services to residents of affordable housing, highlighting any experience serving homeless families.
- M. The types of services that the provider has made available to low-income families; where services have been provided; how clients' needs have been assessed and how a plan for addressing those needs is developed; how clients are linked to the City's safety net of services and assisted in their efforts to access those services.
- N. The duration of services contracts with City departments, contact information for any public agency providing funding for services, and documentation of quality of

services provided, such as contract monitoring reports or funding source evaluations.

4. Development Proposal.

Each proposer shall submit two development proposals—one that includes a public parking garage of 200-300 spaces and another that includes no parking garage. The City expects that, aside from the public parking garage, there will be substantial overlap in the design concept of the two proposals. Therefore, proposers are expected to explain the design elements that are common to both proposals, as well as the ways in which the proposals are distinct. Proposers shall submit development proposals that articulate a distinct vision for the project, describes the approach to each of the required program elements, and illustrates at a pre-schematic level the design concepts (including massing, program disposition, articulation, materials, and design character). The proposals are expected to demonstrate design excellence with an emphasis on sustainability and appropriate urban form.

A. Narrative Overview (up to twelve (12) pages, excluding diagrams and other graphics or photos needed to convey the concept). Describe both of the proposed projects (with and without a parking garage) and include the following information:

- i. Describe the Hotel Component development concept and program, including room types and style, information about the intended user experience, target guest population, and information about the potential hotel operator or brand.
- ii. Describe the Housing Component development concept and program, including number of units, the unit mix of the population to be served by AMI level, residential amenities, location and treatment of the entrance to the Housing Component, and location and treatment of residential open space(s). Identify whether the affordable housing component will be constructed on-site or offsite. If offsite, provide additional detail about the Housing Component development concept, building type, and amenities. If the offsite option is selected, the development team must demonstrate site control of the proposed location upon execution of the LDDA or in accordance with the specific performance terms and schedule to be outlined in the LDDA. If the development team is unable to demonstrate site control of the offsite location per the terms and schedule of the LDDA, the Housing Component must be built at the Moscone Center Garage Site.

- iii. For the development proposal that includes the public parking garage, describe the public parking facility, including location and layout, number of parking spaces, ingress/egress, and accessory uses (e.g. restrooms, lobby).
  - iv. Include a program summary table listing quantities and gross and net square footages for all program elements including hotel rooms, residential units, number of parking spaces (for the development proposal that includes public parking), meeting/convention facilities, accessory hotel functions, ground floor commercial uses, and all other program uses.
  - v. Describe the design approach and concept for the Site, including orientation of the building(s), building height and massing, construction type, architectural character, façade materials, access and egress, ground floor programming, vehicle and pedestrian loading areas, open space programming, and any additional amenities and differentiating features.
  - vi. Describe the public realm approach, including how the urban design concept relates to its surroundings, the streetscape design concept, how the design will activate 3<sup>rd</sup> street and the other street frontages, and the pedestrian experience and circulation. Describe how various users and visitors will access and interact with the project.
  - vii. Describe the transportation approach, such as how the project will embody the goals of a transit-oriented development. Include confirmation that the project will include the TDM measures outlined in Section 2.5 and include a description of any other specific TDM measures that will be incorporated into the project.
  - viii. Describe the project's approach to green design and sustainability. Include confirmation that the project will meet the minimum green design guidelines outlined in Section 2.5, and describe the project's green design and sustainability goals (e.g. LEED certification level).
  - ix. Provide a services plan of no more than three (3) pages that meets the requirements of Section 3.6.
  - x. Provide a narrative or illustrative description of how the project meets the required design parameters described in Section 2.5.
- B. Concept Drawings (no page limit). Provide pre-schematic level drawings for the development proposal in color as follows. Additional diagrams and sketches may be included if needed to clarify approach.
- i. Site Plan. Using a scale of 1" = 50'-0", indicate the location, orientation, and footprint of the building(s), setbacks, and other major physical features and amenities. Indicate locations of retail frontages, lobby entrances, loading

areas, and any open spaces. Indicate the project's relationship to adjacent buildings and rights-of-way.

- ii. Floor Plans. Include a ground floor plan (at a scale of 1" = 50'-0") and a typical floor plan for all major program types (at a scale of 1/32" = 1'-0"). All floor plans should indicate uses and gross square footages of each component (e.g. hotel room size, residential unit size, hotel accessory use size, parking space size). Floor plans need not include layouts within hotel or residential units but should include sufficient detail to discern major circulation patterns and locations of major building systems.
- iii. Building Elevation(s) and Section(s). Include at least two (2) building sections at a scale of 1/32" = 1'-0", one longitudinal and one transverse. Include at least two (2) building elevations at a scale of 1/32" = 1'-0". Indicate building(s) heights, setbacks, and other information to relay bulk and orientation. Label all program elements.
- iv. Perspectives/Renderings. Provide three (3) perspective drawings/renderings that express important aspects of the design concept and how the project's program elements relate to each other and the surroundings. One perspective should be provided that shows how the building will look from 3<sup>rd</sup> Street at street level.

5. Developer's Financial Capacity and Capability (no page limit).

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

Therefore, it is important for Proposers to clearly identify in their proposals those financial records or other information that the Proposer in good faith determines to be a trade secret or confidential proprietary information protected from disclosure under applicable law. To the extent permitted by law, the City will attempt to reasonably maintain the confidentiality of such information, and information so marked will be redacted from anything presented to the public. However, generally, all documentation, including financial information submitted by any Proposer to the City, are public records under State and local law, and the City will not under any

circumstances be responsible for damages or losses incurred by a Proposer or any other person or entity because of the release of such fiscal information.

Each Proposer must provide evidence of its financial capacity to successfully develop the project, including its ability to access adequate debt and equity. Such evidence may be in the form of letters from financial institutions, investors, and/or third party auditors; audited financial statements; and/or other validated reports/statements. Provide the following information in a **separate electronic file marked "confidential"** for each developer entity that is part of the development team.

- A. Financial Statements. Submit audited financial statements for the past two years of each principal and joint venture developer partner, including statement of changes in financial position and statements of any parent organizations and any materially relevant subsidiary units.
- B. Real Estate Portfolio. Describe the composition of the current real estate portfolio owned or managed by the developer(s) and, if applicable, parent company, including: project name, location, type and size, development cost, date completed, ownership interest, and occupancy rate. Identify any projects with negative cash flows, amount of developer's recourse debt, any non-performing loans, and the amount of guarantees and/or contingent liabilities. Identify any projects that have been financed with Low Income Housing Tax Credits, and identify the target population by income (e.g. market rate, 60% AMI, 30% AMI) for any residential projects.
- C. History of Financing Commitments. For each developer entity, provide a recent history (last five years) in obtaining financing commitments, including the type of project, dates of commitment, financing source, and amount committed.
- D. Pipeline Projects. List and describe all projects in the developer(s)' pipeline including location, status, program and size, schedule, estimated cost, financial commitments required of developer, and description of financing structure, sources, and amounts.
- E. Sources and Availability of Capital.
  - i. Identify anticipated sources of funds for the project, including current relationship to the proposed lenders and/or equity investors and their contact information.
  - ii. Provide a written statement from each financing source that the equity and/or mortgage capital is available or will be made available for funding the proposed project, and that the proposed project is consistent with the source's investment criteria for a project of this type and size. In lieu of



commitment letter(s) for the proposed project, Proposers may submit written statements from their financing source(s) describing past projects which the source has financed for the Proposer. Such written statements shall detail the amount of capital, the size of the past project and any other pertinent information that will assist the City in determining the availability of equity or mortgage capital to fund the proposed project such as current funding capacity. For affordable housing funding sources that are obtained competitively (e.g. Federal Home Loan Bank Affordable Housing Program funds), provide evidence that the proposed project would qualify for the funding source.

iii. The City may request additional evidence of financial capability.

F. Additional Disclosures. Provide answers to the following questions for each developer entity.

- i. Is the development entity affiliated with a parent company or other functionally related entity, and how would this entity ensure the development entity's financial obligations to the City are fulfilled?
- ii. Is the development entity involved in any litigation that could have a material adverse effect on the development entity's financial condition? If yes, please explain.
- iii. Are there any pending legal proceedings or actions that have been filed, or any resolved legal proceedings or actions that have been filed in the past 5 years, against any lead entity principals individually and/or as principal in a development entity. If yes, please provide dates the complaints were filed and the present status of any litigation.
- iv. Has the development entity or any affiliated entities filed for bankruptcy during the past five years? If yes, please explain.

6. Financial Proposal (up to twelve (12) pages).

Provide detailed written information regarding the financial aspects of the proposed project. A separate financing plan should be provided for the affordable housing component, whether on-site or offsite.

A. Hotel Component and Garage Component Financing Plan. Provide a detailed financing plan, which may include summary tables as necessary, describing the proposed project and all required program elements except for the Housing Component. Provide a detailed financing plan, with all of the required elements enumerated below, for each of the two development proposals—the proposal

that includes a public parking garage and the proposal that includes no public parking garage.

- i. Ground Rent Offer. The SFMTA is seeking fair market value for a long-term ground lease agreement. Proposals shall include a Ground Rent Offer that may consist of any combination of upfront capitalized rent, recurring rent payments, participation rent, or other proposed formulae. The Developer must provide a residual land value analysis demonstrating how the Ground Rent Offer was determined. The Developer must provide a proposed schedule of payments for the term of the lease, provide justification for the method(s) chosen, and provide projections and assumptions for any performance-based rent payments, such as participation rent. For the purposes of the Ground Rent Offer, Proposers should assume that the project will be entitled as described in the Proposer's Proposal. Any proposed terms for the 34 year Ground Lease extension should be included in the Ground Rent Offer.
  - ii. Development Budget. Provide a detailed project development budget from predevelopment up to and including stabilized operation or sale, including but not limited to, environmental remediation, if any; utility connections and Site work; demolition, grading, and shoring; the full costs of vertical construction; architectural and engineering expenses; all permitting and applicable City fees; financing costs; developer fee; taxes and insurance; hard and soft cost contingencies; and any initial marketing or other startup costs. Include hard costs per room and per gross square foot, and describe whether or not these costs are comparable to recent projects.
  - iii. Sources and Uses Statement. The statement must provide a complete cost-revenue analysis that demonstrates the financial feasibility of the project. The statement should include sources of equity and debt.
  - iv. Pro forma. Submit a 20-year operating pro forma including revenues, expenses, lease payments, debt service, reserves deposits, cash flow, and any finance/refinance proceeds.
  - v. Describe the various developer entities' financial structures and how they relate to the financing plan (e.g. distribution of financial commitments and obligations).
- B. Housing Component Financing Plan. Provide a detailed financing plan for the Housing Component. Include additional financial information for offsite proposals as necessary. The financing plan must conform to MOHCD's most current

underwriting guidelines (see Attachment C) and other published MOHCD policies, such as its Developer Fee Policy.

- i. MOHCD Gap Subsidy. MOHCD intends to provide gap funding on a per unit basis for the affordable housing component. Proposals shall clearly state the maximum amount of gap funding requested overall and *per residential unit*.
- ii. Development Budget. Provide a detailed project development budget from predevelopment up to and including stabilized operation, including but not limited to, the Housing Component's proportional share of any environmental remediation; utility connections and site work; demolition, grading, and shoring; the cost of vertical construction; architectural and engineering expenses; permitting and applicable City fees; financing costs; developer fee; taxes and insurance; hard and soft cost contingencies; and marketing and lease up costs. Include hard costs per unit and per gross square foot, and describe whether or not these costs are comparable to recent projects. The development budget must account for the cost of constructing residential open space and any other associated amenities. All assumptions should be clearly noted.
- iii. Sources and Uses Statement. The statement should identify primary capital funding sources. For the purposes of this RFP, and based on currently available funding sources, developers should provide a "baseline" pro forma that includes only 4% low income housing tax credits, tax-exempt bonds, Federal Home Loan Bank Affordable Housing Program funds, and the requested MOHCD subsidy per unit. Private bank debt may be included, if appropriate. Developers will be expected to aggressively pursue other funding sources to further minimize the MOHCD subsidy per unit. Developers must identify potential other funding sources not included in the baseline pro forma, any experience in securing these sources for other projects, and the potential impact of these sources on the MOHCD subsidy per unit.
- iv. First Full Year Operating Budget. Submit an operating budget that includes all expenses necessary to properly operate and maintain the residential component for the first year after stabilization. Provide narrative detail regarding all operating assumptions, including staffing pattern, building management, and number of FTEs. The operating budget should exclude support services such as case management and counseling but may include one FTE Services Coordinator/Connector. The operating budget shall assume funding from the City's Local Operating Subsidy Program (LOSP), through a 15-year contract with MOHCD, to cover the difference between the cost to operate the homeless set-aside unit and those tenants' contributions<sup>9</sup>.

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<sup>9</sup> Developers should make this assumption only for the purpose of modeling their submissions; in order to control

Formerly homeless households will contribute 30% of their incomes in rent. For the units serving formerly homeless households, developers should assume tenant-paid rents (exclusive of utilities) of \$200 per unit per month for one bedroom units and \$225 for two bedroom and three bedroom units.

- v. Pro-Forma. Submit a 20-year operating pro forma including revenues, expenses, debt service, reserves deposits, deferred developer fee, residual receipts waterfall distributions, and cash flow. Include annual LOSP subsidy payments sized to capture the difference between tenant paid rents in LOSP units and operating expense attributable to LOSP units *only*<sup>10</sup>.
- vi. Services Budget. Submit a services budget, separate from the Operating Budget and Pro-Forma that is consistent with the proposed services plan. The services budget must include proposed staffing (number of FTEs, type of services staff, roles of services staff) for both the homeless and non-homeless units. The services budget shall assume \$350 per unit per month in services funding provided by HSH for the homeless units and shall specify any additional services funding sources beyond assistance provided by HSH, if available.
- vii. Financing and Cost Control Innovations. Describe any innovative financing approaches intended to minimize the MOHCD gap subsidy. Also describe any innovative direct or indirect cost-cutting strategies relevant to overall development, construction or operating expenses, including a calculation of estimated savings.

7. Implementation (up to eight (8) pages, excluding any proposed revisions to the ENA).

- A. Community and Stakeholder Engagement. Describe the proposed approach to engaging with local community members, businesses, and other project stakeholders throughout predevelopment and construction. Explain specific strategies including public meetings, a method to solicit and incorporate public feedback, and other outreach efforts. Explain why this approach is ideal and will succeed in the SoMa community, drawing upon past experiences. Describe how the community engagement strategy will be staffed within the development team and the specific outreach experience and expertise of the team members who will

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LOSP contract values, the City may require cross-subsidization from higher-income units to offset operating expenses.

10 LOSP operating subsidies should account for, on a pro-rata basis, all typical costs of operations, required reserves deposits; mandatory administrative fees required by HCD financing, if any; deferred developer fee, if any; partnership management fees; and investor management fees. LOSP subsidies may not be used to pay hard debt service.

be responsible for leading this effort. Proposers must demonstrate past successes in achieving community support and incorporating community input for development projects.

- B. Affirmative Marketing Plan. Provide a draft affirmative marketing plan for the Housing Component that will facilitate a robust response during lease-up and ensure engagement with a wide diversity of potential tenants. The plan must include specific outreach strategies for SoMa-based tenants displaced by Ellis Act or Owner Move-In evictions and must commit to providing all marketing and application materials in all City-recognized languages. The Developer will be expected to comply with MOHCD's marketing requirements, including but not limited to requirements for language access and integration of the Fair Chance Ordinance<sup>11</sup>.
- C. Project Schedule. Provide project schedules for each of the two development proposals—the proposal that includes a public parking garage and the proposal that includes no public parking garage—beginning at the conclusion of the RFP process and continuing until the project is fully built-out and occupied. The schedules should include milestones around design, environmental review, entitlements, permitting, construction, and lease-up and/or stabilization. If the offsite affordable housing option is selected, provide a separate project schedule for this component of the project with the same requested information. For the purposes of this RFP and this project schedule, proposers should assume an 18-month long environmental review and entitlement period after the submittal of a stable project description. The actual timeline for the project's entitlements and environmental review may differ, but an assumed 18-month period will help to facilitate a fair evaluation of the proposed project schedules.
- D. Operations and Maintenance. Describe the anticipated approach to ongoing project operations and maintenance, particularly in regards to the interaction between the Hotel Component and on-site Housing Component. Include information about management structure and approach, capital maintenance, capital reserves, and any risk management strategies.
- E. ENA Revisions. Identify any material revisions to key terms of the ENA included in Attachment E, Exclusive Negotiating Agreement that would be requested in order to allow the SFMTA Board to approve an agreed upon version at the time the Board selects the winning proposer. This agreed upon version shall be substantially in conformance with the subsequent final negotiated ENA.

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<sup>11</sup> For more information, please see <http://sfgov.org/olse/fair-chance-ordinance-fco>.

**4.4. Submittal Format and Deadline**

**Submittal Format.** All submittals must be in digital format and provided on DVD or flash drive in PDF file type. Submittals must use 11-point type or larger. Paper submittals will not be accepted.

For Part 5 of the submittal, Developer’s Financial Capacity and Capability, provide the required information for each developer entity that is part of the development team in separate files with the word “confidential” in the file name. Any financial records or other information that the Proposer in good faith determines to be a trade secret or confidential proprietary information protected from disclosure under applicable law should be clearly marked as such.

**Submittal Deadline and Address for Submittals.**

Submittal Deadline: XX, 2018 at 4:00 PM

Address for Submittals: SFMTA  
1 South Van Ness Avenue  
6<sup>th</sup> Floor  
San Francisco, California  
ATTN: Sheila Layton

To ensure that submittals are received on time, Proposers are encouraged to deliver submittals by hand to the SFMTA’s 6<sup>th</sup> floor reception area, which is open between 8 a.m. and 5 p.m. on City business days. Late, emailed, or faxed submittals will not be considered.

A proposer may revise its submittal at its own initiative at any time prior to the submittal deadline, provided that the revised submittal is received in its entirety prior to the deadline.

**4.5. Evaluation Criteria**

Selection of a development team with which the SFMTA will enter into exclusive negotiations for the development of the Site will be based on the following factors:

<b>CRITERIA</b>	<b>POINTS</b>
<b>Financial Proposal</b>	
Hotel Component	
Ground Rent Offer .....	40

Overall financial feasibility of the proposal, including the financial structure and the ability to secure debt and equity financing .....	5
<b>Housing Component</b>	
Overall financial feasibility and requested level of MOHCD subsidy per unit <sup>12</sup> .....	15
<i>Subtotal Financial Proposal</i>	<b>60</b>
<hr/> <b>Development Concept</b> <hr/>	
Proposed concept for the project, including quality of the Hotel and Housing Components, design excellence, sustainability, consistency with the Design Parameters (sec 2.5), and number of affordable housing units proposed in excess of minimum .....	20
Proposed outreach plan, including comprehensiveness of strategies, methods for incorporating feedback, and track record of generating community consensus .....	5
<i>Subtotal Development Concept</i>	<b>25</b>
<hr/> <b>Development Team Experience</b> <hr/>	
Experience and expertise of the Proposer's development team, including developer(s), architect(s), and affordable housing specialists, in designing, developing, and managing projects of comparable scale and complexity .....	15
<b>Total Points</b>	<b>100</b>

*Scores may be negatively impacted by the submission of incomplete information*

**4.6. Selection Process**

Proposals will be reviewed and evaluated using the criteria specified in Section 4.5 by an evaluation panel comprised of staff of the SFMTA, OEWD, Planning, MOHCD, and other members as the City deems appropriate (the “Evaluation Panel”). The Evaluation Panel may contact references and may request further written material regarding qualifications or submittals at any time during the selection process. The results of any

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<sup>12</sup> Lower subsidy per unit requests will be scored more favorably than higher subsidy per unit requests.

reference checks or further information on the qualifications of the proposal team or the content of the submittal will be incorporated into the appropriate scoring criteria described in Section 4.5. The selection process will consist of the following steps:

1. Determination of completeness. The Evaluation Panel will review all timely RFP proposals to determine whether they are complete and responsive to the submission requirements outlined in Section 4.3. The City may, but is not required to, notify noncompliant proposers of their errors or omissions and give them an opportunity to remedy those errors or omissions.

2. Evaluation of written proposals. The Evaluation Panel will evaluate each complete RFP proposal based on the evaluation criteria described in Section 4.5. The Evaluation Panel will only evaluate submittals that are determined to be complete.

3. Oral interviews. The Evaluation Panel will invite development teams with complete proposals to participate in oral interviews. Interviews will provide an opportunity for development teams to present their proposals and for the Evaluation Panel to ask clarifying questions about the proposals. Development teams invited for oral interviews may be required to furnish additional information prior to or at the interview. The Evaluation Panel will evaluate the oral interviews based on the evaluation criteria described in Section 4.5.

4. Recommendation and selection. The Evaluation Panel will submit a recommendation for selection of a development team to the SFMTA Executive Director and SFMTA Board of Directors. The recommendation will be based on the Panel's evaluation of the written proposals, oral interviews, and any reference checks, which will yield a score for each proposal of up to 100 points, based on the evaluation criteria described in Section 4.5. By resolution, the SFMTA Board will formally select a proposal (and that proposal's development team) and will endorse the agreed-upon ENA. In accordance with the submission requirement in Section 4.3, RFP responders may propose specific alterations to these ENA terms, which the SFMTA may choose to accept at its sole discretion. The SFMTA reserves the right to work with the selected development team to modify the development program at the Site at a future date following the RFP selection process. The SFMTA may elect, for example, to deviate from how the proposal selected through this RFP process addresses public parking on the Site. This change or any other change in the development concept would not preclude the SFMTA from continuing to work with the Developer selected through this RFP process and would not necessitate a new RFP process. The SFMTA also reserves



the right to not make any development team selection through this RFP process.

#### **4.7. Next Steps**

1. Exclusive Negotiations. After approval by the SFMTA Board, the parties will work to prepare a final ENA. Once the parties come to an agreement on terms, the SFMTA Executive Director and the development team shall execute the ENA. The selected development team shall remit any deposits and fees as described in the ENA.

After execution of the ENA, the selected development team and the SFMTA will negotiate an LDDA. The period after the execution of the ENA and before the execution of an LDDA is defined as the “Negotiations Period.” During the Negotiations Period, the parties will negotiate the terms of the LDDA, the Lease Agreement or Lease Agreements, and any other related documents. During the Negotiations Period, the development team will be responsible for the following tasks, among others:

- Obtaining financial commitments from lenders and/or equity participants;
- Completing its “due diligence” review of the physical conditions on the Site, preparing financial projections, and completing preliminary development plans;
- Revising the proposed project concept and schematic design as a result of the planning review process, and to respond to any new information concerning the physical conditions on the Site;
- As necessary, proposing and defining the parameters of a separate legal parcel for the Housing Component, which parcel shall be reconveyed back to the City for lease to the development team Housing Component partner; and
- Meeting certain milestones during the Negotiations Period with dates specified in a schedule of performance to be determined and included in the ENA.

2. Lease Disposition and Development Agreement. The LDDA will include, but not be limited to, the parties’ responsibilities, economic parameters, closing conditions, development standards and requirements, and performance benchmarks and schedules. It will also require the LDDA Deposit of \$100,000, to be credited against the Ground Lease payment, payable within 30 days after the execution of the LDDA. Additionally, the LDDA will include a construction commencement requirement, which will be based on the detailed development schedule submitted pursuant to the ENA. The LDDA will also provide for the conveyance of any Housing Component Ground or Air Rights Parcel back to the City upon creation of such parcel and completion of construction of the improvements. After such conveyance the City shall convey a leasehold interest to the development team Housing Component partner.

3. Lease Agreements. The Ground and/or Air Rights Leases for the Hotel Component will include, but not be limited to, the parties' responsibilities, economic parameters, closing conditions, development standards and requirements, and performance benchmarks and schedules. The Ground and/or Air Rights Lease for the Hotel Component will have an initial term of 65 years, with an option to extend to a total of 99 years. At the end of the 99-year term, the ownership of the Hotel Component improvements will revert to the SFMTA. The Ground and/or Air Rights Lease for the Housing Component will have an initial term of 65 years, with an option to extend to a total of 99 years. At the end of the 99 year term, the ownership of the Housing Component improvements will revert to the SFMTA.

## **5. Terms and Conditions**

### **5.1. Respondents Duty to Investigate**

It shall be the sole responsibility of the selected Proposer to investigate and determine conditions of the Site and the suitability of the conditions for any proposed improvements. The Site will be conveyed to the selected Proposer in an "as is" condition, with no representations or warranties whatsoever. The City has no obligation to perform any Site remediation, demolish any improvements on the Site, remove, relocate or install utilities, complete on-Site or off-Site preparation work or improvements, or make any changes to existing conditions.

The information presented in this RFP and in any report or other information provided by the City is provided solely for the convenience of the interested parties. It is the responsibility of interested parties to assure themselves that the information contained in this RFP or other documents is accurate and complete. The City and its advisors provide no representations, assurances or warranties pertaining to the accuracy of the information.

### **5.2. Errors and Omissions in RFP**

A Proposer is responsible for reviewing all portions of this RFP. A Proposer shall promptly notify the SFMTA, in writing, if it discovers any ambiguity, discrepancy, omission, or other error in the RFP. Any such notification should be directed to the SFMTA in writing promptly after discovery, but in no event later than five working days prior to the date for receipt of Proposals. The City shall issue modifications and clarifications to the RFP by addenda, as provided below.

### **5.3. Inquiries Regarding RFP**

Any questions, requests for information, or other clarifications regarding this RFP must be submitted in writing as set forth in Section 4.1.

#### **5.4. Objections**

Should a Proposer object on any ground to any provision or legal requirement set forth in this RFP, the Proposer must, not more than fifteen calendar days after the RFP is issued, provide written notice to the SFMTA setting forth with specificity the grounds for the objection. Should a Proposer object on any ground to a determination that its proposal is non-responsive to this RFP, that party must provide written notice to the SFMTA setting forth with specificity the grounds for the objection no more than seven calendar days after the date of the letter notifying the Proposer of the City's determination of non-responsiveness.

#### **5.5. Notice of Intent to Award and Protest**

The SFMTA will issue a notice of intent to award the ENA to the selected Proposer not less than 14 calendar days before the SFMTA Board of Directors will consider the award. A Proposer that wishes to object to the SFMTA's award of the ENA must submit a written protest to the Director of Transportation stating with specificity all grounds and reasons for its protest and all arguments and supporting facts not more than five calendar days from the date of the notice of intent to award. The Director of Transportation will issue a written decision denying or sustaining the protest. If the protesting Proposer wishes to appeal that decision to the SFMTA Board, the Proposer must file a written appeal with the Director of Transportation not less than ten calendar days before the SFMTA Board meeting at which the Board will consider the award of the ENA. The SFMTA Board will consider and sustain or deny the protest before awarding the ENA. Any protest and appeal will be determined solely on the written record; neither the Director of Transportation nor the SFMTA Board is required to hold a formal evidentiary hearing or compel witness testimony to issue a determination of a protest or appeal. The failure of a Proposer to object in the manner set forth in this paragraph shall constitute a complete and irrevocable waiver of any such objection.

#### **5.6. Changes**

The City may modify or terminate the RFP at any time before the Proposal due date, by issuing one or more RFP addenda, which will be posted on the SFMTA and City's websites at [http://\\_\\_\\_\\_\\_](http://_____). The Proposer shall be responsible for ensuring that its Proposal reflects any and all RFP addenda issued before the RFP due date regardless of when the response is submitted. Therefore, the City recommends that the Proposer consult the websites frequently, including shortly before the Proposal due

date, to determine if the City has made any changes to the RFP.

**5.7. Revision of RFP Response**

A Proposer may revise its Proposal on the Proposer's own initiative at any time before the deadline for submission of Proposals. The Proposer must submit its revised Proposal in the same manner as the original. A revised Proposal must be received on or before the response due date. In no case will a statement of intent to submit a revised response, or commencement of a revision process, extend the response due date for any Proposer.

At any time during the Proposal evaluation and selection process, the City may, but is not required to, ask one or more of the Proposers for oral or written clarifications to its response.

**5.8. Errors and Omissions in RFP Response**

Failure by the City to object to an error, omission, or deviation in the Proposal will in no way modify the RFP or excuse the Proposer from full compliance with the specifications of the RFP or any subsequent contract.

**5.9. Financial Responsibility**

The City accepts no financial responsibility for any costs incurred by any Proposer. Proposals will become the property of the City and may be used by the City in any way it deems appropriate.

**5.10. Claims Against City**

No Proposer will obtain by Proposal , and separately by its Proposal affirmatively waives, any claim against the City, including the SFMTA, by reason of any or all of the following: any aspect of this RFP, any part of the Proposal evaluation and selection process, any informalities or defects in that process, the rejection of any or all Proposals, the acceptance of any Proposal, entering into exclusive negotiations, conditioning exclusive negotiations, terminating exclusive negotiations, approval or disapproval of plans or drawings, entering into any transaction documents, the failure to enter into a lease disposition and development agreement or other related agreement, any statements, representations, acts, or omissions of the City, the exercise of any discretion set forth in or concerning any of the above, and any other matters arising out of all or any of the above.

**5.11. Sunshine Ordinance**

All communications about this RFP are subject to the San Francisco Sunshine Ordinance. The City, including the SFMTA, will not be responsible under any circumstances for any damages or losses incurred by a Proposer or any other person or entity because of the City's release of information in response to a public disclosure

request. In accordance with Section 67.24(e)(1) of the San Francisco Administrative Code:

Contracts, contractors' bids, responses to requests for proposals and all other records of communications between the City and persons or firms seeking contracts will be open to inspection immediately after a contract has been awarded. Nothing in this ordinance requires the disclosure of a private person's or organization's net worth or other proprietary financial data submitted for qualification for a contract or other benefit until and unless that person or organization is awarded the contract or benefit. Information covered by this provision will be made available to the public upon request.

#### **5.12. Respondent's Obligations under the Campaign Reform Ordinance**

Respondents must comply with Section 1.126 of the S.F. Campaign and Governmental Conduct Code, which states in part:

No person who contracts with the City and County of San Francisco for the rendition of personal services, for the furnishing of any material, supplies or equipment to the City, or for selling any land or building to the City, whenever such transaction would require approval by a City elective officer, or the board on which that City elective officer serves, shall make any contribution to such an officer, or candidates for such an office, or committee controlled by such officer or candidate at any time between commencement of negotiations and the later of either (1) the termination of negotiations for such contract, or (2) six months have elapsed from the date the contract is approved.

If a proposer is negotiating for a contract that must be approved by an elected local officer or the board on which that officer serves, during the negotiation period the proposer is prohibited from making contributions to:

- The officer's re-election campaign;
- A candidate for that officer's office; or
- A committee controlled by the officer or candidate.

The negotiation period begins with the first point of contact, either by telephone, in person, or in writing, when a contractor approaches any city officer or employee about a particular contract, or a city officer or employee initiates communication with a potential contractor about a contract. The negotiation period ends when a contract is awarded or not awarded to the contractor. Examples of initial contacts include: (1) a vendor contacts a city officer or employee to promote himself or herself as a candidate for a contract; and (2) a city officer or employee contacts a contractor to

propose that the contractor apply for a contract. Inquiries for information about a particular contract, requests for documents relating to a Request for Proposal, and requests to be placed on a mailing list do not constitute negotiations.

Violation of Section 1.126 may result in the following criminal, civil, or administrative penalties:

1. Criminal. Any person who knowingly or willfully violates section 1.126 is subject to a fine of up to \$5,000 and a jail term of not more than six months, or both.
2. Civil. Any person who intentionally or negligently violates section 1.126 may be held liable in a civil action brought by the civil prosecutor for an amount up to \$5,000.
3. Administrative. Any person who intentionally or negligently violates section 1.126 may be held liable in an administrative proceeding before the Ethics Commission held pursuant to the Charter for an amount up to \$5,000 for each violation.

For further information, proposers should contact the San Francisco Ethics Commission at (415) 581-2300.

### **5.13. Reservations of Rights by the City**

The issuance of this RFP does not constitute an agreement by the City that any contract will actually be entered into by the City. The City expressly reserves the right at any time to:

1. Waive or correct any defect or informality in any response, Proposal, or related procedure;
2. Reject any or all Proposals;
3. Reissue an RFP;
4. Suspend any or all aspects of the process indicated in the RFP;
5. Request that some or all Proposers revise submittals;
6. Extend deadlines for accepting Proposals, or accept amendments to Proposals after expiration of deadlines;
7. During negotiation, expand or contract the scope of the development opportunity, including adding or subtracting areas to or from the Site, or change the concept from that initially proposed in order to respond to new information, community or environmental issues, or opportunities to improve the financial return to the City or the SFMTA from the project or enhance public amenities;
8. Prior to submission deadline for Proposals, modify all or any portion of the selection procedures, including deadlines for accepting responses or the requirements for contents or format of the Proposals; or

9. Determine that no project or lease will be pursued.

**5.14. No Waiver**

No waiver by the City of any provision of this RFP shall be implied from any failure by the City to recognize or take action. Any City waiver must be in writing.

**5.15. Respondent Selection Does Not Guarantee Project Approval**

The SFMTA's Board's selection of a Proposer and authorization to commence exclusive negotiations may not be construed as an approval of the proposed uses or the proposed project.

The SFMTA and City will not enter into any lease disposition and development agreement or related documents for the Site until environmental review is complete. If the project is found to cause significant adverse impacts, the City retains absolute discretion to require additional environmental analysis, and to: (1) modify the project to mitigate significant adverse environmental impacts; (2) select feasible alternatives that avoid significant adverse impacts of the proposed project; (3) require the implementation of specific measures to mitigate the significant adverse environmental impacts of the project, as identified upon environmental evaluation in compliance with applicable environmental law; (4) reject the project as proposed if the economic and social benefits do not outweigh otherwise unavoidable significant adverse impacts of the project; or (5) approve the project upon a finding that the economic and social benefits of the project outweigh otherwise unavoidable significant adverse impacts.

The selected Proposer will be responsible for obtaining all government approvals required for the development of the Site and paying all permit and processing fees related to the development. Approvals for the project are likely to be required from governmental agencies other than the SFMTA and the City. The selected Proposer will be responsible for all development exactions and fees that are required as conditions of approvals by governmental agencies, including the SFMTA and the City. In issuing this RFP, the City makes no representations or warranties about which government approvals will be required, or that the necessary governmental approvals to allow the development of the Site will be obtained.

The SFMTA issues this RFP in its capacity as a landowner with a proprietary interest in the selected Proposal, and not as a regulatory agency of the City. The SFMTA's status as an agency of the City will in no way limit the obligation of the selected Proposer to obtain approvals from City departments, boards or commissions with jurisdiction over the project.

#### **5.16. Submittals Become City Property**

All Proposal and subsequent submittals from a Proposer will become the property of the City and may be used by the City in any way it deems appropriate.

#### **5.17. Interpretation**

For the purposes of this RFP, the terms "include," "included" and "including" will be deemed to be followed by the words "without limitation" or "but not limited to," and, where required by the context, the singular includes the plural and vice versa, the feminine gender includes the masculine and vice versa, and the term "City" includes the SFMTA. Section and paragraph headings used in this RFP are for reference only and are not to be used to interpret the provisions of this RFP.

#### **5.18. Accessibility Requirements**

The selected Proposer will be responsible for meeting all applicable accessibility standards related to any proposed project.

#### **5.19. Equal Opportunity (Sub)contracting Requirements**

The selected Proposer/Developer shall promote the development of employment and small business opportunities with all segments of the community impacted by the Project, including low income persons, minorities, and women. The selected Proposer will be required to comply with local procurement requirements, including the provision of equal employment opportunities for disadvantaged business consultants, architects, contractors, and other potential development team members to participate in the Project. All predevelopment and preconstruction contracting shall comply with the San Francisco Local Business Enterprise and Nondiscrimination in Contracting Ordinance (14B). There is a cumulative 20% Local Business Enterprise (LBE) subcontracting goal on all development-related, non-construction services including predevelopment, development, and construction management services; SFMTA Contract Compliance will establish equal opportunity contracting goals on the construction work when the final construction scope and budget are approved by the SFMTA. To ensure that equal opportunity plans are consistent with City procurement requirements, the selected development team must meet with SFMTA Contract Compliance staff prior to soliciting a team beyond the core development team identified in the proposal. The project's equal opportunity subcontracting requirements must remain for the term of the Lease Agreement(s) and will be recorded in the LDDA.

#### **5.20. Prevailing Wages**

The Project will be subject to applicable local and/or state requirements with regard



to labor standards<sup>13</sup>. Development teams should take prevailing wage requirements and labor standards into account when seeking estimates for contracted work, especially the cost of construction, and other work to which the requirements apply, and when preparing development budgets overall. All construction work performed shall be recorded in certified payroll reports that conform with the Davis-Bacon Act and California Labor Codes. All certified payroll reports must be submitted to SFMTA using the prescribed electronic certified payroll reporting system.

#### **5.21. Employment and Training**

This project is subject to California Apprenticeship Standards, the San Francisco's First Source Hiring Program (non-construction), San Francisco's Local Hiring Ordinance (construction), and SFMTA's Construction Management Program (Employment Training Program). The selected development team will be required to work with SFMTA Contract Compliance and OEWD to comply with local requirements regarding the provision of employment opportunities for minority, female, local, and low-income residents during both the development and operation of the Project. The project's employment and training requirements must remain for the term of the Lease Agreement(s) and will be recorded in the LDDA.

#### **5.22. Employee Signature Authorization Ordinance**

The City has adopted an Employee Signature Authorization Ordinance (S.F. Admin Code Sections 23.50-23.56). That ordinance requires employers of employees in hotel or restaurant projects on City-owned property with fifty (50) or more employees (whether full-time or part-time) to enter into a "card check" agreement with a labor union regarding the preference of employees to be represented by a labor union to act as their exclusive bargaining representative. The development team shall comply with the requirements of such ordinance, if applicable, including, without limitation, any requirements in the ordinance with respect to any subtenants or operators.

#### **5.23. Standard Contract Provisions**

The development team shall enter into a contract substantially in the form of the ENA, attached hereto as Attachment E. Failure to timely execute the contract, or to furnish any and all insurance certificates and policy endorsements, surety bonds or other materials required in the contract, shall be deemed an abandonment of a contract offer and upon abandonment the City, in its sole discretion, may select another Proposer.

The City reserves the right to disqualify any Proposer to this RFP based on any real or

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<sup>13</sup> For example, see Section 23, Article VII of the San Francisco Administrative Code, which provides prevailing wage, apprenticeship, and local hire requirements for projects on land leased by the City.

apparent conflict of interest that is disclosed by the responses submitted or on the basis of other information available to the City. This City may exercise this right in its sole discretion.

#### **5.24. Nondiscrimination**

The Developer shall not to discriminate on the grounds, or because of, race, color, creed, national origin, ancestry, age, sex, sexual orientation, disability or Acquired Immune Deficiency Syndrome or AIDS Related Condition (AIDS/ARC), against any employee of, or applicant for employment with the applicant/developer or against any bidder or contractor for public works or improvements, or for a franchise, concession or lease of property, or for goods or services or supplies to be purchased by applicant/developer. The Developer shall include this non-discrimination provision in all subordinate agreements let, awarded, negotiated or entered into by the Developer for the purpose of implementing the Project.

The Developer shall comply fully with and be bound by the provisions of Chapters 12B and 12C of the San Francisco Administrative Code. Generally, Chapter 12B prohibits the City and County of San Francisco from entering into contracts or leases with any entity that discriminates in the provision of benefits between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of employees. Chapter 12C requires nondiscrimination in contracts in public accommodation. Additional information on Chapters 12B and 12C is available on the Human Rights Commission's ("HRC's") website at [www.sfhrc.org](http://www.sfhrc.org).

#### **5.25. Minimum Compensation Ordinance (MCO)**

The Developer shall comply fully with and be bound by the provisions of the Minimum Compensation Ordinance ("MCO"), as set forth in San Francisco Administrative Code Chapter 12P. Generally, this Ordinance requires contractors to provide employees covered by the Ordinance who do work funded under the contract with hourly gross compensation and paid and unpaid time off that meet certain minimum requirements.

For the amount of hourly gross compensation currently required under the MCO, see [www.sfgov.org/olse/mco](http://www.sfgov.org/olse/mco). Note that this hourly rate may increase on January 1 of each year and that contractors will be required to pay any such increases to covered employees during the term of the contract.

Additional information regarding the MCO is available on the web at [www.sfgov.org/olse/mco](http://www.sfgov.org/olse/mco).

#### **5.26. Local Hire Policy and Fair Chance Ordinance**

Through its submission of a proposal, the development team understands and agrees to abide by the terms and conditions of the City's Local Hire Ordinance and Fair

Chance Ordinance.

**5.27. Health Care Accountability Ordinance (HCAO)**

The Developer shall comply fully with and be bound by the provisions of the Health Care Accountability Ordinance (HCAO), as set forth in San Francisco Administrative Code Chapter 12Q. A Proposers should consult the San Francisco Administrative Code to determine its compliance obligations under that chapter. Additional information regarding the HCAO is available on the web at [www.sfgov.org/olse/hcao](http://www.sfgov.org/olse/hcao).

**5.28. Conflicts of Interest**

The Developer shall comply fully with and be bound by the applicable provisions of State and local laws related to conflicts of interest, including Section 15.103 of the City's Charter, Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California. The Developer shall acknowledge that it is familiar with these laws; certify that it does not know of any facts that constitute a violation of said provisions; and agree to immediately notify the City if it becomes aware of any such fact during the term of the Agreement.

Individuals who will perform work for the City on behalf of the selected development team might be deemed consultants under State and local conflict of interest laws. If so, such individuals will be required to submit a Statement of Economic Interests, California Fair Political Practices Commission Form 700, to the City within ten calendar days of the City notifying the selected development team that the City has selected the development team.

The City reserves the right to disqualify any Proposer to this RFP based on any real or apparent conflict of interest that is disclosed by the responses submitted or on the basis of other information available to the City. This City may exercise this right in its sole discretion.

**5.29. Subordination**

In the case of a ground lease, the SFMTA will not subordinate its fee interest in the Site. For purposes of financing the project, the SFMTA will permit bona fide lenders to have a leasehold security interest in the Project. The leasehold security interest will be subordinate to the SFMTA's fee interest and to the SFMTA's right to terminate the ground lease upon a default by the Developer (subject to any right to cure granted to the lender).

**5.30. Obtaining Title Insurance**

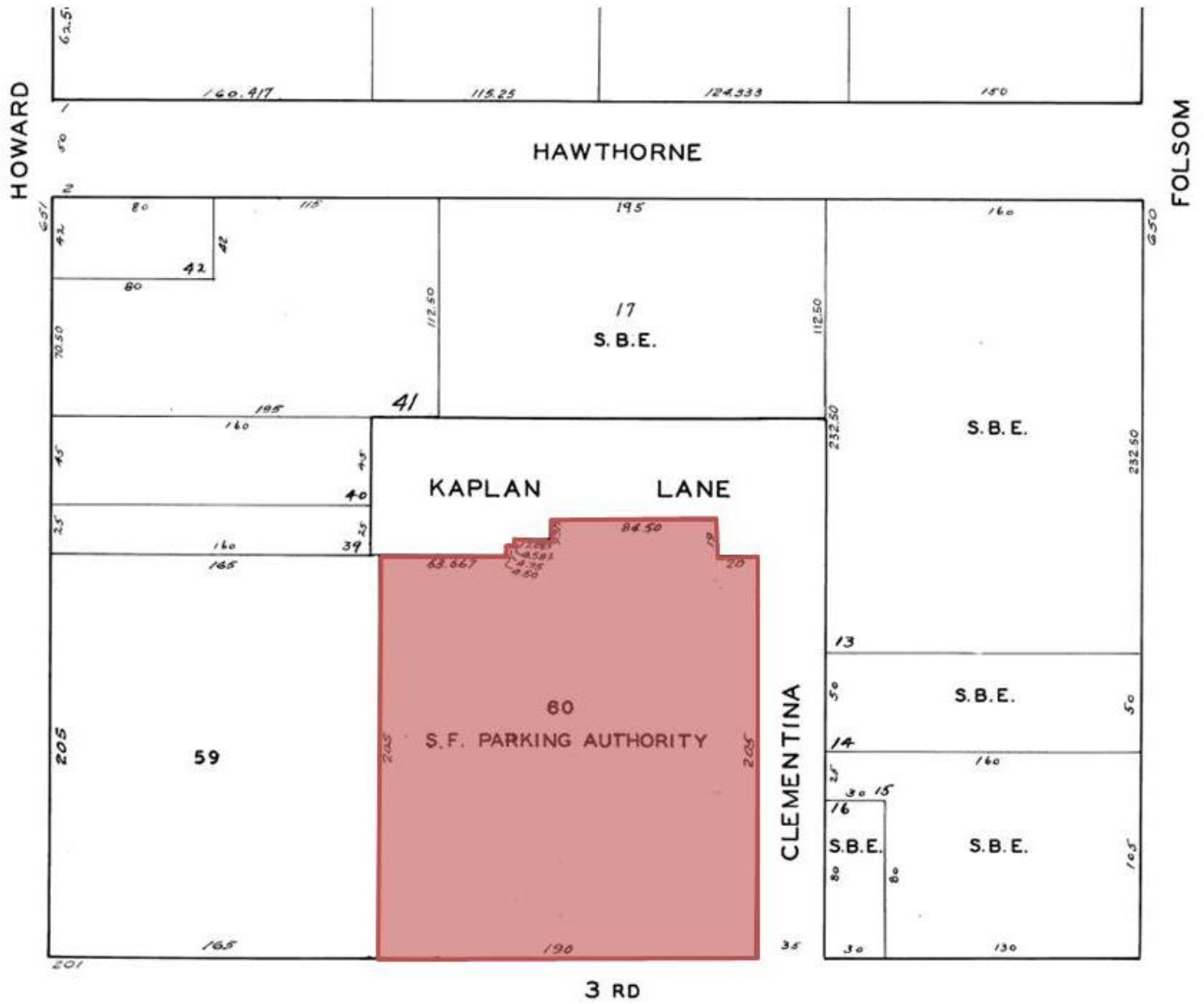
The SFMTA is not providing any evidence of title. Any title insurance or other evidence of good title desired by a Proposer must be obtained by the Proposer team

at its own cost and expense from a party other than the SFMTA. The SFMTA will not pay for any title examination, title report, title commitment, title policy, survey or other title-related matter. All conveyance, notary, settlement and other fees (including all transfer, recordation, grantor's, stamp, or other documentary taxes) shall be paid by the Developer, and the SFMTA shall have no obligation for any those or similar fees.

## **Attachments**

- A. Site Map
- B. Legal Description of Property
- C. MOHCD Affordable Housing and Underwriting Guidelines
- D. MOHCD Resident Services Guidelines
- E. Exclusive Negotiating Agreement

Attachment A – Site Map



## Attachment B – Legal Description of Property

### **For APN/Parcel ID(s): Lot 060, Block 3735**

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

#### **Parcel A:**

BEGINNING at a point on the Northeasterly line of 3rd Street, distant thereon 165 feet Southeasterly from the Southeasterly line of Howard Street; running thence Southeasterly along said line of 3rd Street 190 feet to the Northwesterly line of Clementina Street; thence Northeasterly along said line of Clementina Street 205 feet to the Southwesterly line of Kaplan Lane, as said Lane is shown on that certain map entitled, "Map Showing the Opening of Kaplan Lane Northwesterly of Clementina Street", recorded June 30, 1977, in Map Book "W" at Page 90, in the Office of the County Recorder of the City and County of San Francisco, State of California; thence at a right angle Northwesterly along said line of Kaplan Lane 190 feet to a line drawn parallel with and perpendicularly distant 165 feet Southeasterly from the Southeasterly line of Howard Street; thence at a right angle Southwesterly along said parallel line so drawn 205 feet to the point of beginning.

BEING a portion of 100 Vara Block No. 356 and a portion of former Tehama Street, vacated by Resolution No. 270-75, adopted March 31, 1975, by the Board of Supervisors of the City and County of San Francisco.

#### **Parcel B:**

BEGINNING at a point on the Southerly line of Kaplan Lane distant thereon 20.00 feet Northwesterly from the Northwesterly line of Clementina Street, as said Lane and Street are shown on that certain map entitled, "Map Showing the Opening of Kaplan Lane Northwesterly of Clementina Street", recorded June 30, 1977, in Map Book "W" at Page 90, in the Office of the County Recorder of the City and County of San Francisco, State of California, running thence Northwesterly along said line of Kaplan Lane 84 feet and 6 inches; thence at a right angle Northeasterly 19.00 feet; thence at a right angle Southeasterly parallel with said line of Kaplan Lane 84 feet and 6 inches; thence at a right angle Southwesterly 19.00 feet to the point of beginning.

BEING a portion of Kaplan Lane, now vacated.

#### **Parcel C:**

BEGINNING at a point on the Southerly line of Kaplan Lane, distant thereon 104.50 feet Northwesterly from the Northwesterly line of Clementina Street, as said Lane and Street are shown on that certain map entitled, "Map Showing the Opening of Kaplan Lane Northwesterly of Clementina Street", recorded June 30, 1977, in Map Book "W" at Page 90, in the Office of the County Recorder of the City and County of San Francisco, State of California, and running thence Northwesterly along said line of Kaplan Lane 21 feet and 10 inches; thence at a right angle Northeasterly 4.50 feet; thence at a right angle Southeasterly 4 feet and 9 inches; thence at a right angle Northeasterly 4 feet and 7 inches; thence at a right angle Southeasterly parallel with said line of Kaplan Lane 17 feet and 1 inch; thence at a right angle Southwesterly 9 feet, one inch to the point of beginning.

BEING a portion of Kaplan Lane, now vacated.

## **Attachment C – MOHCD Affordable Housing and Underwriting Guidelines**

### Underwriting Guidelines

<http://sfmohcd.org/sites/default/files/Documents/CURRENT%20Underwriting%20Guidelines%202016.pdf>

### 2017 Income Limits

[http://sfmohcd.org/sites/default/files/Documents/MOH/Asset%20Management/2017%20AMI-IncomeLimits-HMFA\\_04-21-17.pdf](http://sfmohcd.org/sites/default/files/Documents/MOH/Asset%20Management/2017%20AMI-IncomeLimits-HMFA_04-21-17.pdf) 2017 Rent Limits

[http://sfmohcd.org/sites/default/files/Documents/MOH/2017%20AMI-RentLimits-HMFA-ForMOHsf\\_04-26-17.pdf](http://sfmohcd.org/sites/default/files/Documents/MOH/2017%20AMI-RentLimits-HMFA-ForMOHsf_04-26-17.pdf) Developer Fee Policy

<http://sfmohcd.org/sites/default/files/Documents/CURRENT%20Developer%20Fee%20Policy%20072916.pdf>



**Attachment D – MOHCD Resident Services Guidelines**

For projects funded by MOHCD, services for the homeless units should be provided through a case-manager-to-unit ratio of no less than 1 case manager for every 35 units; services for the non-homeless households should be provided at 1 services coordinator/connector for every 100 households. The winning Proposer will be required to work with the Department of Homelessness and Supportive Housing (“HSH”) to determined final staffing ratios and budgets to successfully serve the homeless households.

High quality supportive services are a critical element of successful permanent supportive housing and are required by the Local Operating Subsidy Program (“LOSP”) contract. Services are funded and monitored by the City under separate contract(s) with HSH. Service providers assist supportive housing residents who need ongoing services to maintain housing stability.

Contracts for services are typically for an initial three year term with an option to extend for two more years. Subsequently, service providers at each Site are selected through a Request for Proposal (RFP) issued by HSH for three year terms with an option to extend for two years. Each contract is assigned a program manager with HSH and this is the contact person for all questions related to the service provision and contracting.

Currently the services funding amount awarded by HSH is based on the “Tier System” for all projects except Direct Access to Housing (“DAH”) projects. Factors such as who does placement into the building, level of need of the target population, and if the program serves homeless families or adults will be considered when determining the Tier level and associated services funding level. For example, in family housing, additional funding will be provided for an “activities coordinator” to work with children and youth at the Site. A Services Plan with associated funding level is placed in Tiers I through V based on the target population for the supportive housing units. All LOSP sites are currently in Tier IV or V. The higher the Tier, the more service dollars are provided and the lower the ratio for case manager to client.

Each Tier is assigned specific outcome objectives which are determined by HSH. The outcome objectives are reported on monthly, quarterly, and annually and reviewed by the HSH program manager. Below is the FY 2016-17 breakdown for funding per Tier and client/case manager ratio on a per unit per year basis:

Summary	FY16-17 Per Unit Per Year
Tier I Adult (Step-Up) = 1:75 ratio	\$ 1,397
Tier III Adult (Non-placement and Master lease) = 1:35 ratio	\$ 2,784
Tier IV Adult (non-clinical) = 1:25 ratio	\$ 3,886
Tier V Adult (with clinical) = 1:25 ratio	\$ 4,902

Tier I/III Family (Non-placement) = 1:35 ratio	\$ 3,341
Tier IV Family and TAY (non-clinical) = 1:25 ratio	\$ 4,567
Tier V Family (with clinical) = 1:25 ratio	\$ 5,614

**Attachment E – Exclusive Negotiating Agreement**

**DRAFT**

**EXCLUSIVE NEGOTIATION AGREEMENT**

**by and between**

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

**and**

---

**MOSCONE CENTER GARAGE**

**[DATE]**

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**APPENDICES**

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**APPENDIX B: FEE SCHEDULE**

**ATTACHMENT C: LOCAL HIRING POLICY FOR CONSTRUCTION**

**APPENDIX: DEFINED TERMS AND DESCRIPTIONS**

## EXCLUSIVE NEGOTIATION AGREEMENT

This EXCLUSIVE NEGOTIATION AGREEMENT (this “**Agreement**”) dated as of \_\_\_\_\_, for reference purposes only, is by and between the CITY AND COUNTY OF SAN FRANCISCO (the “**City**”), a municipal corporation acting by and through the SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY (the “**SFMTA**” or the “**SFMTA Board**”), and \_\_\_\_\_, a \_\_\_\_\_ (“**Developer**”). City and Developer are sometimes individually referred to in this Agreement as a “**Party**” and collectively as the “**Parties**”. Defined terms are listed in the Appendix.

### RECITALS

**A.** City, under the SFMTA’s jurisdiction, owns approximately 1 acre of land improved with a multi-story parking structure commonly known as the **Moscone Center Garage** located at 255 3<sup>rd</sup> Street in the SoMa neighborhood, which property is further described on the attached **Appendix A** (the “**Site**”).

**B.** City issued a Request for Proposals (the “**RFP**”) on \_\_\_\_\_ to solicit qualified developer teams to plan, develop, and operate on the Site a mixed-use project with a full-service hotel and affordable housing. City desires to (i) provide the SFMTA with competitive market value for its asset; (ii) create a mixed-use development that meets the dual objectives of supporting the demand for convention lodging and producing affordable housing for low and moderate income households; and (iii) achieve a Site development that serves as a model for transit oriented development and enhances the quality of life for individuals who live in, work in, and visit the surrounding area.

**C.** Pursuant to the RFP’s requirements, the information submitted and the evaluation criteria focused on each developer team’s experience, financial proposal, and development concept for the Site. RFP proposals were reviewed and evaluated by an evaluation panel comprised of City staff from the SFMTA, the Office of Economic and Workforce Development (“**OEWD**”), the Planning Department (“**Planning**”), and the Mayor’s Office of Housing and Community Development (“**MOHCD**”). Developer submitted an initial proposal in response to the RFP dated \_\_\_\_\_ (the “**RFP Proposal**”) for its proposed lease and development of a project (the “**Project**”) pursuant to the terms described in the RFP Proposal and the RFP (the “**Project Terms**”). After the evaluation panel scored each response, the SFMTA Director reviewed the scores and recommended the selection of Developer to the SFMTA Board.

**D.** On \_\_\_\_\_, by Resolution \_\_\_\_\_, the SFMTA Board awarded Developer the opportunity to proceed with exclusive negotiations and authorized the SFMTA to enter into this Agreement. This Agreement sets forth the process, terms, and conditions upon which City and Developer will negotiate and seek to complete a ground lease, or two ground leases or air rights leases, (individually, a “**Lease Agreement**” and together, “**Lease Agreements**”), a lease disposition and development agreement (“**LDDA**”), and such other documents as are necessary to effectuate an approved Project for the Site (collectively, the “**Transaction Documents**”).

**E.** The Parties enter into this Agreement with the understanding that the Project will continue to evolve through the public review process. The final terms and conditions of the Transaction Documents for the lease of the Site and development of the Project must be negotiated during the term of this Agreement. All Project approval actions, including approval of the Transaction Documents by the SFMTA, City’s Board of Supervisors (the “**Board**”) and Mayor, and other applicable City agencies are subject to environmental review through the California Environmental Quality Act, Cal. Pub. Res. Code Section 21000 *et seq.* (“**CEQA**”), the



CEQA Guidelines, 15 Cal. Code Regs. Section 15000 *et seq*, and San Francisco's Environmental Quality Regulations, codified at San Francisco Administrative Code Chapter 31. In order to comply with CEQA and give decision-makers and the public the opportunity to be aware of the environmental consequences of any contemplated actions with respect to the Project and to fully participate in the CEQA process, City retains the absolute and sole discretion to (i) structure and modify the Project as City determines may be necessary to comply with CEQA, (ii) select other feasible alternatives to the Project to avoid significant environmental impacts, (iii) balance the benefits of the Project against any significant environmental impacts before final approval by City if such significant impacts cannot otherwise be avoided, and/or (iv) determine not to proceed with the Project due to unavoidable significant impacts. Any provision of this Agreement that is found to conflict with City's exercise of such absolute discretion shall be void and without effect.

## AGREEMENT

### 1. EXCLUSIVE NEGOTIATIONS

(a) **Exclusive Negotiation Period.** During the term of this Agreement (as extended or earlier terminated, the "**Exclusive Negotiation Period**"), City, represented by SFMTA and OEWD, and in consultation with other City agencies as appropriate, will negotiate exclusively with Developer the terms and conditions of the Transaction Documents, each of which must be in a form approved by the City Attorney, and will not solicit or consider any other proposals or negotiate with any other Person for the acquisition or development of the Site without Developer's consent, which consent Developer may grant or withhold in its sole discretion.

(b) **Interim Uses of the Site.** Developer acknowledges that: (i) the Site is subject to existing lease agreements; (ii) the SFMTA has the continuing right to enter into additional interim leases and other occupancy agreements affecting the use of the Site in the ordinary course of the SFMTA's management in accordance with **Section 2.6(a)**; and (iii) the SFMTA is operating a parking garage on the Site and has the right to continue to do so in accordance with **Section 2.6(a)**.

(c) **Good Faith Negotiations.** Each Party agrees during the Exclusive Negotiation Period to act in good faith in performing its obligations under this Agreement. Developer acknowledges that the SFMTA's obligation to negotiate in good faith is limited to the actions of the SFMTA Director of Transportation (the "**Director**") and OEWD staff and does not obligate any Regulatory Agency or legislative body, including the SFMTA Board and the Board of Supervisors.

### 2. TERM

**2.1. Phase 1.** The first phase of the Exclusive Negotiation Period ("**Phase 1**") will commence on the date the Director executes this Agreement, as authorized by the SFMTA Board, (the "**Effective Date**") and, subject to a Force Majeure Extension, expire six (6) months after the Effective Date (the "**Initial Expiration Date**"). If the SFMTA Endorsement and, if required, the Board Endorsement of the Development Overview have not occurred as of the Initial Expiration Date, and if Developer is not in default of this Agreement on the Initial Expiration Date, Phase 1 will automatically be extended for six (6) months, conditioned solely upon City's receipt of Developer's Extension Fee in the amount of Fifty Thousand Dollars (\$50,000). If the Board Endorsement of the Development Overview (or the SFMTA Endorsement if City determines the Board Endorsement is not required) does not occur prior to the end of such six-month extension period, Developer may request additional extensions of no longer than six (6) months in the aggregate. The Director may deny Developer's request for such extension if, in the Director's reasonable judgment, Developer (a) fails to provide adequate documentation that it has proceeded diligently throughout the entirety of the Exclusive Negotiating Period, including timely completion of the Project Schedule milestones, or

(b) does not commit to an expeditious and feasible revised Project Schedule corresponding with the length of the desired extension. Developer will pay to City a Developer's Extension Fee for any such additional extension of Phase 1 equal to Ten Thousand Dollars (\$10,000) for each month of extension.

Within two weeks of the commencement of Phase 1, City and Developer shall develop an anticipated schedule of milestones ("**Project Schedule**"), including: (a) Developer's submittal of its formation documents and operating or other managing agreements to City; (b) completion of the Project Description, Development Overview, and fiscal feasibility analysis; (c) findings of fiscal feasibility, if required; (d) commencement and completion of environmental review; and (e) completion and final regulatory approvals of all Transaction Documents. The Project Schedule will be revised as a condition of Developer's exercise of its additional extensions of Phase 1 and Phase 2, as described in Section 2.1(b) and 2.2(b). In addition, each six (6) months during the Exclusive Negotiating Period, City and Developer will update the Project Schedule to reflect the progress of the Project milestones.

**2.2. Phase 2.** The second phase of the Exclusive Negotiation Period ("**Phase 2**") will commence on the day after the Board Endorsement of the Development Overview and, subject to a Force Majeure Extension, expire twenty-two (22) months later (the "**Phase 2 Expiration Date**"). If City, in its sole discretion, determines that the Board Endorsement is not necessary, then Phase 2 will commence on the day after the SFMTA Endorsement of the Development Overview. If Developer is not in default of this Agreement on the Phase 2 Expiration Date, Phase 2 will automatically be extended for nine (9) months, conditioned solely upon City's receipt of Developer's Extension Fee in the amount of Fifty Thousand Dollars (\$50,000). If the Board of Supervisors does not approve all required Transaction Documents prior to the end of the extension period, Developer may request one or more additional extension periods of no more than twelve (12) months in the aggregate. The Director may deny Developer's request for any such extension if, in the Director's reasonable judgment, Developer (a) fails to provide adequate documentation that it has proceeded diligently throughout the entirety of the Exclusive Negotiating Period, including timely completion of the Project Schedule, or (b) does not commit to an expeditious and feasible revised Project Schedule corresponding with the length of the desired extension. Developer will pay to City a Developer's Extension Fee equal to Ten Thousand Dollars (\$10,000) for each such additional month of extension of Phase 2.

Within two weeks of the commencement of Phase 2, City and Developer shall revise the Project Schedule to reflect anticipated changes in timing.

**2.3. Regulatory Force Majeure.**

(a) The SFMTA will grant to Developer one or more extensions under this Section (each, a "**Regulatory Force Majeure Extension**") if the Director agrees with Developer that Developer cannot satisfy the Project Schedule because of a delay resulting from a determination of a Regulatory Agency that is both reasonably outside of Developer's control and reasonably likely to prevent the Parties from timely entering into the Transaction Documents (a "**Regulatory Force Majeure Event**"). No Extension Fee will be payable for any Regulatory Force Majeure Extension. Examples of Regulatory Force Majeure Events include delays caused by: (i) Developer's revisions to the Project Description made in response to requests made by the SFMTA Board or the Board at a public meeting; (ii) a regional agency's decision to revise the standards or methods by which certain potentially significant impacts under the California Environmental Quality Act ("**CEQA**") are evaluated; (iii) a delay in the publication of any environmental review document after Developer has met all requirements for publication in City's reasonable judgment; and (iv) either Party's inability to schedule a Board or commission hearing that is otherwise timely requested. Regulatory Force Majeure Events exclude any Litigation Force Majeure Event and any delay occasioned by the direct or

indirect action, inaction, or negligence of Developer, any Affiliate of Developer, or any Developer consultant.

**(b)** In Phase 1, Developer may exercise one or more Regulatory Force Majeure Extensions of no more than six (6) months in the aggregate upon written notice to City that Developer is exercising an extension of the Exclusive Negotiation Period under this Subsection (b) and the Director's agreement that a Regulatory Force Majeure Event exists (a "**Regulatory Force Majeure Notice**"). In Phase 2, Developer may exercise one or more Regulatory Force Majeure Extensions of no more than twelve (12) months in the aggregate upon delivery of a Regulatory Force Majeure Notice to City and City's agreement that a Regulatory Force Majeure Event exists.

**(c)** Each Regulatory Force Majeure Notice given under Subsection (b) must: (i) describe the Regulatory Force Majeure Event and Developer's efforts to resolve the event; (ii) be delivered promptly after Developer first learns of the Regulatory Force Majeure Event; and (iii) provide Developer's good faith estimate of the dates by which Developer will be able to satisfy the remaining Project Schedule, within the limitations under Subsection (b).

#### **2.4. Litigation Force Majeure.**

**(a)** If Developer cannot satisfy any Project Schedule milestone because of a Litigation Force Majeure Event, then Developer may extend the Exclusive Negotiation Period (a "**Litigation Force Majeure Extension**") by notice to City (a "**Litigation Force Majeure Notice**"). No Extension Fee will be payable for any Litigation Force Majeure Extension. Developer must deliver a Litigation Force Majeure Notice within thirty (30) days after Developer first learns of the Litigation Force Majeure Event. In the Litigation Force Majeure Notice, Developer must describe the Litigation Force Majeure Event and provide its good faith estimate of the dates by which Developer will be able to satisfy the Project Schedule, the last of which must be on or before the date that is twenty-four (24) months after the Phase 2 Expiration Date.

**(b)** "**Litigation Force Majeure Event**" means any proceeding before any court, tribunal, or other judicial, adjudicative, or legislative decision-making body, including any administrative appeal, that challenges the validity of any City or SFMTA Regulatory Approval with respect to the Project, including any findings under CEQA, if the pendency of the proceeding is reasonably likely to prevent the Parties from timely entering into the Transaction Documents. Litigation Force Majeure Events exclude any Regulatory Force Majeure Events and any action or proceeding brought by any Developer Affiliate or their Affiliates, any Developer consultant, or any other third party assisted directly or indirectly by Developer.

#### **2.5. General Provisions Applicable to all Force Majeure Events.**

**(a)** Subject to **Article 8** (Termination) and **Article 9** (Default), a Regulatory Force Majeure Extension or Litigation Force Majeure Extension, as applicable (in either case, a "**Force Majeure Extension**"), will be deemed validly in effect and extend the Initial Expiration Date or the Phase 2 Expiration Date, as applicable, for the period described in Developer's Regulatory Force Majeure Notice or Litigation Force Majeure Notice (in either case, a "**Force Majeure Notice**") or a shorter period if the Regulatory Force Majeure Event or Litigation Force Majeure Event (in either case, a "**Force Majeure Event**") is resolved before such date, unless: (i) City gives Developer notice within ten (10) business days after City's receipt of the Force Majeure Notice that, based on the Director's reasonable judgment, no Force Majeure Event exists, or (ii) a Terminating Event has occurred before Developer delivered its Force Majeure Notice, or (iii) an Event of Default, or an event that, with notice or the passage of time or both would constitute an Event of Default, has occurred and is uncured on the date the Force Majeure Notice is delivered.

**(b)** In addition to a Force Majeure Extension under **Section 2.3** (Regulatory Force Majeure) or **Section 2.4** (Litigation Force Majeure), Developer may request one or more additional Force Majeure Extensions under this **Section 2.5(b)** (General Force Majeure

Provisions) by submitting its written request to the Director describing the Force Majeure Event, providing Developer's good faith estimate of the dates by which Developer will be able to satisfy the Project Schedule, as extended by any earlier Force Majeure Extension. The Director will determine whether to grant Developer's request for an additional Force Majeure Extension or to submit Developer's request to the SFMTA Board to be considered in open session. The Director may grant or deny Developer's request in his or her sole discretion.

(c) Except for the Phase 2 Expiration Date and the revised Project Schedule as specified in a valid Force Majeure Notice or as otherwise specified in a SFMTA decision granting an additional Force Majeure Extension, no other terms of this Agreement will be affected by a Force Majeure Extension. The Parties agree to proceed with due diligence and cooperate with one another to resolve the Force Majeure Event, and acknowledge that the resolution of the Force Majeure Event may affect Development Overview provisions to which they have previously agreed and require additional Development Overview negotiations.

**2.6. SFMTA's Reserved Rights.** During the Exclusive Negotiation Period, the SFMTA reserves the right, in its sole discretion, to take any or all of the following actions:

(a) Enter into interim leases, licenses, use or occupancy agreements for use of any portion of the Site in the ordinary course of the SFMTA's management, so long as the SFMTA may terminate such interim leases, use or occupancy agreements or they expire without penalty or expense to Developer before the anticipated execution of the Lease Agreement or Lease Agreements;

(b) Continue to operate the Moscone Center Garage at the Site; and

(c) Extend the Exclusive Negotiation Period; and

(d) Expand or contract the scope of the Project, including altering the Project concept from that initially proposed to respond to new information, community or environmental issues, or opportunities to improve the financial return to the SFMTA from the Project, or to enhance public benefits, provided that if the SFMTA Board takes any action described in this subsection (c), Developer will have the right to terminate this Agreement upon notice to City as Developer's sole remedy. If Developer exercises its right to terminate under this subsection (c), City will refund the City Costs Deposit paid by Developer, less any amount drawn down to reimburse City for unpaid City Costs.

### **3. NEGOTIATION OF DEVELOPMENT OVERVIEW AND TRANSACTION DOCUMENTS.**

**3.1. Negotiating Principals.** During the Exclusive Negotiation Period, City and Developer each will assign designated principals (i.e., an officer, board member, executive employee, or other agent with management level authority) and key staff members who will meet and negotiate diligently in good faith on its behalf in exclusive negotiations.

(a) City's designated negotiating principals are Director Ed Reiskin of the SFMTA, and Ken Rich of OEWD.

(b) Developer's designated negotiating principals are \_\_\_\_\_ and \_\_\_\_\_.

(c) Designated negotiating principals may be changed by notice given in accordance with **Article 13** (Notices).

**3.2. Project Description.** The Parties acknowledge that the Project Terms are preliminary, will be refined, and currently do not include sufficient detail to allow negotiation of the Development Overview. Accordingly, Developer must work with City staff and consultants to develop a proposal that will serve as the basis for the Development Overview (the "**Project Description**"), the analysis of fiscal feasibility, if required under Chapter 29 of City's

Administrative Code, and environmental review. The Project Description must be informed by preliminary City and community feedback.

### **3.3. Development Overview and Fiscal Feasibility Findings.**

(a) Concurrently with negotiations between Developer and City over the Project Description, the Parties will negotiate a Development Overview for the Project that is based on the Project Terms (the “**Development Overview**”). The Parties acknowledge that: (i) the Development Overview is intended to be a summary of the general terms for negotiating the Transaction Documents, which will be subject to review and approval by the parties, their respective legal counsel, and the SFMTA Board; (ii) the Lease Disposition and Development Agreement and the Lease Agreements will be subject to SFMTA Board and Board approval; and (iii) certain other Transaction Documents may be subject to SFMTA Board approval, Board approval and other Regulatory Approvals. When the Project Description is complete, and Developer and City have agreed on the Development Overview, the Director will recommend that the SFMTA Board endorse the Project Description and the Development Overview (the “**SFMTA Endorsement**”).

(b) Concurrently with negotiations between Developer and City over the Project Description, City and its consultants will analyze the Project Description’s fiscal feasibility under Administrative Code Chapter 29, if required.

(c) Following the SFMTA Endorsement of the Development Overview, the SFMTA may submit the Development Overview to the Board for its review and endorsement (the “**Board Endorsement**”). If required, the SFMTA will also submit a concurrent request for the Board’s determination on the Project’s financial feasibility under Administrative Code Chapter 29. If City, in its sole discretion, determines that the Board Endorsement is not necessary, then the Board Endorsement will not be required. At City’s request, Developer will attend the hearings and, if requested, make presentations on the Project to the full Board and any of its committees. Following the SFMTA Endorsement and the Board Endorsement (if necessary), references to the **Project** in this Agreement will mean the Project as reflected in the Project Description as endorsed by the SFMTA and the Board.

(d) The Director will have no obligation to execute the Development Overview until it receives the SFMTA Endorsement and, if necessary, the Board Endorsement.

(e) In negotiating the Transaction Documents, City and the Developer may agree upon modifications or changes to the terms of the Development Overview, the Project, and the Project Description.

**3.4. Director Approval** Any approval by the Director in this Agreement may be given by the Director or his or her designee unless otherwise specified.

## **4. REQUIRED PAYMENTS**

**4.1. City Costs.** In consideration of the right to negotiate exclusively with City for the Site, Developer agrees to pay to City the actual costs incurred by City for all work associated with the Project and preparing, adopting or negotiating the Transaction Documents (“**City Costs**”) from the date the SFMTA Board authorizes exclusive negotiations with Developer through the expiration or earlier termination of the Exclusive Negotiation Period.

(a) Eligible City Costs shall include, without limitation; (1) fees and expenses of the City Attorney’s Office staff at the rates charged by the City Attorney’s Office to third party outside developers from time to time; (2) actual fees and expenses of any outside counsel and third party consultants, advisors, and professionals (including, but not limited to, real estate appraisers); (3) actual costs related to public outreach and information; and (4) costs of staff time for City agencies in connection with the Project and Transaction Documents. City Costs shall not include costs that Developer pays or reimburses through the Planning Department or other project or permit applications. City shall obtain Developer’s approval, which approval

shall not be unreasonably withheld, prior to engaging any outside counsel or consultants the costs of which will be included in City Costs. OEWD shall be responsible for coordinating the billing of all City agencies as described in this section.

**(b)** OEWD or its designee will provide Developer with quarterly invoices. These invoices shall indicate the hourly rate for City staff members at that time, the total number of hours spent by City staff on the tasks during the invoice period, any additional costs incurred by City and a brief non-confidential description of the work completed. Developer shall pay the invoiced amount within thirty (30) calendar days of receipt from City.

**(c)** If Developer in good faith disputes any portion of an invoice, then within sixty (60) calendar days of receipt of the invoice Developer shall provide written 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 of Developer's notice to City of the dispute, Developer may pursue all remedies at law or in equity to recover the disputed amount. Developer shall have no obligation to reimburse City for any cost that is not invoiced to Developer within forty-eight (48) months from the date the cost was incurred. Developer's obligation to pay City Costs that have become due and payable will survive Termination or expiration of this Agreement.

**(d)** As a condition to entering into this Agreement, Developer has tendered to City the initial sum of One Hundred Thousand Dollars (\$100,000) as a deposit against Developer's obligation to pay City's Costs (the "**ENA Deposit**"), as supplemented from time to time to maintain a balance not less than One Hundred Thousand Dollars (\$100,000) from which to pay the City Costs. City may apply the ENA Deposit to reimburse City for the City Costs in the event that Developer does not pay quarterly invoices within thirty (30) days. Developer must tender funds as needed to replenish the City Costs Deposit within thirty (30) days after receipt of City's request. If any balance of City Costs Deposit remains at the time that Developer leases the Site, City will refund such funds to Developer.

**(e)** City will provide Developer with a City's cost budget for Phase 1 with City's estimate of the City Costs that City expects to incur during Phase 1 (not including any extension under **Section 2.1** (Phase 1)).

**4.2. Extension Fees.** In consideration of the right to negotiate exclusively with City for the Site and in an effort to diligently pursue development of the Project, Developer agrees to pay to City extension fees (the "**Extension Fees**"), if applicable, as provided in **Section 2**. City will apply the Extension Fees to the Lease Agreement rent.

## **5. DEVELOPER'S OBLIGATIONS**

Developer must pursue diligently and in good faith all of its obligations under this Agreement during the Exclusive Negotiation Period. In furtherance of this Agreement, Developer agrees as follows.

**5.1. Developer's Costs.** Developer will be solely responsible for all costs (including fees for its attorneys, architects, engineers, consultants, and other professionals) Developer incurs related to or arising from this Agreement, the development and construction of the Project, and transactional costs, including costs of negotiations with City, and any fees or taxes imposed on the transaction, including but not limited to real estate transfer taxes. Developer will have no claims against the SFMTA or City for reimbursement for Developer's costs even if: (a) City's Planning Board or any other Regulatory Agency (including the Board of Supervisors when acting in a regulatory capacity) does not approve the required permits or issue required approvals; (b) the SFMTA Board fails to endorse the Development Overview or to approve the

Transaction Documents; or (c) the Board fails to endorse the Development Overview (if required), find the Project fiscally feasible (if required), or approve the Transaction Documents.

**5.2. Submittals to City; Appraisals.** Developer must: (a) diligently undertake and complete its due diligence review of the Site; (b) provide copies to City of all of Developer's reports and studies on material aspects of the Project, including engineering reports; (c) prepare financial projections and complete concept plans and schematic design plans for the Project, including floor plans, elevations, and renderings; (d) provide a roles and responsibilities document to City detailing the Developer's team composition and relative project responsibilities; and (e) provide copies to City of any new or amended documents relating to Developer's composition, members' obligations to Developer, and operations. In addition, Developer must submit appraisals for the Project in accordance with City's requirements when required by City.

**5.3. Regulatory Approvals.**

(a) The Parties acknowledge that zoning and other discretionary actions or entitlements are required for the development of the Project (each, a "**Regulatory Approval**"). Any Regulatory Approvals obtained by Developer shall be conditioned on Developer's acquiring leasehold interest in the Site. Developer agrees and acknowledges that maintaining professional working relations with any officials, departments, boards, commissions or agencies providing a Regulatory Approval (a "**Regulatory Agency**") is critical to City operations. Accordingly, Developer shall use its best efforts throughout the Term and thereafter to not take any actions relating to the Project that would adversely affect City's relationship with any Regulatory Agency. Before taking any action to obtain any Regulatory Approval, Developer and City must agree upon a process and strategy for obtaining the required Regulatory Approvals.

(b) Developer will be solely responsible for applying for, obtaining, and paying all costs associated with all Regulatory Approvals, and may not file any application for any Regulatory Approval without first obtaining City's authorization, which City will not unreasonably withhold or delay. Developer agrees that City's withholding or delay in approving any application for a Regulatory Approval will be reasonable if the application does not substantially conform to the Development Overview or any subsequent development design and program.

(c) Developer must pay and discharge any fines or penalties imposed as a result of Developer's failure to comply with any Regulatory Approval, for which City will have no monetary or other liability.

(d) Developer must submit to the City Planning Commission, the San Francisco Planning Department's Major Environmental Analysis division ("**Planning**"), and any other Regulatory Agency having approval over any aspect of the Project all specifications, descriptive information, studies, reports, disclosures, and any other information as and when required to satisfy the application filing requirements of those departments or agencies.

(e) Developer acknowledges that the entire Project and a range of reasonable alternatives and feasible mitigation measures must be analyzed under CEQA prior to Project approval. Developer will work at the direction of Planning to complete all required submittals, studies, and other documents as Planning determines are needed for City to comply with CEQA requirements.

(f) Developer acknowledges and agrees that City has made no representation or warranty that the Regulatory Approvals can be obtained. Developer further acknowledges and agrees that although the SFMTA is a Regulatory Agency, the SFMTA has no authority or influence over other City officials, departments, boards, commissions, or agencies or any other Regulatory Agency responsible for issuing required Regulatory Approvals, and that the SFMTA is entering into this Agreement in its capacity as a landowner with a proprietary interest in the Site and not as a Regulatory Agency with certain police powers. Accordingly, no

guarantee or presumption exists that any of the Regulatory Approvals will be issued by the appropriate Regulatory Agency, including the SFMTA, and the SFMTA's status as a City Regulatory Agency will not limit Developer's obligation to obtain Regulatory Approvals from appropriate Regulatory Agencies.

**5.4. Periodic Reports.** Developer must prepare and submit to City each six months a meaningful summary of major activities taken during the previous period with regard to the Project, including the status of Regulatory Approvals and plans for community outreach and public relations activities for the subsequent period, in an agreed format. Such reports may include Developer's expenditures for professional services and other project costs upon request, but Developer's reporting will not prejudice City's right to determine the extent and timing of any right of Developer to cost reimbursement as may be negotiated in the Development Overview and the Transaction Documents.

**5.5. Weekly Meetings.** Developer and appropriate City staff will meet weekly to discuss Project coordination, Transaction Documents, entitlement issues, and other Project-related matters, unless the meeting is waived or rescheduled by agreement.

## **6. CITY'S OBLIGATIONS AND RIGHTS**

**6.1. SFMTA's Obligations.** The SFMTA, in its proprietary capacity, agrees to: (a) cooperate with Developer in filing for, processing, and obtaining all Regulatory Approvals in accordance with the regulatory approval strategy agreed to under **Section 5.3**; (b) if required, join with Developer as co-applicant in filing, processing, and obtaining all Regulatory Approvals; and (c) cooperate with requests for coordination, consultation, and scheduling additional meetings regarding the Project, including matters relating to Regulatory Approvals where the SFMTA is the co-applicant. This Section does not limit or otherwise constrain the SFMTA's or City's discretion, powers, and duties as a Regulatory Agency.

**6.2. Final Action Subject to Environmental Review.** Nothing in this Agreement commits the SFMTA or City to approve the Project. The SFMTA Board and City will not approve any Transaction Documents or take any other discretionary actions that will have the effect of committing the SFMTA or City to the development of the Project until environmental review for the Project as required by CEQA has been completed in accordance with CEQA and SF Admin. Code Chapter 31. The SFMTA intends through exclusive negotiations to identify the actions and activities that would be necessary to develop the Site to facilitate meaningful environmental review. No Transaction Documents or other discretionary actions will be approved and become binding on the SFMTA and City unless and until (1) City, acting as the lead agency under CEQA, has determined that the environmental documentation it has prepared for the Project complies with CEQA; and (2) City has reviewed and considered the environmental documentation and adopted appropriate CEQA findings in compliance with CEQA. If the Project is found to cause potential significant environmental impacts, City retains absolute and sole discretion to require additional environmental analysis, if necessary, and to: (a) modify the Project as City determines may be necessary to comply with CEQA; (b) select feasible alternatives to the Project to avoid significant environmental impacts of the proposed Project; (c) require the implementation of specific mitigation measures to address environmental impacts of the Project identified; (d) reject the Project as proposed due to unavoidable significant environmental impacts of the Project; and (e) balance the benefits of the Project against any significant environmental impacts before final approval of the Project upon a finding that the economic, legal, social, technological or other benefits of the Project outweigh unavoidable significant environmental impacts of the Project.

**6.3. Effectiveness of Transaction Documents.** The effectiveness of the Lease Agreements and Transaction Documents will be conditioned upon final approval of all zoning legislation necessary for the Project.



## 7. PROHIBITED ACTIONS

### 7.1. No Assignment.

(a) Developer acknowledges that the SFMTA is entering into this Agreement on the basis of Developer's special skills, capabilities, and experience. This Agreement is personal to Developer and, except as provided in this Agreement, may not be transferred without the SFMTA prior consent, which may be withheld in the SFMTA's sole and absolute discretion. Any Transfer in violation of this Section will be an incurable Event of Default under this Agreement.

(b) Developer may Transfer its rights under this Agreement to Affiliates with the Director's consent, which it will not withhold unreasonably if the following conditions are met: (i) Developer provides notice to City at least thirty (30) days before the effective date of the Transfer, together with information about the details of the Transfer, including the creditworthiness, skill, capability, and experience of the transferee Affiliate; and (ii) the Director is satisfied that the proposed transferee Affiliate, including any single-purpose entity specifically established for the Project, meets the same standards of creditworthiness, skill, capability, and experience as Developer.

(c) The following definitions apply to this Agreement.

(i) **"Affiliate"** means: any person that Controls, is controlled by, or is under Common Control with Developer.

(ii) **"Control"** means a person holding or holding the right to acquire direct or indirect ownership of fifty percent (50%) or more of each class of equity interests or fifty percent (50%) or more of each class of interests that has a right to nominate, vote for, or otherwise select the members of the governing body. **"Common Control"** means two or more persons that are controlled by another person.

(iii) **"Transfer"** means: (1) dissolution, merger, consolidation, or other reorganization, unless the Transfer is the result of a public transaction resulting in a new Controlling entity or entity under Common Control; (2) any cumulative or aggregate sale, assignment, encumbrance, or other transfer of fifty percent (50%) or more of legal or beneficial interests (twenty-five percent (25%) or more if publicly traded); (3) the withdrawal or substitution (whether voluntary, involuntary, or by operation of law and whether occurring at one time or over a period of time) of any member or shareholder of Developer owning fifty percent (50%) or more of the interests in Developer or rights to its capital or profits; or (4) the occurrence of any of the events described in paragraphs (1), (2), or (3) of this clause (iii) with respect to any Affiliate.

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

**7.3. Ballot Measures.** Developer expressly agrees not to initiate, or to promote, support or pursue directly or indirectly the initiation of, any ballot measure relating to the Project without the prior consent of the SFMTA. Developer must provide the Director with reasonable prior written notice of its intent to initiate, promote, support, or otherwise pursue any ballot measure relating to the Project. The Director may either make the consent determination himself or seek the SFMTA Board's consent by resolution in open session.

**7.4. No Entry.** Developer expressly acknowledges and agrees that this Agreement does not give Developer or any of its employees, officers, members, managers, directors, agents, contractors, consultants, architects, or engineers (collectively, “**Agents**”) the right to enter or access the Site. The SFMTA will enter into a separate agreement with Developer specifying the terms and conditions of Developer’s and its Agents’ entry on and access to the Site.

**7.5. Public Relations and Outreach.**

(a) Developer must present to the negotiating principals for City for their approval Developer’s proposed public relations program and plans for conducting outreach to various community groups and stakeholders in the vicinity of the Project, for educating the public with respect to the Project, and for informing the Board and other Regulatory Agencies about the Project (the “**PR & Community Outreach Program**”). The PR & Community Outreach Program must include: (i) a budget for publicizing the Project (i.e., mailers, brochures, press releases, web-based communications, and forums educating the public); (ii) Developer’s strategy for publicizing the Project and for keeping the appropriate Regulatory Agencies apprised of the Project; (iii) a schedule of presentations to community groups, stakeholders, and Regulatory Agencies during the Exclusive Negotiation Period; and (iv) Developer’s proposal for keeping City informed of its activities during the Exclusive Negotiation Period.

(b) For any item involving communications with the media, the negotiating principals for City and Developer shall confer and agree upon a media strategy prior to either Party communicating with the media. In general, all media communications regarding the Project shall be conducted through OEWD’s communications team and the SFMTA’s communications team or another City agency’s communications team as designated by the SFMTA, except in the event that City and Developer agree on an alternative approach.

**8. TERMINATION**

**8.1. Events Causing Termination.** The occurrence of any of the following events (each, a “**Terminating Event**”) will cause termination of and extinguish this Agreement (“**Termination**”), without an opportunity to cure or requiring further City action: (a) Subject to its rights under **Article 2** (Term), Developer fails to obtain the SFMTA Endorsement and the Board Endorsement (if required) by the Initial Expiration Date, as such may have been extended; or (b) the Exclusive Negotiation Period expires before the Transaction Documents are approved by the Board and any other necessary Regulatory Agencies; or (c) Developer voluntarily withdraws from or abandons the Project; or (d) Developer fails to comply with **Section 7.1** (No Assignment); or (e) the SFMTA exercises its right to Terminate following an Event of Default by Developer; or (f) Developer exercises its right to terminate this Agreement pursuant to **Section 2.6(c)** (SFMTA’s Reserved Rights); or (g) Developer exercises its right to terminate this Agreement following an Event of Default by City.

**8.2. Effect of Termination.** Following Termination, Developer, City, and the SFMTA will be released from all further obligations under this Agreement except for any obligations that expressly survive Termination or expiration of this Agreement.

**8.3. SFMTA’s Rights Following Termination.** Following Termination, the SFMTA Board in its sole discretion may, without limitation: (a) agree to reinstate and consent to an assignment of this Agreement; (b) undertake other efforts to develop the Site, including issuing a new request for proposals and alternate uses; or (c) cease its efforts to develop the Site.

**8.4. Project Assignment After Termination.**

(a) If this Agreement is Terminated, Developer must: (i) provide SFMTA with a Project Assignment of all Project Materials, to the extent permitted under its consulting contracts, without cost to City and within sixty (60) days after Termination; (ii) satisfy all outstanding fees relating to the Project Materials that are then due and payable or will become

due and payable for services relating to the Project rendered by any of the Project Consultants up to the date of Termination and provide written evidence of satisfaction to the SFMTA; and (iii) deliver copies of all Project Materials, subject to any and all limitations contained therein, in Developer's possession or, for materials not in Developer's possession, confirm, upon request from Project Consultants or the SFMTA, that Project Consultants are authorized to deliver or have delivered from the appropriate parties all Project Materials to the SFMTA.

(b) Developer will be permitted to disclaim any representations or warranties with respect to the Project Materials (other than Developer's payment of fees), and, at Developer's request, the SFMTA will provide Developer with a release from liability for future use of the applicable Project Materials. Developer's acceptance of the SFMTA's release will be deemed to waive and release the SFMTA from any claims of proprietary rights or interest in the Project Materials, and Developer agrees that, following a Project Assignment, the SFMTA or its designee may use any of the Project Materials at the Site for any purpose, including pursuit of the same or a similar Project with a third party.

(c) The following definitions apply to this Agreement.

(i) **"Project Assignment"** means a contractual assignment of all of Developer's rights under a consulting contract with a Project Consultant, including any rights to use the Project Consultant's work product.

(ii) **"Project Consultants"** means all of Developer's architects, engineers, and other consultants.

(iii) **"Project Materials"** means all non-privileged, final and material studies, applications, reports, permits, plans, drawings, and similar work product, prepared for the Project by Project Consultants for Developer.

## 9. DEFAULT

**9.1. Developer's Event of Default.** In addition to Terminating Events giving rise to Termination under **Article 8** (Termination), the occurrence of any of the following will constitute a default by Developer under this Agreement after the expiration of the applicable cure period, if any (each, an **"Event of Default"**):

(a) Developer fails to pay any sum (including the Negotiating Fee, Extension Fees, and replenishing the City Costs Deposit) when due under this Agreement, unless such failure to pay is cured within five (5) days after City's notice to Developer; or

(b) Developer fails to comply with any other provision of this Agreement, if not cured within thirty (30) days after City's notice to Developer describing the default and specifying the manner in which it may be cured, but if the default cannot be cured within the 30-day cure period, Developer will not be in default of this Agreement if Developer commences to cure the default within the 30-day cure period and diligently and in good faith prosecutes the cure to completion, provided that the default is cured within sixty (60) days after City's notice to Developer; or

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

(d) Any of the events described in Subsection (c) occurs with respect to any of Developer's members with a Controlling interest in Developer.

**9.2. City Event of Default.** City's failure to comply with any provision of this Agreement, if the failure is not cured within thirty (30) days after Developer's notice to City, will constitute an event of default by City ("**City Event of Default**"); but if the City Event of Default cannot be cured within the 30-day cure period, City will not be in default of this Agreement if City commences to cure the City Event of Default within the 30-day cure period and diligently and in good faith prosecutes the cure of the City Event of Default to completion.

## **10. REMEDIES**

**10.1. City's Remedies.** Following a Developer Event of Default, City, at its option may: (a) Terminate this Agreement; (b) seek to recover from Developer any funds due and owing to City; (c) seek to enforce Developer's indemnity obligations; (d) seek to obtain copies or assignments of the Project Materials to which City is entitled; and (e) seek enforcement of any of its other remedies under this Agreement. These remedies are not exclusive, but are cumulative with any remedies now or later allowed by law or in equity.

**10.2. Developer's Remedies.** Following a City Event of Default, Developer will have the option, as its sole and exclusive remedy at law or in equity, to: (a) Terminate this Agreement by delivery of notice to City, and Developer and City will each be released from all liability under this Agreement (except for those obligations that survive Termination); or (b) file in any court of competent jurisdiction an action for specific performance to require City to perform under this Agreement (but Developer will not be entitled to recover from City Monetary Damages, or reimbursement of any fees paid by Developer, in connection with the City Event of Default). Developer waives any and all rights it may now or later have to pursue any other remedy or recover any other damages on account of any City breach or default, including loss of bargain, special, punitive, compensatory or consequential damages.

## **11. INDEMNITY; WAIVERS**

**11.1. Developer's Duty to Indemnify.** To the fullest extent permitted by law, Developer agrees to indemnify and hold City, including the SFMTA, and their respective boards, commissions, officers, employees, and Agents (collectively, the "**Indemnified Parties**") harmless from and against any loss, expense, cost, compensation, damages, including foreseeable and unforeseeable loss of bargain, special, punitive, compensatory, and consequential damages, (collectively "**Monetary Damages**"), attorneys' fees, claims, liens, obligations, injuries, interest, penalties, fines, lawsuits and other proceedings, judgments, awards, or liabilities of any kind, known or unknown, contingent or otherwise, equitable relief, mandamus relief, specific performance, or any other relief (collectively, "**Losses**") that the Indemnified Parties may incur arising out of or related to any activity of Developer or its Agents under this Agreement. Developer's obligations under this Section will survive the expiration or Termination of this Agreement.

### **11.2. Developer's Releases.**

**(a)** Developer, on behalf of itself and its Agents, successors and assigns (collectively, "**Developer Agents**"), fully, unconditionally and irrevocably releases, discharges, and forever waives (collectively, "**releases**") any and all claims, demands, rights, and causes of action (collectively, "**claims**") against, and covenants not to sue or to pay the attorneys' fees and other litigation costs of any Party to sue, the SFMTA or City, or any of their respective Agents (collectively, "**City Agents**"), for Monetary Damages and Losses arising from, accruing from, or due to, directly or indirectly: (i) the facts or circumstances of or alleged in connection with the Project to the extent arising before the Effective Date; (ii) any failure by any Regulatory Agency to issue any necessary Regulatory Approval; and (iii) Developer's or its Agents' entry onto or activities conducted in, on or around the Site.

**(b)** Developer understands that if any facts concerning the claims released in this Agreement should be found to be other than or different from the facts now believed to be true, Developer expressly accepts and assumes the risk of the possible difference in facts and

agrees that the release in this Agreement will remain effective. By placing its initials below, Developer specifically acknowledges and confirms the validity of the release made above and the fact that Developer was represented by or had the opportunity to consult with counsel, who explained the consequences of the above release at the time this Agreement was made.

INITIALS: Developer: \_\_\_\_\_

## 12. NOTICES

**12.1. Form and Manner of Delivery.** Any notice given under this Agreement must be in writing and delivered in person, by commercial courier, or by registered, certified mail, or express mail, return receipt requested, with postage prepaid, to the mailing addresses below. All notices under this Agreement will be deemed given, received, made, or communicated on the date personal receipt actually occurs or, if mailed, on the delivery date or attempted delivery date shown on the return receipt. For the convenience of the Parties, copies of notices may also be given by email or telephone, but email or telephonic notice will not be binding on either Party. The effective time of a notice will not be affected by the time that email or telephonic notice was delivered.

**12.2. Addresses for Notices.** Addresses for notices given under this Agreement follow. Any contact information may be changed by giving written notice of the change in the manner provided above at least ten (10) days before the effective date of the change.

**SFMTA:** San Francisco Municipal Transportation Agency  
Facilities and Real Estate  
One South Van Ness, 8th Floor  
San Francisco, CA 94103  
Attn: Long Range Asset Development Manager  
Moscone Center Garage Project

Telephone: (415) 646-2764  
Email: rafe.rabalais@sfmta.com

**OEWD:** San Francisco Office of Economic and Workforce  
Development  
Joint Development Division  
1 Dr. Carlton B. Goodlett Pl., Room 448  
San Francisco, CA 94102  
Attn: Director of Development

Telephone: (415) 554-5194  
Email: ken.rich@sfgov.org

**With a copy to:**

City Attorney's Office  
1390 Market Street, 7th floor  
San Francisco, CA 94102  
Attn: Robert Stone, Deputy City Attorney

Telephone: (415) 554-3813  
Email: Rob.Stone@sfcityatty.org

**Developer:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_

Telephone: \_\_\_\_\_  
Email: \_\_\_\_\_

**With copies to:**

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

Telephone: \_\_\_\_\_  
Email: \_\_\_\_\_

**12.3. Day-to-Day Communications.** Developer and the SFMTA agree that day-to-day communications will be directed as follows to:

- (a) \_\_\_\_\_ for Developer;
- (b) \_\_\_\_\_ for OEWD; and
- (c) \_\_\_\_\_ for the SFMTA.

**13. CITY AND SFMTA REQUIREMENTS**

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

The following summary is for Developer's convenience only; Developer is obligated to become familiar with all applicable requirements and to comply with them fully as they are amended from time to time. City ordinances are currently available on the internet at [www.sfgov.org](http://www.sfgov.org).

References to specific laws in this Article refer to San Francisco municipal codes unless specified otherwise.

**13.1. Nondiscrimination in City Contracts and Benefits Ordinance.**

**(i) Developer Shall Not Discriminate.** In the performance of this Agreement, Developer agrees not to discriminate against any employee, City and County employee working with such developer or subcontractor, applicant for employment with such developer 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.

**(ii) Subcontracts.** Developer shall incorporate by reference in all subcontracts the provisions of §§12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code (copies of which are available from Purchasing) and shall require all subcontractors to comply with such provisions. Developer's failure to comply with the obligations in this subsection shall constitute a material breach of this Agreement.

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

**(iv) Condition to Contract.** As a condition to this Agreement, Developer shall execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (Form CMD-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Contracts Monitoring Division.

**(v) Incorporation of Administrative Code Provisions by Reference.** The provisions of Chapters 12B and 12C of the San Francisco Administrative Code are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Developer shall comply fully with and be bound by all of the provisions that apply to this Agreement under such Chapters, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, Developer understands that pursuant to §§12B.2(h) and 12C.3(g) of the San Francisco Administrative Code, a penalty of Fifty Dollars (\$50) for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Agreement may be assessed against Developer and/or deducted from any payments due Developer.

**13.2. Prohibition on Political Activity with City Funds.** Under Administrative Code chapter 12G, Developer may not participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure in the performance of the services required under this Agreement. Developer agrees to comply with chapter 12G and any implementing rules and regulations promulgated by the Controller. If Developer violates this Section, in addition to any other rights or remedies available, City may: (a) terminate this Agreement; and

(b) prohibit Developer from bidding on or receiving any new City contract for a period of 2 years. The Controller will not consider Developer's use of profit as a violation of this Section.

**13.3. Requiring Health Benefits for Covered Employees.** Unless exempt, Developer agrees to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance ("HCAO"), as set forth in Administrative Code chapter 12Q, including the remedies provided, and implementing regulations, as the same may be amended from time to time. The provisions of Chapter 12Q are incorporated herein by reference and made a part of this Agreement as though fully set forth. The text of the HCAO is available on the web at <http://www.sfgov.org/olse/hcao>. Capitalized terms used in this Section and not defined in this Agreement will have the meanings assigned to them in chapter 12Q.

(a) For each Covered Employee, Developer shall provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO. If Developer chooses to offer the health plan option, such health plan shall meet the minimum standards set forth by the San Francisco Health Board.

(b) Notwithstanding the above, if the Developer is a small business as defined in Section 12Q.3(d) of the HCAO, it shall have no obligation to comply with subsection (a) above.

(c) Developer's failure to comply with the HCAO shall constitute a material breach of this Agreement. City shall notify Developer if such a breach has occurred. If, within thirty (30) days after receiving City's written notice of a breach of this Agreement for violating the HCAO, Developer fails to cure such breach or, if such breach cannot reasonably be cured within such period of thirty (30) days, Developer fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, City shall have the right to pursue the remedies set forth in Section 12Q.5(f)(1-5). Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to City.

(d) Any Subcontract entered into by Developer shall require the Subcontractor to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section. Developer shall notify City's Purchasing Department when it enters into such a Subcontract and shall certify to the Purchasing Department that it has notified the Subcontractor of the obligations under the HCAO and has imposed the requirements of the HCAO on Subcontractor through the Subcontract. Each Developer shall be responsible for its Subcontractors' compliance with this Chapter. If a Subcontractor fails to comply, City may pursue the remedies set forth in this Section against Developer based on the Subcontractor's failure to comply, provided that City has first provided Developer with notice and an opportunity to obtain a cure of the violation.

(e) Developer shall not discharge, reduce in compensation, or otherwise discriminate against any employee for notifying City with regard to Developer's compliance or anticipated compliance with the requirements of the HCAO, for opposing any practice proscribed by the HCAO, for participating in proceedings related to the HCAO, or for seeking to assert or enforce any rights under the HCAO by any lawful means.

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

(g) Developer shall keep itself informed of the current requirements of the HCAO.

(h) Developer shall provide reports to City in accordance with any reporting standards promulgated by City under the HCAO, including reports on Subcontractors and Subtenants, as applicable.



(i) Developer shall provide City with access to records pertaining to compliance with HCAO after receiving a written request from City to do so and being provided at least five (5) business days to respond.

(j) City may conduct random audits of Developer to ascertain its compliance with HCAO. Developer agrees to cooperate with City when it conducts such audits.

(k) If Developer is exempt from the HCAO when this Agreement is executed because its amount is less than Twenty-Five Thousand Dollars (\$25,000), but Developer later enters into an agreement or agreements that cause Developer's aggregate amount of all agreements with City to reach Seventy-Five Thousand Dollars (\$75,000), all the agreements shall be thereafter subject to the HCAO. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between Developer and the Contracting Department to be equal to or greater than Seventy-Five Thousand Dollars (\$75,000) in the fiscal year.

**13.4. Local Hiring Policy for Construction.** Developer acknowledges that the Transaction Documents will require compliance with the San Francisco Local Hiring Policy for Construction set forth in the San Francisco Administrative Code, Chapter 82 (the "**Local Hiring Policy for Construction**").

**13.5. Consideration of Criminal History in Hiring and Employment Decisions.**

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

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

(c) Developer shall incorporate by reference in all subcontracts the provisions of Chapter 12T, and shall require all subcontractors to comply with such provisions. Developer's failure to comply with the obligations in this subsection shall constitute a material breach of this Agreement.

(d) Developer or Subcontractor shall not inquire about, require disclosure of, or if such information is received base an Adverse Action on an applicant's or potential applicant for employment, or employee's: (1) Arrest not leading to a Conviction, unless the Arrest is undergoing an active pending criminal investigation or trial that has not yet been resolved; (2) participation in or completion of a diversion or a deferral of judgment program; (3) a Conviction that has been judicially dismissed, expunged, voided, invalidated, or otherwise rendered inoperative; (4) a Conviction or any other adjudication in the juvenile justice system; (5) a Conviction that is more than seven years old, from the date of sentencing; or (6) information pertaining to an offense other than a felony or misdemeanor, such as an

infraction.

(e) Developer or Subcontractor shall not inquire about or require applicants, potential applicants for employment, or employees to disclose on any employment application the facts or details of any conviction history, unresolved arrest, or any matter identified in **Section 14.5(d)**. Developer or Subcontractor shall not require such disclosure or make such inquiry until either after the first live interview with the person, or after a conditional offer of employment.

(f) Developer or Subcontractor shall state in all solicitations or advertisements for employees that are reasonably likely to reach persons who are reasonably likely to seek employment to be performed under this Agreement, that the Developer or Subcontractor will consider for employment qualified applicants with criminal histories in a manner consistent with the requirements of Chapter 12T.

(g) Developer and Subcontractors shall post the notice prepared by the Office of Labor Standards Enforcement (OLSE), available on OLSE's website, in a conspicuous place at every workplace, job Site, or other location under the Developer or Subcontractor's control at which work is being done or will be done in furtherance of the performance of this Agreement. The notice shall be posted in English, Spanish, Chinese, and any language spoken by at least 5% of the employees at the workplace, job Site, or other location at which it is posted.

(h) Developer understands and agrees that if it fails to comply with the requirements of Chapter 12T, City shall have the right to pursue any rights or remedies available under Chapter 12T, including but not limited to, a penalty of Fifty Dollars (\$50) for a second violation and One Hundred Dollars (\$100) for a subsequent violation for each employee, applicant or other person as to whom a violation occurred or continued, termination or suspension in whole or in part of this Agreement.

### **13.6. MacBride Principles - Northern Ireland.**

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

**13.7. Tropical Hardwood and Virgin Redwood Ban.** The SFMTA and City urge Developer not to import, purchase, obtain or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood, or virgin redwood product. Except as expressly permitted by Environment Code sections 802(b) and 803(b), Developer may not provide any items to the construction of the Project, or otherwise in the performance of this Agreement that are tropical hardwoods, tropical hardwood wood products, virgin redwood, or virgin redwood wood products. If Developer fails to comply in good faith with any of the provisions of Environment Code chapter 8, Developer will be liable for liquidated damages for each violation in any amount equal to the contractor's net profit on the contract, or 5 percent of the total amount of the contract dollars, whichever is greater.

**13.8. Preservative-Treated Wood Containing Arsenic.** Developer may not purchase preservative-treated wood products containing arsenic in the performance of this Agreement unless an exemption from the requirements of Environment Code Chapter 13 is obtained from the Department of Environment under Section 1304 of the Environment Code. The term "**preservative-treated wood containing arsenic**" shall mean wood treated with a preservative that contains arsenic, elemental arsenic, or an arsenic copper combination, including, but not limited to, chromated copper arsenate preservative, ammoniac copper zinc arsenate

preservative, or ammoniacal copper arsenate preservative. Developer may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared and adopted by the Department of Environment. This provision does not preclude Developer from purchasing preservative-treated wood containing arsenic for saltwater immersion. The term "**saltwater immersion**" shall mean a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

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

**13.10. Requiring Minimum Compensation for Covered Employees.**

(a) Developer agrees to comply fully with and be bound by all of the provisions of the Minimum Compensation Ordinance (MCO), as set forth in San Francisco Administrative Code Chapter 12P (Chapter 12P), including the remedies provided, and implementing guidelines and rules. The provisions of Sections 12P.5 and 12P.5.1 of Chapter 12P are incorporated herein by reference and made a part of this Agreement as though fully set forth. The text of the MCO is available on the web at [www.sfgov.org/olse/mco](http://www.sfgov.org/olse/mco). A partial listing of some of Developer's obligations under the MCO is set forth in this Section. Developer is required to comply with all the provisions of the MCO, irrespective of the listing of obligations in this Section.

(b) The MCO requires Developer to pay Developer's employees a minimum hourly gross compensation wage rate and to provide minimum compensated and uncompensated time off. The minimum wage rate may change from year to year and Developer is obligated to keep informed of the then-current requirements. Any subcontract entered into by Developer shall require the subcontractor to comply with the requirements of the MCO and shall contain contractual obligations substantially the same as those set forth in this Section. It is Developer's obligation to ensure that any subcontractors of any tier under this Agreement comply with the requirements of the MCO. If any subcontractor under this Agreement fails to comply, City may pursue any of the remedies set forth in this Section against Developer.

(c) Developer shall not take adverse action or otherwise discriminate against an employee or other person for the exercise or attempted exercise of rights under the MCO. Such actions, if taken within ninety (90) days of the exercise or attempted exercise of such rights, will be rebuttably presumed to be retaliation prohibited by the MCO. Developer shall

maintain employee and payroll records as required by the MCO. If Developer fails to do so, it shall be presumed that the Developer paid no more than the minimum wage required under State law. City is authorized to inspect Developer's job sites and conduct interviews with employees and conduct audits of Developer.

**(d)** Developer's commitment to provide the Minimum Compensation is a material element of City's consideration for this Agreement. City in its sole discretion shall determine whether such a breach has occurred. City and the public will suffer actual damage that will be impractical or extremely difficult to determine if the Developer fails to comply with these requirements. Developer agrees that the sums set forth in Section 12P.6.1 of the MCO as liquidated damages are not a penalty, but are reasonable estimates of the loss that City and the public will incur for Developer's noncompliance. The procedures governing the assessment of liquidated damages shall be those set forth in Section 12P.6.2 of Chapter 12P.

**(e)** Developer understands and agrees that if it fails to comply with the requirements of the MCO, City shall have the right to pursue any rights or remedies available under Chapter 12P (including liquidated damages), under the terms of the contract, and under applicable law. If, within thirty (30) days after receiving written notice of a breach of this Agreement for violating the MCO, Developer fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Developer fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, City shall have the right to pursue any rights or remedies available under applicable law, including those set forth in Section 12P.6(c) of Chapter 12P. Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to City.

**(f)** Developer represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the MCO.

**(g)** If Developer is exempt from the MCO when this Agreement is executed because the cumulative amount of agreements with this department for the fiscal year is less than Twenty-Five Thousand Dollars (\$25,000), but Developer later enters into an agreement or agreements that cause Developer to exceed that amount in a fiscal year, Developer shall thereafter be required to comply with the MCO under this Agreement. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between the Developer and the City for this Project to exceed Twenty-Five Thousand Dollars (\$25,000) in the fiscal year.

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

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

**13.13. Prevailing Wages and Working Conditions.**

Any undefined, initially-capitalized term used in this Section shall have the meaning given to such term in San Francisco Administrative Code Section 23.61. Developer shall require

its Contractors and Subcontractors performing (i) labor in connection with a “public work” as defined under California Labor Code Section 1720 *et seq.* (which includes certain construction, alteration, maintenance, demolition, installation, repair, carpet laying, or refuse hauling work if paid for in whole or part out of public funds) or (ii) Covered Construction, at the Site to (1) pay workers performing such work not less than the Prevailing Rate of Wages, (2) provide the same hours, working conditions and benefits as in each case are provided for similar work performed in San Francisco County, and (3) employ Apprentices in accordance with San Francisco Administrative Code Section 23.61 (collectively, "**Prevailing Wage Requirements**"). Developer agrees to cooperate with City in any action or proceeding against a Contractor or Subcontractor that fails to comply with the Prevailing Wage Requirements.

Developer shall include, and shall require its subtenants, and Contractors and Subcontractors (regardless of tier) to include, the Prevailing Wage Requirements and the agreement to cooperate in City enforcement actions in any Construction Contract with specific reference to San Francisco Administrative Code Section 23.61. Each such Construction Contract shall name the City and County of San Francisco, affected workers, and employee organizations formally representing affected workers as third party beneficiaries for the limited purpose of enforcing the Prevailing Wage Requirements, including the right to file charges and seek penalties against any Contractor or Subcontractor in accordance with San Francisco Administrative Code Section 23.61. Developer’s failure to comply with its obligations under this Section shall constitute a material breach of this Agreement. A Contractor’s or Subcontractor’s failure to comply with this Section will enable City to seek the remedies specified in San Francisco Administrative Code Section 23.61 against the breaching party. For the current Prevailing Rate of Wages, see [www.sfgov.org/olse](http://www.sfgov.org/olse) or call the City’s Office of Labor Standards Enforcement at 415-554-6235.

#### **13.14. Employee Signature Authorization Ordinance**

Developer shall comply with the requirements of the Employee Signature Authorization Ordinance (S.F. Admin Code Sections 23.50-23.56), if applicable, including, without limitation, any requirements in the ordinance with respect to any subtenants or operators. The ordinance requires employers of employees in hotel or restaurant projects on public property with fifty (50) or more employees (whether full-time or part-time) to enter into a "card check" agreement with a labor union regarding the preference of employees to be represented by a labor union to act as their exclusive bargaining representative.

#### **13.15. Local Business Enterprise Utilization; Liquidated Damages.**

Developer shall comply with all the requirements of the Local Business Enterprise and Non-Discrimination in Contracting Ordinance set forth in Chapter 14B of the San Francisco Administrative Code as it now exists or as it may be amended in the future (collectively the "**LBE Ordinance**"), provided such amendments do not materially increase Developer's obligations or liabilities, or materially diminish Developer's rights, under this Agreement. Such provisions of the LBE Ordinance are incorporated by reference and made a part of this Agreement as though fully set forth in this Section. Developer’s willful failure to comply with any applicable provisions of the LBE Ordinance is a material breach of Developer's obligations under this Agreement and shall entitle City, subject to any applicable notice and cure provisions set forth in this Agreement, to exercise any of the remedies provided for under this Agreement, under the LBE Ordinance or otherwise available at law or in equity, which remedies shall be cumulative unless this Agreement expressly provides that any remedy is exclusive. In addition, Developer shall comply fully with all other applicable local, state and federal laws prohibiting discrimination and requiring equal opportunity in contracting, including subcontracting.

## 14. MISCELLANEOUS PROVISIONS

**14.1. Attorneys' Fees.** If either Party brings an action or proceeding at law or in equity against the other Party to enforce any provision of this Agreement or to protect or establish any right or remedy under this Agreement, the unsuccessful Party to the litigation must pay to the prevailing Party all costs and expenses incurred by the prevailing Party as determined by the court, including reasonable attorneys' fees. If the prevailing Party obtains a judgment in any action or proceeding, costs, expenses, and attorneys' fees will be included in and be a part of the judgment. For purposes of this Agreement, reasonable fees of attorneys of the Office of the City Attorney will be based on the fees regularly charged by private attorneys with an equivalent number of years of professional experience (calculated by reference to earliest year of admission to the Bar of any State) who practice in the San Francisco in law firms with approximately the same number of attorneys as employed by the Office of the City Attorney.

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

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

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

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

**14.6. No Party Drafter; Captions.** The provisions of this Agreement will be construed as a whole according to their common meaning and not strictly for or against any Party, in order to achieve the objectives and purposes of the Parties. This Agreement has been negotiated at arm's length by knowledgeable parties assisted by legal counsel; neither party shall be deemed the drafter. No statutory, common law or other construction of this Agreement shall be applied to the effect that any provision of this Agreement or any ambiguity shall be construed against either party as the drafter. Any caption preceding the text of any section, paragraph or subsection or in the table of contents is included only for convenience of reference and will be disregarded in the construction and interpretation of this Agreement.

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

**14.8. Authority.** If Developer signs as a corporation, limited liability company or a partnership, each of the persons executing this Agreement on behalf of Developer represents and warrants that Developer is a duly authorized and existing entity, that Developer has and is qualified to do business in California, that Developer has full right and authority to enter into

this Agreement, and that each and all of the persons signing on Developer's behalf are authorized to do so. Upon the SFMTA's request, Developer must provide the SFMTA with evidence satisfactory to the SFMTA confirming these representations and warranties.

**14.9. Waiver.** None of the following will constitute a waiver of any breach under, or of the SFMTA's right to demand strict compliance with, this Agreement: (a) the SFMTA's or another City agency's failure to insist upon Developer's strict performance of any obligation under this Agreement; (b) the SFMTA's or another City agency's failure to exercise any right, power, or remedy arising from Developer's failure to perform its obligations for any length of time; or (c) the SFMTA's or another City agency's acceptance of any full or partial payment, including any portion of the Negotiating Fee, during the continuance of the breach. The SFMTA's or another City agency's consent to or approval of any act by Developer requiring consent or approval may not be deemed to waive or render unnecessary any consent to or approval of any subsequent act by Developer. Any waiver by any City agency or the SFMTA of any default must be in writing and will not be a waiver of any other default concerning the same or any other provision of this Agreement.

**14.10. Time is of the Essence.** Time is of the essence for each provision of this Agreement, including Developer proceeding diligently to meet the Project Schedule.

**14.11. Broker.** City will not pay a finder's or broker's fee in connection with this Agreement or upon execution of any of the Transaction Documents. Developer agrees to indemnify and hold City harmless from any costs, including attorneys' fees, City incurs if any broker or brokers claim a commission in connection with this Agreement or any of the Transaction Documents.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

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

**DEVELOPER:**

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

Its: \_\_\_\_\_

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

**SFMTA:**

**SAN FRANCISCO MUNICIPAL  
TRANSPORTATION AGENCY**

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

Ed Reiskin  
Director

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

APPROVED BY  
SAN FRANCISCO MUNICIPAL  
TRANSPORTATION AGENCY  
BOARD OF DIRECTORS

Pursuant to Resolution No. \_\_\_\_\_

Adopted \_\_\_\_\_

\_\_\_\_\_  
Secretary

**APPROVED AS TO FORM:**  
Dennis J. Herrera, City Attorney

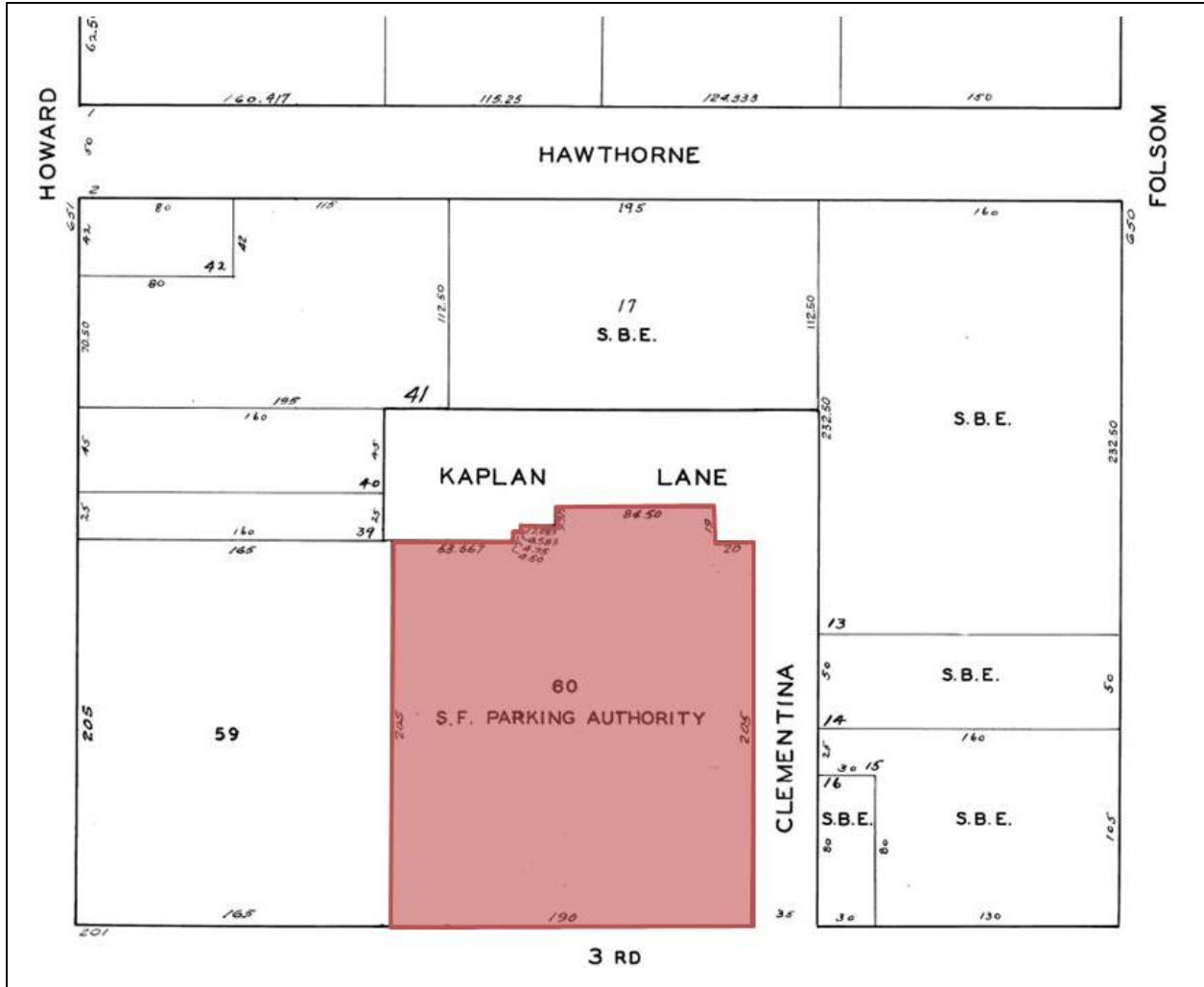
By: \_\_\_\_\_

\_\_\_\_\_  
Deputy City Attorney



APPENDIX A

MOSCONE CENTER GARAGE SITE



**Legal Description for APN/Parcel ID(s): Lot 060, Block 3735**

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

**Parcel A:**

BEGINNING at a point on the Northeasterly line of 3rd Street, distant thereon 165 feet Southeasterly from the Southeasterly line of Howard Street; running thence Southeasterly along said line of 3rd Street 190 feet to the Northwesterly line of Clementina Street; thence Northeasterly along said line of Clementina Street 205 feet to the Southwesterly line of Kaplan Lane, as said Lane is shown on that certain map entitled, "Map Showing the Opening of Kaplan

Lane Northwesterly of Clementina Street", recorded June 30, 1977, in Map Book "W" at Page 90, in the Office of the County Recorder of the City and County of San Francisco, State of California; thence at a right angle Northwesterly along said line of Kaplan Lane 190 feet to a line drawn parallel with and perpendicularly distant 165 feet Southeasterly from the Southeasterly line of Howard Street; thence at a right angle Southwesterly along said parallel line so drawn 205 feet to the point of beginning.

BEING a portion of 100 Vara Block No. 356 and a portion of former Tehama Street, vacated by Resolution No. 270-75, adopted March 31, 1975, by the Board of Supervisors of the City and County of San Francisco.

**Parcel B:**

BEGINNING at a point on the Southerly line of Kaplan Lane distant thereon 20.00 feet Northwesterly from the Northwesterly line of Clementina Street, as said Lane and Street are shown on that certain map entitled, "Map Showing the Opening of Kaplan Lane Northwesterly of Clementina Street", recorded June 30, 1977, in Map Book "W" at Page 90, in the Office of the County Recorder of the City and County of San Francisco, State of California, running thence Northwesterly along said line of Kaplan Lane 84 feet and 6 inches; thence at a right angle Northeasterly 19.00 feet; thence at a right angle Southeasterly parallel with said line of Kaplan Lane 84 feet and 6 inches; thence at a right angle Southwesterly 19.00 feet to the point of beginning.

BEING a portion of Kaplan Lane, now vacated.

**Parcel C:**

BEGINNING at a point on the Southerly line of Kaplan Lane, distant thereon 104.50 feet Northwesterly from the Northwesterly line of Clementina Street, as said Lane and Street are shown on that certain map entitled, "Map Showing the Opening of Kaplan Lane Northwesterly of Clementina Street", recorded June 30, 1977, in Map Book "W" at Page 90, in the Office of the County Recorder of the City and County of San Francisco, State of California, and running thence Northwesterly along said line of Kaplan Lane 21 feet and 10 inches; thence at a right angle Northeasterly 4.50 feet; thence at a right angle Southeasterly 4 feet and 9 inches; thence at a right angle Northeasterly 4 feet and 7 inches; thence at a right angle Southeasterly parallel with said line of Kaplan Lane 17 feet and 1 inch; thence at a right angle Southwesterly 9 feet, one inch to the point of beginning.

BEING a portion of Kaplan Lane, now vacated.

**APPENDIX B**

**FEE SCHEDULE**

<b>Period</b>	<b>Associated Payments*</b>	<b>Maximum Length</b>
<b>PHASE 1 – Commences Upon ENA Execution</b>		
Initial phase length	\$100,000 deposit toward City Costs	6 months
Automatic extension with payment	\$50,000 extension fee	6 months
Additional extension at City's discretion	\$10,000 per month	Up to 6 months
<b>PHASE 2 – Commences Upon Development Overview Endorsement</b>		
Initial phase length	None	22 months
Automatic extension with payment	\$50,000 extension fee	9 months
Additional extension at City's discretion	\$10,000 per month	Up to 12 months

\* Payments due at beginning of associated period.

**APPENDIX C**

**LOCAL HIRING POLICY FOR CONSTRUCTION**

**(Attached)**

## LOCAL HIRING REQUIREMENTS

This Attachment C states requirements applicable to construction contracts issued by the City. Applicable provisions of this Attachment C shall apply to the construction of the Project. Final Local Hiring and Workforce provisions will be recorded in the LDDA.

### 1.1 SUMMARY

- A. This Attachment C incorporates applicable requirements of the San Francisco Local Hiring Policy for Construction ("Policy") as set forth in Section 6.22(g) and Chapter 82 of the San Francisco Administrative Code. The Provisions of the Policy are hereby incorporated as a material term of this Contract. Contractor agrees that (i) Contractor shall comply with all applicable requirements of the Policy; (ii) the provisions of the Policy are reasonable and achievable by Contractor and its Subcontractors; and (iii) they have had a full and fair opportunity to review and understand the terms of the Policy.
- B. The Office of Economic and Workforce Development (OEWD) is responsible for administering the Policy. For more information on the Policy and its implementation, please visit the OEWD website at: [www.oewd.org](http://www.oewd.org).
- C. Meeting the local hiring requirements of the Policy as set forth in this Document will satisfy Contractor's obligations under the City's First Source Hiring Program (San Francisco Administrative Code Chapter 83).

### 1.2 DEFINITIONS

- A. "Apprentice" means any worker who is indentured in a construction apprenticeship program that maintains current registration with the State of California's Division of Apprenticeship Standards.
- B. "Area Median Income (AMI)" means unadjusted median income levels derived from the Department of Housing and Urban Development ("HUD") on an annual basis for the San Francisco area, adjusted solely for household size, but not high housing cost area.
- C. "Covered Project" means a public work or improvement or part thereof with estimated cost in excess of the Threshold Amount as set forth in Section 6.1 of the San Francisco Administrative Code.
- D. "Non-covered Project" means any construction projects not covered by the San Francisco Local Hiring Policy.

- E. “Disadvantaged Worker” means a local resident, who (i) resides in a census tract within the City with a rate of unemployment in excess of 150% of the City unemployment rate; or (ii) at the time of commencing work on a covered project has a household income of less than 80% of the AMI, or (iii) faces or has multiple barriers to employment as set forth in Section 82.3 of the Administrative Code.
- F. “Local Resident” means an individual who is domiciled, as defined by Section 349(b) of the California Election Code, within the City at least seven (7) days prior to commencing work on the project. For projects outside the jurisdictional boundaries of the City, “local resident” also applies to residents within the San Francisco Public Utilities Commission service territory, except where a reciprocity agreement exists with another local agency, in which case the reciprocity agreement controls.<sup>14</sup>
- G. “Project Work Hours” means the total work hours worked on a construction contract by all apprentices and journey-level workers, whether those workers are employed by the Contractor or any Subcontractor.
- H. "Job Notification" means the written notice of any Hiring Opportunities from Contractor to CityBuild. Contractor shall provide Job Notifications to CityBuild with a minimum of three (3) business days' notice.
- I. “Targeted Worker” means any Local Resident or Disadvantaged Worker.

### 1.3 LOCAL HIRING REQUIREMENTS

- A. Total Project Work Hours by Trade. For all Covered Projects advertised for bids on or after March 25, 2013, the mandatory participation level in terms of Project Work Hours within each trade to be performed by Local Residents is 30%, with a goal of no less than 15% of Project Work Hours within each trade to be performed by Disadvantaged Workers.
- B. Apprentices. For all Covered Projects, at least 50% of the Project Work Hours performed by apprentices within each trade shall be performed by Local Residents, with a goal of no less than 25% of Project Work Hours performed by apprentices within each trade to be performed by Disadvantaged Workers.
- C. Out-of-State Workers. For all Covered Projects, Project Work Hours performed by residents of states other than California will not be considered in calculation of the number of Project Work Hours to which the local hiring requirements

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<sup>14</sup> For Covered Projects located in whole or in part in San Mateo County, the following reciprocity agreement controls:  
<http://oewd.org/sites/default/files/Workforce/Workforce-Docs/SFO-SM%20reciprocity%20agreement.pdf>

apply. Contractors and Subcontractors shall report to Contracting City Agency and OEWD the number of Project Work Hours performed by residents of states other than California.

- D. Pre-construction or other Local Hire Meeting. Prior to commencement of construction on Covered Projects, Contractor and its Subcontractors identified in the Local Hiring Forms as contributing toward the mandatory local hiring requirement shall attend a preconstruction or other Local Hire meeting(s) convened by awarding department or OEWD staff. Representatives from Contractor and the Subcontractor(s) who attend the pre-construction or other Local Hire meeting must have hiring authority.
- E. The Policy does not limit Contractor's or its Subcontractors' ability to assess qualifications of prospective workers, and to make final hiring and retention decisions. No provision of the Policy shall be interpreted so as to require a Contractor or Subcontractor to employ a worker not qualified for the position in question, or to employ any particular worker.

#### 1.4 CITYBUILD WORKFORCE DEVELOPMENT PROGRAM: EMPLOYMENT NETWORKING SERVICES

- A. OEWD administers the CityBuild Program. CityBuild is a resource for Contractor and Subcontractors to use in meeting local hiring requirements under the Policy. CityBuild has two main goals:
  - 1. Assist with local hiring requirements under the Policy by connecting Contractor and Subcontractors with qualified journey-level, apprentice, and pre-apprentice local residents.
  - 2. Promote training and employment opportunities for disadvantaged workers of all ethnic backgrounds and genders in the construction work force.
- B. Where Contractor's or its Subcontractors' preferred or preexisting hiring or staffing procedures for a Covered Project do not enable Contractor to satisfy the local hiring requirements of the Policy, the Contractor or Subcontractor shall use other procedures to identify and retain Targeted Workers, including the following:
  - 1. Requesting to connect with workers through CityBuild, with qualifications described in the request limited to skills directly related to performance of job duties.
  - 2. Considering Targeted Workers networked through CityBuild within three business days of the request and who meet the qualifications described in the request. Such consideration may include in-person interviews. All

workers networked through CityBuild will qualify as Disadvantaged Workers under the Policy. Neither Contractor nor its Subcontractors are required to make an independent determination of whether any worker is "disadvantaged" as defined in the Policy.

## 1.5 CONDITIONAL WAIVER FROM LOCAL HIRING REQUIREMENTS

- A. Contractor or the Subcontractor may use one or more of the following pipeline and retention compliance mechanisms to receive a conditional waiver from the local hiring requirements on a project-specific basis. All requests for conditional waivers must be submitted to OEWD for approval.
1. Specialized Trades. OEWD has published a list of trades designated as "Specialized Trades" for which the local hiring requirements of the Policy will not apply. The list is available on the OEWD website. Contractor and its Subcontractors shall report to OEWD the project work hours utilized in each designated Specialized Trade and in each OEWD-approved project-specific Specialized Trade.
  2. Credit for Hiring on Non-Covered Projects. Contractor and its Subcontractors may accumulate credit hours for hiring Targeted Workers on Non-Covered Projects in the nine-county San Francisco Bay Area and apply those credit hours to contracts for Covered Projects to meet the mandatory local hiring requirement. For hours performed by Targeted Workers on Non-Covered Projects, the hours shall be credited toward the local hiring requirement for this Contract provided that:
    - a. the Targeted Workers are paid the prevailing wages for work on the Non-Covered Projects; and
    - b. for Non-Covered Projects located in the City, the number of hours to be credited for the Non-Covered Project exceed one-half of the number of hours that would be required if the project were a Covered Project.
  3. Sponsoring Apprentices. Contractor or a Subcontractor may agree to sponsor an OEWD-specified number of new apprentices in trades in which noncompliance is likely and retaining those apprentices for the period of Contractor's or a Subcontractor's work on the project. OEWD will verify with the California Department of Industrial Relations that the new apprentices are registered and active apprentices.
  4. Direct Entry Agreements. OEWD is authorized to negotiate and enter into direct entry agreements with apprenticeship programs that are registered with the California Department of Industrial Relations' Division of Apprenticeship Standards. Contractor may avoid assessment of penalties for non-compliance with the Policy by Contractor or Subcontractor hiring



and retaining apprentices who are enrolled through such direct entry agreements. Such exception from assessments of penalties is subject to review and approval by OEWD.

## 1.6 LOCAL HIRING FORMS

- A. Utilizing the City's online Project Reporting System ("PRS"), Contractors shall submit the following forms, as applicable, to the Contracting City Agency and OEWD **within 15 calendar days of notice of Award:**
1. Form 1: Local Hiring Workforce Projection. The City will not issue Notice to Proceed (NTP) until Contractor completes and submits a Local Hiring Workforce Projection.
  2. Form 2: Local Hiring Plan. For Covered Projects estimated to cost more than \$1,000,000, Contractor shall prepare and submit to Contracting City Agency and OEWD for approval a Local Hiring Plan for the project using OEWD Form 2. The OEWD-approved Local Hiring Plan will be incorporated into this Contract as a Contract Document, and will serve as the basis for determining Contractor's and its Subcontractors' compliance with local hiring requirements.
  3. The City will not issue NTP until Contractor submits the Local Hiring Plan. Contractor shall be fully responsible for any delays to NTP and associated damages incurred by the City caused by Contractor's failure to timely submit a Local Hiring Plan.
  4. The Local Hiring Plan must be reviewed and approved in writing by OEWD before any Application for Payment can be approved and progress payment paid to Contractor.
  5. Upon commencement of work, Contractor and its Subcontractors may submit Job Notifications to CityBuild to connect with local trades workers.
  6. Form 4: Conditional Waivers. To be completed by Contractor in the event that Contractor or a Subcontractor believes the local hiring requirements cannot be met. Refer to Articles 1.4 and 1.5 for more information regarding conditional waivers.

## 1.7 ENFORCEMENT, RECORD KEEPING, NONCOMPLIANCE AND PENALTIES

- A. Subcontractor Compliance. Contractor shall ensure that Subcontractors of all tiers comply with applicable requirements of the Policy. Refer to Administrative Code Section 82.7(d)
- B. Reporting. As required by Subparagraph 9.03M of the General Conditions (Document 00 72 00) Contractor shall submit certified payrolls to the City electronically using the Project Reporting System. OEWD and Contracting City

Agency will monitor compliance with the Policy electronically.

- C. Recordkeeping. Contractor and each Subcontractor shall keep, or cause to be kept, for a period of four years from the date of Substantial Completion of project work, certified payroll and basic records, including time cards, tax forms, and superintendent and foreman daily logs, for all workers within each trade performing work on the Project.
1. Such records shall include the name, address and social security number of each worker who worked on the covered project, his or her classification, a general description of the work each worker performed each day, the apprentice or journey-level status of each worker, daily and weekly number of hours worked, the self-identified race, gender, and ethnicity of each worker, whether or not the worker was a local resident, and the referral source or method through which the contractor or subcontractor hired or retained that worker for work on the covered project (e.g., core workforce, name call, union hiring hall, City-designated referral source, or recruitment or hiring method).
  2. Contractor and Subcontractors may verify that a worker is a Local Resident by following OEWD's domicile policy.
  3. All records described in this subsection shall at all times be open to inspection and examination by the duly authorized officers and agents of the City, including representatives of the awarding department and the OEWD.
- D. Monitoring. From time to time and in its sole discretion, OEWD and/or the awarding department may monitor and investigate compliance of Contractor and Subcontractors working on the Project with requirements of this Policy. Consistent with the Access to Work provisions of Paragraph 3.13 of the General Conditions (Document 00 72 00), Contractor shall allow representatives of OEWD and the awarding department, in the performance of their duties, to engage in random inspections of the Site. Contractor and all Subcontractors shall also allow representatives of OEWD and the awarding department to have access to employees of Contractor and Subcontractors and the records required to be maintained under the Policy.
- E. Noncompliance and Penalties. Failure of Contractor and/or its Subcontractors to comply with the requirements of the Policy and the obligations set forth in the Local Hiring Plan may subject Contractor to the consequences of noncompliance specified in Section 82.8(f) of the Administrative Code, including but not limited to the penalties prescribed in Section 82.8(f)(2). The assessment of penalties for noncompliance shall not preclude the City from exercising any other rights or remedies to which it is entitled. Refer to Administrative Code Section 82.8(f)(4)

for a description of the recourse procedure applicable to penalty assessments under the Policy.

END OF DOCUMENT



## FORM 1: LOCAL HIRING WORKFORCE PROJECTION

**Contractor** \_\_\_\_\_ **Project** \_\_\_\_\_ **Contract #:** \_\_\_\_\_  
 : \_\_\_\_\_ **Name:** \_\_\_\_\_

The Contractor must complete and submit this Local Hiring Workforce Projection (Form 1) within 15 calendar days from notice of award of the contract. The Contractor must include information regarding all of its Subcontractors who will perform construction work on the project regardless of Tier and Value Amount. Notice to Proceed (NTP) will not be issued until the City receives a completed Form 1 from Contractor. The Contractor shall be responsible for any delays to NTP and resulting damages incurred by the City caused by Contractor's failure to submit an accurate and complete Form 1 for its workforce and the workforce of its Subcontractors in a timely manner.

### Will you be able to meet the mandatory Local Hiring Requirements?

**YES (Please provide information for all contractors performing construction work in Table 1 below.)**

**NO (Please complete Table 1 below and Form 4: Conditional Waivers.)**

#### INSTRUCTIONS FOR COMPLETING TABLE 1:

1. Please organize the contractors' information based on their Trade Craft work.
2. For contractors performing work in various Trade Craft, please list contractor name in each Trade Craft (*i.e. if Contractor X will perform two trades, list Contractor X under two Trade categories.*)
3. If you anticipate utilizing apprentices on this project, please note the requirement that 50% of apprentice hours must be performed by Local Residents.
4. Additional blank form is available at our Website: [www.owd.org](http://www.owd.org). For assistance or questions in completing this form, contact (415) 701-4894 or Email @ [Local.hire.ordinance@sfgov.org](mailto:Local.hire.ordinance@sfgov.org).

**TABLE 1: WORKFORCE PROJECTION**

Trade Craft	Contractor <i>List contractors by Trade Craft</i>		Est. Total Work Hours	Est. Total Local Work Hours	Est. Total Local Work Hours %
<b>Example:</b> <i>Laborer</i>	<i>Contractor X</i>	<b>Journey</b>	800	250	31%
		<b>Apprentice</b>	200	100	50%
<b>Example:</b> <i>Laborer</i>	<i>Contractor Y</i>	<b>Journey</b>	500	100	20%
		<b>Apprentice</b>	0	0	0
<b>Example:</b>	<b>TOTAL LABORER</b>	<b>Journey</b>	1300	350	<b>27%</b>
		<b>Apprentice</b>	200	100	<b>50%</b>
<b>Example:</b>	<b>TOTAL</b>		<b>1500</b>	<b>450</b>	<b>30%</b>



		<b>Journey</b>			
		<b>Apprentice</b>			
		<b>Journey</b>			
		<b>Apprentice</b>			
		<b>Journey</b>			
		<b>Apprentice</b>			

**DISCLAIMER:** *If the Total Work Hours for a Trade Craft are less than 5% of the Total Project Work Hours, the Trade Craft is exempt from the Mandatory Requirement. Subsequently, if the Trade Craft exceeds 5% of the Total Project Work Hours at any time during the project, the Trade Craft is subject to the Mandatory Requirement.*

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Name of Authorized Representative                      Signature                      Date                      Phone                      Email



**FORM 2: LOCAL HIRING PLAN**

**Contractor** \_\_\_\_\_ **Project** \_\_\_\_\_  
: \_\_\_\_\_ **Name:** \_\_\_\_\_ **Contract #:** \_\_\_\_\_

If the Engineer's Estimate for this Project exceeds **\$1 million**, then Contractor must submit a Local Hiring Plan using this Form 2 through the City's Project Reporting System. NTP will not be issued until Contractor submits a completed Form 2. Contractor shall be responsible for any delays to NTP and resulting damages incurred by the City caused by the Contractor's failure to submit a completed Form 2 in a timely manner. The Local Hiring Plan must be approved in writing by OEWD before any Application for Payment can be approved and progress payment paid to Contractor. The OEWD-approved Local Hiring Plan will be a Contract Document and will be the basis for determining Contractor's and its Subcontractors' compliance with the local hiring requirements. Any OEWD-approved Conditional Waivers (Form 4) will be incorporated into the OEWD-approved Local Hiring Plan.

**COMPLETE AND SUBMIT A SEPARATE FORM 2 FOR EACH TRADE THAT WILL BE UTILIZED ON THIS PROJECT.**

**INSTRUCTIONS:**

1. Please complete tables below for Contractor and all Subcontractors that will be contributing Project Work Hours to meet the Local Hiring Requirement.
2. Please note that a Form 2 will need to be developed and approved separately for each trade craft that will be utilized on this project.
3. If you anticipate utilizing apprentices on this project, please note the requirement that 50% of apprentice hours must be performed by Local Residents.
4. The Contractor and each Subcontractor identified in the Local Hiring Plan must sign this form before it will be considered for approval by OEWD.
5. If applicable, please attach all OEWD-approved Form 4 Conditional Waivers.
6. Additional blank form is available at our Website: [www.oewd.org](http://www.oewd.org). For assistance or questions in completing this form, contact (415) 701-4894 or Email @ [Local.hire.ordinance@sfgov.org](mailto:Local.hire.ordinance@sfgov.org).

**List Trade Craft. Add numerical values from Form 1: Local Hiring Workforce Projection and input in the table below.**

Trade Craft	Total Work Hours	Total Local Work Hours	Local Work Hours%	Total Apprentice Work Hours	Total Local Apprentice Work Hours	Local Apprentice Work Hours %
<i>Example: Laborer</i>	1500	450	30%	200	100	50%

**List all contractors contributing to the project work hours to meet the Local Hiring Requirements for the above Trade Craft**

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Contractor and Authorized Representative	Local Journey Hours	Local Apprenti ce Hours	Total Local Work Hours	Start Date	Numbe r of Workin g Days	*Contractor Signature
Contractor X Joe Smith	250	100	350	3/25/13	60	Joe Smith
Contractor Y Michael Lee	100	0	100	5/25/13	30	Michael Lee

**\*We the undersigned, have reviewed Form 2 and agree to deliver the hours set forth in this document.**



**FORM 4: CONDITIONAL WAIVERS**

**Contractor** \_\_\_\_\_ **Project** \_\_\_\_\_  
**:** \_\_\_\_\_ **Name:** \_\_\_\_\_ **Contract #:** \_\_\_\_\_

Upon approval from OEWD, Contractors and Subcontractors may use one or more of the following pipeline and retention compliance mechanisms to receive a Conditional Waiver from the Local Hiring Requirements on a project-specific basis. Conditional Waivers must be approved by OEWD prior to approval of Contractor's first Application for Payment. If applicable, each contractor must submit their individual Waiver request to OEWD and copy their Prime Contractor.

**TRADE WAIVER INFORMATION:** Please provide information on the Trades you are requesting Waivers for:

Laborer Trade Craft	Est. Total Work Hours	Projected Deficient Local Work Hours	Laborer Trade Craft	Est. Total Work Hours	Projected Deficient Local Work Hours
1.			3.		
2.			4.		

City Use Only	
OEWD Approval	<input type="checkbox"/> Yes <input type="checkbox"/> No
Signature and Date:	
Rev. 3/23/2017	

**Please check any of the following Conditional Waivers and complete the appropriate boxes for approval:**

1. SPECIALIZED TRADES       2. SPONSOR APPRENTICE(S)

### 3. CREDIT FOR NON-COVERED PROJECTS or DIRECT ENTRY HIRE

<b>1. SPECIALIZED TRADES:</b> Will your firm be requesting Conditional Waivers for “Specialized Trades” designated by OEWD and listed on OEWD’s website or project-specific Specialized Trades approved by OEWD during the bid period?	<input type="checkbox"/> Yes	<input type="checkbox"/> No			
<p style="text-align: center;"><b>Please CHECK off the following Specialized Trades you are claiming for Condition Waiver:</b></p> <input type="checkbox"/> MARINE PILE DRIVER <input type="checkbox"/> HELICOPTER, CRANE, OR DERRICK BARGE OPERATOR <input type="checkbox"/> IRONWORKER CONNECTOR <input type="checkbox"/> STAINLESS STEEL WELDER <input type="checkbox"/> TUNNEL OPERATING ENGINEER <input type="checkbox"/> ELECTRICAL UTILITY LINEMAN <input type="checkbox"/> MILLWRIGHT <input type="checkbox"/> TRADE CRAFT IS LESS THAN 5% OF TOTAL WORK HOURS*. <b>LIST:</b> *WAIVER VOIDED IF TOTAL WORK HOURS EXCEED 5%.					
<b>a. List OEWD-approved project-specific Specialized Trades approved during the bid period:</b>					
<table style="width: 100%; border: none;"> <tr> <td style="width: 40%; border: none;"></td> <td style="width: 20%; border: none;"> <b>OEWD APPROVAL:</b> <input type="checkbox"/> Yes <input type="checkbox"/> No                 </td> <td style="width: 40%; border: none;"> <b>OEWD Signature:</b> </td> </tr> </table>				<b>OEWD APPROVAL:</b> <input type="checkbox"/> Yes <input type="checkbox"/> No	<b>OEWD Signature:</b>
	<b>OEWD APPROVAL:</b> <input type="checkbox"/> Yes <input type="checkbox"/> No	<b>OEWD Signature:</b>			

<b>2. SPONSORING APPRENTICES:</b> Will you be able to work with OEWD to sponsor an OEWD-specified number of new apprentices in the agreeable trades into California Department of Industrial Relations’ Division of Apprenticeship Standards approved apprenticeship programs?	<input type="checkbox"/> Yes	<input type="checkbox"/> No				
<b>PLEASE PROVIDE DETAILS:</b>						
<b>Construction Trade</b>	<b>Est. # of Sponsor Positions</b>	<b>Union (Yes / No)</b> Y <input type="checkbox"/> N <input type="checkbox"/> <input type="checkbox"/>	<b>If Yes, Local #</b>	<b>Est. Start Date</b>	<b>Est Duration of Working Days</b>	<b>Est Total Work Hours Performed</b>
		Y <input type="checkbox"/> N <input type="checkbox"/> <input type="checkbox"/>				
<b>OEWD APPROVAL:</b> <input type="checkbox"/> Yes <input type="checkbox"/> No			<b>OEWD Signature:</b>			

<b>3. CREDIT for HIRING on NON-COVERED PROJECTS or DIRECT ENTRY HIRE:</b> If your firm cannot meet the mandatory local hiring requirement, will you be requesting credit for hiring Targeted Workers on Non-covered Projects or hiring workers with Direct Entry Agreements?	<input type="checkbox"/> Yes	<input type="checkbox"/> No		
<b>PLEASE PROVIDE DETAILS:</b>				
<b>Labor Trade, Position, or Title</b>	<b>Est. # of Off-Site Hires</b>	<b>Est Total Work Hours Performed</b>	<b>Offsite Project Name</b>	<b>Project Address</b>
Journey				



	Apprentice				
			OEWD APPROVAL: <input type="checkbox"/>	OEWD Signature:	
			Yes <input type="checkbox"/> No		

## APPENDIX D

### DEFINED TERMS AND DESCRIPTIONS

Defined Term	Location
Affiliate	§ 7.1(c)(i)
Agents	§ 7.4
Agreement	Preamble
Balboa Reservoir	Recital A, Attachment A
Board	Recital E
Board Endorsement	§ 3.3(c)
CEQA	Recital E, §2.3(a)
City	Preamble
City Agents	§ 12.2(a)
City Costs	§ 4.1
City Costs Deposit	§ 4.1(d)
City Event of Default	§ 9.2
Claims	§ 11.2(a)
Common Control	§ 7.1(c)
Control	§ 7.1(c)
DA	Recital D
Deed	Recital D
Developer	Preamble
Developer Agents	§ 11.2(a)
Effective Date	§ 2.1
Event of Default	§ 9.1
Exclusive Negotiation Period	§ 1.1(a)
Phase 2 Expiration Date	§ 2.2
Extension Fees	§ 4.1
First Source Agreement	§ 13.4, Attachment D
Force Majeure Event	§ 2.5(a)
Force Majeure Extension	§ 2.5(a)
Force Majeure Notice	§ 2.5(a)
Director	§ 1(c)
HCAO	§ 13.3
Indemnified Parties	§ 11.1(a)
Initial Expiration Date	§ 2.1
LBE Ordinance	§ 13.14
Litigation Force Majeure Event	§ 2.4(b)
Litigation Force Majeure Extension	§ 2.4(a)

<b>Defined Term</b>	<b>Location</b>
Litigation Force Majeure Notice	§ 2.4(a)
Losses	§ 11.1
Monetary Damages	§ 11.1
Negotiating Fee	§ 4.2
Development Overview	§ 3.3(a)
OEWD	Recital C
Party, Parties	Preamble
Permit to Enter	§ 7.4, Attachment C
Phase 1	§ 2.1
Phase 2	§ 2.2
Phase 2 Expiration Date	§ 2.2
Planning	§ 6.3(d)
PR & Community Outreach Program	§ 7.5(a)
preservative-treated wood containing arsenic	§ 13.8
Prevailing Wage Requirements	§ 13.13
Project	Recital C, § 3.3(c)
Project Assignment	§ 8.4(c)
Project Consultants	§ 8.4(c)
Project Description	§ 3.2
Project Materials	§ 8.4(c)
Project Schedule	§ 2.1
Project Terms	Recital C
Purchase Agreement	Recital D
Regulatory Agency	§ 6.3(a)
Regulatory Approval	§ 6.3(a)
Regulatory Force Majeure Event	§ 2.3(a)
Regulatory Force Majeure Extension	§ 2.3(a)
Regulatory Force Majeure Notice	§ 2.3(b)
releases	§ 11.2(a)
RFP Proposal	Recital C
RFQ	Recital B
saltwater immersion	§ 13.8
Site	Recital A, Attachment A
SF Admin. Code Chapter 31	Recital E
SFMTA	Preamble
SFMTA Board	Preamble
SFMTA Endorsement	§ 3.3(a)
Terminating Event	§ 8.1
Termination	§ 8.1
Transaction Documents	Recital D
Transfer	§ 7.1(c)

