THIS PRINT COVERS CALENDAR ITEM NO. : 11

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY

DIVISION: Sustainable Streets

BRIEF DESCRIPTION:
Adopting findings under the California Environmental Quality Act (CEQA) to support the Parkmerced Project (the Project), including a Statement of Overriding Considerations and a Mitigation Monitoring and Reporting Program, and consenting to the Development Agreement (DA) between the City and Parkmerced Investors, LLC (the Project Sponsor).

SUMMARY:
- On February 10, 2011, the Planning Commission adopted California Environmental Quality Act (CEQA) findings and certified the Project's Environmental Impact Report (EIR). The Environmental Impact Report includes mitigation measures that require the Project Sponsor to fund transit-related feasibility studies, provide certain transportation-related capital improvements, and fund purchase of a new transit vehicle during the anticipated 20-year course of Project construction. The mitigation measures require the SFMTA to carry out feasibility studies, consider increasing capacity on the "M" Oceanview light rail line, and consult with the Project Sponsor regarding implementation of other mitigation measures.
- The Office of Economic and Workforce Development (OEWD), working with the City Attorney's Office, drafted and negotiated the DA, which creates a legally binding framework for cooperation between the Project Sponsor and the various City departments affected by the Project, including the SFMTA. Under the DA, the Project Sponsor must fund and construct transportation-related infrastructure, including intersection improvements, realignment of the "M" Oceanview light rail line, and bicycle paths, provide a transportation coordinator for the Project, and contribute to the purchase of Muni monthly passes for Project residents. The new transportation-related infrastructure will, upon completion and acceptance, be under SFMTA jurisdiction. The Board of Supervisors approved the DA on June 7, 2011.
- The SFMTA Board is being asked to make environmental findings to support the Project, and consent to the terms of the DA.

ENCLOSURES:
1. SFMTAB Resolution
2. Attachment A – Transportation Plan
3. Attachment B – Design Standards and Guidelines
4. Attachment C – Development Agreement
5. Attachment D – Transit Operating Plan
6. Attachment E – CEQA Findings and Mitigation Monitoring Reporting Program
7. Attachment F – Fiscal and Economic Impact Analysis Overview

APPROVALS: **DATE**

DIRECTOR OF DIVISION PREPARING ITEM _____ _____

FINANCE _____ _____

EXECUTIVE DIRECTOR/CEO _____ _____

SECRETARY _____ _____

ADOPTED RESOLUTION
BE RETURNED TO Peter Albert

ASSIGNED SFMTAB CALENDAR DATE: _____

PURPOSE

Consenting to the Development Agreement (DA) for the Parkmerced Project, and adopting findings, including a Statement of Overriding Considerations and a Mitigation Monitoring Reporting Program.

GOAL

Consenting to the DA and making supporting CEQA findings are consistent with all goals and objectives of the SFMTA Strategic Plan, especially:

Goal 2: System Performance – To get customers where they want to go, when they want to get there.
Objective 2.2: Ensure efficient transit connectivity and span of service.
Objective 2.3: Ensure bicycle and pedestrian network connectivity.
Objective 2.4: Reduce congestion through major corridors.

Goal 3: External Affairs – Community Relations: To improve the customer experience, community value, and enhance the image of the SFMTA as well as to ensure the SFMTA is a leader in the industry.
Objective 3.1: Improve economic value by growing relationships with businesses, community and stakeholder groups.

Goal 4: Financial Capacity – To ensure financial stability and effective resource utilization.
Objective 4.2: Ensure efficient and effective use of resources.

DESCRIPTION

The Project proposes a comprehensive, transit-oriented redevelopment of the existing 152-acre Parkmerced neighborhood over the next 20 years. The Project includes the incremental replacement of 1,538 existing rent controlled 2-story garden apartments with new rent controlled replacement units, the retention of an existing 1,683 rent-controlled tower apartments and the addition of 5,679 net new housing units for a total of 8,900 housing units at build-out. The Project also includes 400,000 square feet of retail and commercial space, including space for neighborhood services and a school, and over 68 acres of newly configured and redesigned parks and open space. The Project will be supported by the Project Sponsor's extensive investments in infrastructure, including a multi-modal transportation system developed in close consultation with the SFMTA, using tools and methodologies developed for the Transit Effectiveness Project ("TEP"). Neighborhoods within the Project will be linked by streets designed to conform to the San Francisco "Better Streets" guidelines and the San Francisco Bicycle Plan. The term of the DA is 30 years, but the City anticipates that the Project will be built-out over 20 years, and accomplished in a series of Development Phases, which will range between 500 and 2,500 units in size.

Transportation Improvements

Due to geography, topography and the heavy traffic on adjacent arterials, convenient access to Parkmerced is comparatively limited from the local and regional transit networks serving the City and region. Similarly, connections between Parkmerced to surrounding areas are even more limited for pedestrians and bicyclists. These deficiencies, along with a general trend of increasing congestion on 19th Avenue/Highway 1 and related impacts to transit and pedestrian circulation projected in such documents as the San Francisco Countywide Transportation Plan, TEP and the "19th Avenue Corridor Study," an independent analysis by the Planning Department, have been identified as top community concerns in the extensive planning efforts conducted for the Project across the southwestern section of San Francisco. Comments from community members consistently call for:

- Comprehensive transit coverage consistent with SFMTA's TEP goals, with more direct and faster service to Downtown and other San Francisco neighborhoods, and better access to regional transit (BART, Caltrain) serving regional employment centers and destinations;

- Safer, more walkable streets with complete sidewalks and neighborhood traffic calming design in concert with the SF Better Streets Program;

- Connected, safe bicycle routes connecting to the citywide bicycle network;

- Area-wide traffic management of regional highways and arterials to avoid overwhelming residential streets;

- Comprehensive parking management coordinated with the traffic network to ensure neighborhood livability in a balanced transportation system, and

- Well-managed shuttle services to complement transit and sustain alternative access to local businesses, services and transit hubs without exacerbating congestion and street safety concerns.

To upgrade the transportation networks in this area and address community concerns and goals, OEWD has worked with the Project Sponsor, the SFMTA, the California Department of Transportation ("Caltrans"), the Planning Department and other key transportation providers to ensure that the Project anticipates projections of traffic congestion and related impacts outlined in the Parkmerced project EIR, the San Francisco Countywide Transportation Plan, the San Francisco Bicycle Plan, the 19th Avenue Corridor Study, the TEP and other transportation analyses. Accordingly, the Project's Transportation and Transit Impact Plans include the following key transit and transportation improvements:

- Re-alignment of the "M" Oceanview light rail transit line from the current location in the median of 19th Avenue between Holloway Avenue and Junipero Serra Boulevard to a new trackway in Parkmerced, with one relocated station and two new stations: in a transit plaza adjacent to San Francisco State University (SFSU) between Holloway Avenue and Crespi Drive, at Diaz Avenue, and on Font Boulevard near Chumasero Drive. With the vast majority of "M" Oceanview riders using the current station at Holloway heading west into Parkmerced or SFSU, this track alignment and station move provides a great pedestrian safety benefit and includes traffic bulbs, enhanced crosswalks and new pedestrian refuges in the median of 19th Avenue to facilitate all crossings of 19th Avenue;

- Construction of a tail track with crossovers at Font Boulevard to allow LRT service flexibility and the temporary retention of disabled LRT vehicles to minimize service disruption, and to support potential extension of the "M" Oceanview light rail line to BART's Daly City Station consistent with the TEP;

- Addition of more frequent LRT service with a "short" "M" line service option supplementing "M" service and doubling capacity between Parkmerced, SFSU and Downtown San Francisco, facilitated by the new tail track on Font Boulevard;

- Extensions of key Muni motor coach lines, consistent with the TEP, and shuttles between Parkmerced's transit hubs and residential streets to nearby destinations such as BART's Daly City Station, Muni's West Portal Station, Stonestown Shopping Center and Westlake Shopping Center;

- Opening several new intersections along Lake Merced Boulevard and along 19th Avenue to increase pedestrian and bicycle access between Parkmerced and surrounding neighborhoods, disperse concentrations of traffic, and improve travel mode and path choices accordingly;

- Extensions of the Bicycle Plan into, within and from Parkmerced with a variety of treatments from Class I (separated path), Class II (bicycle lane), Class III (shared-use streets) and mixed-use pedestrian/bicycle paths;

- Construction of landscaped boulevards, traffic-calmed residential streets, pedestrian-priority shared public ways, street furniture and lighting, and comprehensive stormwater treatments throughout the Project and on key, adjacent street segments that are consistent with the "Better Streets" program and allow adequate access for emergency vehicles;

- Funding of a permanent on-site Transportation Demand Management Office, with specific programs designed to reduce the use of private automobiles and promote the use of transit and other alternatives, including the provision of a Project-subsidized Muni pass program for each household, on-site car-sharing and bicycle-sharing, unbundled parking and carpool/vanpool facilitation services;

- Facility design that anticipates the pedestrian, transit and traffic recommendations and areas of additional study that have been derived from community feedback and transportation agency input from the on-going analysis of the TEP and the 19th Avenue Corridor Study (including that Study's proposed "Tier 5" planning phase to be initiated in summer 2011); and

- Adoption of a phasing and monitoring plan for these transportation services, which will be coordinated with SFMTA, to ensure the cost-effective, sustainable provision of services matching each development phase of the Project.

A complete description of the transportation improvements is included in the Transportation Plan (Attachment A) and the Design Standards and Guidelines (Attachment B). Input and guidance from City agencies and input from current Parkmerced residents as well as residents of the adjacent neighborhoods have been carried into the Transportation Plan, ranging from the comprehensive (San Francisco's "Transit First "policy and SFMTA's policies supporting safe pedestrian and bicycle circulation) to the neighborhood-specific (transportation policies and programs reflecting the character of Southwestern San Francisco and the 19th Avenue Corridor). OEWD conducted an extensive multi-agency series of workshops, panels, hearings and presentations between 2009 and 2011 to update and refine the Transportation Plan. The Project was presented to the SFMTA Board as an informational item on September 7, 2010.

SFMTA's Role

OEWD, in careful coordination with the City Attorney's Office, drafted and negotiated the DA between the City and the Project Sponsor (Attachment C). The DA provides a legally-binding framework for cooperation between the Project Sponsor and the various City departments involved in the Project. It has been approved by the Planning Commission, the Board of Supervisors and the Mayor.

By approving/consenting to the DA, the SFMTA is assuming the following key responsibilities:

- Design, engineering, review and approval for SFMTA-related transportation infrastructure for the Project, which will be constructed and funded by the project sponsor; and

- Operation and maintenance of the proposed, enhanced SFMTA transit service as described in the Project's Transit Operating Plan (Attachment D), and purchase of vehicles and construction of facilities for such enhanced service, to the extent that SFMTA determines such enhanced service is feasible and warranted.

Transportation-related infrastructure
The Project will be constructed in Development Phases, and the timing and content of private Development Phase is subject to City approval. The DA requires that the public improvements included in each Development Phase, including SFMTA Transit improvements, are commensurate to the amount of private development (and net new auto trips) to occur in each Phase, and that the timing and phasing of the public improvements are consistent with the

operational needs and plans of affected City agencies, including the SFMTA. Before the City approves any Development Phase application, the, SFMTA will review and approve portions of the Infrastructure Plan and applicable plans and specifications relating to on-site and off-site infrastructure that will be under SFMTA jurisdiction. After any required testing, and after acceptance by the City, the DA requires the SFMTA to maintain various infrastructure components described in the DA, including:

- Poles, wires, eyebolts and substations as needed
- Transit Security System
- Transit Center Transit Service Equipment
- Trackways
- Signals and Control Boxes
- Transit Stops and Markings
- Crosswalks and APS/Ped Signals
- Street Signs and Parking/Loading Signs
- Parking Meters

Transit Operating Plan
The Project would not substantially reconfigure the City's transit system beyond the alignment of the "M" Oceanview light rail tracks. But as the Project is built out, delay will increase in the Project area, and will trigger the need for additional vehicles on various routes. In addition, the SFMTA's TEP proposes several changes to Muni service within the Project area. The Transit Operating Plan (Attachment D) outlines proposed transit service schedules on select lines, and describes their phased roll-out at pace with development of the Project to support and coordinate with the Project's transit needs. The goal of the Transit Operating Plan is to promote a "Transit First" culture within the Project site from its inception. The Transit Operating Plan recognizes that SFMTA will retain discretion to implement appropriate transit service as conditions in the Project area warrant.

TDM Element
The TDM (Transportation Demand Management) Element of the Transportation Plan (Attachment A, Sections 4.1.5-4.1.8) provides incentives, strategies and programs designed to help the Project achieve its overall goal of increasing use of transit trips, bicycle trips and walking, and decreasing reliance on single-automobile trips. The TDM programs outlined include those sponsored and managed by the Project with the assistance of a full-time on-site Transportation Coordinator, such as bicycle and car sharing, unbundling residential off-street parking, coordinating carpool and vanpool services, and offering a "guaranteed ride home" service. The TDM Element of the Transportation Plan also provides details of certain programs that the SFMTA might manage, such as general parking pricing strategies.

Project Mitigation Measures
Environmental review of the Project under the California Environmental Quality Act identified a number of transportation related environment impacts requiring mitigation to lessen their effects. Pursuant to the DA, SFMTA will retain design and engineering oversight and the authority to approve key transportation-related mitigation measures described in the CEQA Findings and Mitigation Monitoring Reporting Program (Attachment E). These measures are consistent with the goals of the Transportation Plan, including the TDM Element, and the Transit Operating

Plan, and have been developed and refined with SFMTA staff to anticipate the most desirable responses to traffic impacts created by the Project. The transportation mitigation measures that the SFMTA will oversee include street and intersection improvements, traffic signal modifications, creation of transit only lanes, purchase of a new transit vehicle (all funded by the Project Sponsor) and a possible revision in the service plan for the "M" Oceanview light rail line. Implementing many of the transportation-related mitigation measures requires collaboration among City departments, including especially DPW, the SFMTA and the SFPUC, as well as cooperation with the San Francisco County Transportation Authority and other outside agencies. By adopting the CEQA findings and consenting to the DA, the SFMTA Board is affirming, based on the information presently available, that it is feasible for the SFMTA to implement the mitigation measures under its jurisdiction and, subject to availability of resources, appropriation of funds, and other fiscal and operational considerations, the SFMTA Board is expressing its intent to implement these measures.

The CEQA findings set forth in Attachment E make reference to the Draft and Final Environmental Impact Reports. These documents were made available to Board members on June 17, 2011.

NEXT STEPS

The SFMTA Board's decision will be the last Commission decision necessary before the required signatories can execute the DA and SFMTA staff can assume the roles and responsibilities defined therein.

ALTERNATIVES CONSIDERED

Because the responsibilities the SFMTA is assuming under the DA and the Mitigation Monitoring and Reporting Program are required by the environmental review for the Project, declining to consent to the DA, or a similar alternative agreement, or declining to adopt the CEQA findings would interfere with advancement and final approval of the Project.

FUNDING IMPACT

Neither the CEQA Findings and Mitigation Monitoring Reporting Program nor the DA require the SFMTA to implement the Transit Operating Plan, fund the purchase of additional rolling stock, construct facilities for maintenance and storage of additional vehicles, or provide a specific level or transit service to the Project site. But the Project's Transportation and Transit Operating Plans contemplate significant transit and transportation improvements on the Project site and in surrounding areas during the 20-year construction period. The information contained in the attached Parkmerced Fiscal and Economic Impact Analysis Overview (Attachment F), indicates that these transportation and transit improvements will be funded through a combination of developer capital, on-going developer-funded service commitments, and new tax and fee revenues generated by the Project. The capital and operating costs that would be borne by the SFMTA are projected, as set forth in Attachment F, to be less than the Project-generated revenues that SFMTA may use to cover these costs. However, at this point, the Project-generated revenues are best estimates, and there is no written instrument that sets aside or guarantees any such revenues to the SFMTA. Without these revenues, the SFMTA will not be able to provide the services detailed in the attached documents unless alternative funding sources are identified.

Capital Costs

Developer-Funded Capital Costs.
Presently, the Parkmerced area of San Francisco lacks the infrastructure and transportation improvements required to bring this area of the City into conformance with the "Transit First" policy and the pedestrian/bicycle supportive policy elements of the "Better Streets" program and the San Francisco Bicycle Plan. While historically transit expansion has been funded with the assistance of state and federal funds targeting transit expansion projects, the DA requires the Project Sponsor to fund the purchase of one light rail vehicle ($5.5 million) and to realign rail right-of-way and related infrastructure onto the Project site (at an estimated cost of $61 million). In addition to the transit expansion, the Project Sponsor will also fund other transportation improvements--intersection modifications ($9.5 million) and TDM-related capital improvements ($5.7 million). The Project's transit and other transportation improvements will be developed primarily through the investment of private capital and the possible use of established tax-exempt financing tools that are supported by certain tax revenues generated by the Project itself– not by the City's General Fund. The tax-exempt financing tools rely on tax revenues that would not exist, and would not be available to the City, but for the development of the Project.

SFMTA-Funded Capital Costs.
The Fiscal and Economic Impact Analysis (Attachment F) indicates that adequate financial resources will be available if the SFMTA decides to fund SFMTA vehicle procurement and construction of new on-site and off-site infrastructure associated with the Project. Revenues generated by increased economic activity in the Project area would pay for both the purchase of additional new light rail and bus transit vehicles to provide enhanced transit service to southwestern San Francisco, and that portion of expanded storage and maintenance facilities that would be necessary to support the operation of these vehicles. The projected revenues include a combination of service-generated revenue and increases to dedicated SFMTA funding sources, such as sales tax receipts, that would result from the Project. The revenue sources dedicated to SFMTA are calculated and described in Attachment F. Federal and state grant funds would further diversify the sources available to Muni for capital expenses.

Table 1 identifies more specifically the capital projects identified in the DA and Transit Operating Plan, and the projected available sources of funding as set forth in Attachment F:

Table 1: Major Transportation Capital Components by Funding Source

Funded by Development Project
PA Streets + Roadways*
PA sidewalks (incl bike /ped paths)
Hillside Pedestrian Connections
LRT trackways, unions and crossings in PA
1 light-rail transit (LRT) vehicle
LRT trackways, unions and crossings in PA
Support LRT equipment for operations: poles, cables, wires, boxes, substation, ducts, etc.
LRT Stations in PA and supporting equipment: monitors, lights, fare collection systems, safety features, and ramps.
LRT operator restroom
Traffic Signals, Transit Signal Priority, Transit Stations in PA
TDM-related capital improvements (incl shuttle, bikeshare pods)**
Street/ped/transit/bike improvements***
Specific transportation mitigation measures****
Intersection improvements outside PA

Funded by Project-generated Revenues
4 motor coaches*****
11 light rail transit (LRT) vehicles*****
Fair-share proportion of operating facility costs needed to accommodate extra transit vehicles

Notes:

* PA = Project Area

** Stationary TPS equipment (for signals, wires, conduits, utilities, etc), bus bulbs, striping, signage

*** Includes street, bicycle facility, crosswalk, sidewalk, and transit features

**** Includes transit, bicycle and pedestrian improvements and other investments on Lakeshore, 19th Avenue, Brotherhood, Junipero Serra, Holloway, Font, Sunset Boulevard to mitigate transit and traffic delays

***** Includes both net new and replacement vehicles as identified in the Attachment F.

Operating Costs

Developer-funded Operating Costs.
The DA imposes on the Project Sponsor a permanent obligation to maintain and operate public improvements except from curb to curb within public streets, which includes the obligation to clean and maintain the new station areas, excluding the rails and rail beds. The DA obligates the Project Sponsor to fund, create and operate a shuttle system within the Project, provide carpool/vanpool, carshare and bikeshare programs for the Project, and provide an on-site Transportation Coordinator for the Project who will educate residents, employers, employees and visitors about the range of transportation alternatives available to them. The Transportation Coordinator will also manage the transit pass program whereby each new and replacement unit in the Project will be eligible in perpetuity for a transit pass subsidy to be used toward purchase of a Muni monthly transit pass.

SFMTA-Funded Operating Costs.
Assuming that the Transit Operating Plan is implemented, costs for SFMTA would include both transit service operations and traffic engineering systems comparable to those maintained and operated by the SFMTA in other parts of the City. Traffic signals and other traffic engineering systems typically maintained by the SFMTA on City-accepted streets and sidewalks would be maintained by the SFMTA as part of the Project. The Transit Operating Plan includes projected transit service proposal costs at build-out and transit phasing and associated costs by year. As described in Attachment F, the annual operating and maintenance cost at build-out is estimated at approximately $2.6 million in fiscal year 2010-11 dollars using the SFMTA's operating cost model. The Fiscal and Economic Impact Analysis Overview indicates that increased fare and parking revenues as a result of the Project, as well as increased sales tax revenue, a portion of which is allocated to SFMTA, will exceed SFMTA costs of ongoing transit operations and maintenance as well as parking enforcement and overhead costs in the Project area.

OTHER APPROVALS RECEIVED OR STILL REQUIRED

No other approvals are needed from SFMTA at this time.

The City Attorney's Office has reviewed this report.

RECOMMENDATION

Staff recommends that the SFMTA Board of Directors authorize and direct the Executive Director/CEO of the SFMTA to execute the DA and adopt the CEQA findings on behalf of the SFMTA.

MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS
CITY AND COUNTY OF SAN FRANCISCO

RESOLUTION NO. _____

WHEREAS, Improving the transportation choices and quality of life of the residents of the Parkmerced neighborhood and of residents, students, commuters and visitors traveling along the 19th Avenue Corridor is a City priority. Increasing affordable and market rate housing options in the Parkmerced neighborhood, improving its pedestrian safety and access to transit, increasing the quantity of neighborhood services within walking distance, increasing traffic calming and automobile access points, and expanding its bicycle network will also benefit the City as a whole; and,

WHEREAS, In 2007, Supervisor Sean Elsbernd sponsored the commission of the "19th Avenue Corridor Study," which was published on February 12, 2010 and provides a comprehensive analysis of traffic conditions on 19th Avenue in Southwest San Francisco projected over 20-30 years, including four "tiers" of land use and transportation infrastructure investment scenarios that range from background growth only, to all known major development proposals and the transportation improvements accessory to those developments; and,

WHEREAS, The 19th Avenue Corridor Study projects that traffic volumes and congestion along 19th Avenue and Junipero Serra Boulevard will increase significantly along this corridor even if no additional housing is constructed on the west side of San Francisco, impacting transit operation and reliability, impeding pedestrian and bicycle circulation, and increasing overall carbon emissions, and shows limited amelioration of those conditions with select improvements proposed in conjunction with the Parkmerced Development Project; and,

WHEREAS, The amount of traffic on 19th Avenue has increased significantly over the past 30 years although little to no growth has occurred on the west side of San Francisco; and,

WHEREAS, The Parkmerced Development Project ("the Project") was developed in close coordination with SFMTA staff and this Project, along with the Final Environmental Impact Report, have been guided by the findings of the 19th Avenue Corridor Study and the overarching policies of the SFMTA; and,

WHEREAS, The City's Planning Department has undertaken an environmental review process for the Project (as defined below) in close consultation with the SFMTA and other City agencies, and there have been more than 300 public meetings, workshops and presentations over the past three years on every aspect of the Project, including meetings before this Board, the Planning Commission, the Board of Supervisors and other City commissions and advisory and community groups; and,

WHEREAS, The Project's Transportation Plan and Transit Operating Plan, which propose a phased, comprehensive and multi-modal transportation network to serve the Project and adjacent areas, have been developed with extensive guidance and input from SFMTA and provided the basis of the transportation analysis in the Project's environmental review process as well as a financial analysis of transportation-related expenditures and revenues; and,

WHEREAS, The Planning Commission reviewed and considered the Final Environmental Impact Report for the Project (the "EIR") in Planning Department File No.2008.0021E, consisting of the Draft EIR and the Comments and Responses document, and the Planning Commission by Motion (1) found that the contents of the EIR and the procedures through which the EIR was prepared, publicized and reviewed complied with the provisions of the California Environmental Quality Act (CEQA), the CEQA Guidelines and Chapter 31 of the San Francisco Administrative Code ("Chapter 31"), (2) found that the EIR reflects the independent judgment and analysis of the City and is adequate, accurate, and objective and that the Comments and Responses document contains no significant revisions to the Draft EIR, and (3) certified the completion of the EIR in compliance with CEQA, the CEQA Guidelines and Chapter 31, a copy of which Motion is on file with the Planning Department; and,

WHEREAS, The EIR files available from the Planning Department have been made available to this Board and the public, and this Board has reviewed and considered the information in the EIR and the proposed CEQA Findings, including a statement of overriding considerations, and the proposed mitigation, monitoring and reporting program, attached to this Resolution as Attachment E in furtherance of the actions contemplated by this Resolution; and,

WHEREAS, The Planning Commission determined by Motion that the Project, and the various actions being taken by the City and the Agency to approve and implement the Project, are consistent with the General Plan and with the Eight Priority Policies of City Planning Code Section 101.1, and made findings in connection therewith (the "General Plan Consistency Determination"), a copy of which is on file with the Planning Department and is incorporated into this Resolution by reference; and,

WHEREAS, Following certification the EIR, the Board of Supervisors approved a Development Agreement (the "DA") with Parkmerced Investors, LLC ("Developer"), for the development of the Project Site (the "Project"). At full build-out, the Project is anticipated to include: 68 acres of public park and open space improvements; 8,900 homes for sale or rent; and over 400,000 square feet of retail and commercial uses, including space for neighborhood services and a school; and,

WHEREAS, The Board of Supervisors has taken a series of actions and approvals in furtherance of the Project, including the adoption of Planning Code amendments for the Parkmerced area; and,

WHEREAS, The City wishes to enter into a DA with the Project Sponsor, the SFMTA, the Public Utilities Commission, the San Francisco Planning Department, the San Francisco Fire Department, the San Francisco Rent Board in the form on file with this Board (the “DA”), to provide for cooperation between the City and the Agency in administering the process for control, approval and acceptance of infrastructure and other improvements constructed by the Project Sponsor, and all other applicable land use, development, construction, improvement, infrastructure, occupancy, service and use requirements and commitments and in establishing the policies and procedures relating to such approvals; now therefore be it

RESOLVED, That in order to effectuate the development of the Project Site, the SFMTA Board of Directors does hereby adopt CEQA Findings to support the Parkmerced Project, attached to this Calendar Item as Attachment E, including the Statement of Overriding Considerations and Mitigation Monitoring and Reporting Program, which are incorporated into this Resolution by this reference; and be it

FURTHER RESOLVED, That the SFMTA Board of Directors does hereby consent to the DA between the City and the Developer substantially in the form and on the terms on file with this Board and authorizes the Executive Director/CEO to execute the Consent to the DA on behalf of this Board; and, be it

FURTHER RESOLVED, That subject to any approval of this Board or the Executive Director/CEO or his designee that may be required in accordance with the DA in connection with amendments that affect the infrastructure or mitigation measures for which the SFMTA has responsibility, this Board authorizes any of the Mayor, the City Administrator and the Director of Public Works (or any successor City officer designated by law) to enter into and approve any additions, amendments or other modifications to the DA (including, without limitation, any exhibits) that they determine, in consultation with the City Attorney and with the consent of the Executive Director/CEO of the SFMTA, are in the best interests of the City, provided that any such additions, amendments or modifications do not materially increase the costs or liabilities of the City and are necessary or advisable to effectuate the implementation of the Parkmerced Plan Documents (as defined in the DA), and this Resolution and legislation by the Board of Supervisors; and, be it

FURTHER RESOLVED, That, subject to appropriation of any necessary funds, this Board authorizes the SFMTA Executive Director/CEO, to take any and all steps (including, but not limited to, the execution and delivery of any and all agreements, notices, consents and other instruments or documents) as he or she deems necessary or appropriate, in consultation with the City Attorney, in order to consummate and perform its obligations under the DA in accordance with this Resolution and legislation by the Board of Supervisors, or otherwise to effectuate the purpose and intent of this Resolution and such legislation; and, be it

FURTHER RESOLVED, That, by adopting the CEQA Findings to support the Parkmerced Project and by consenting to the DA between the City and the Project Sponsor, the SFMTA Board does not intend to in any way limit, waive or delegate the exclusive authority of the SFMTA as set forth in Article VIIIA of the City's Charter; and be it

I hereby certify that the foregoing resolution was adopted by the Municipal Transportation Agency Board of Directors at its meeting on _____.

_____

Secretary, Municipal Transportation Authority Board

DRAFT 6/07/11

RECORDING REQUESTED BY
CLERK OF THE BOARD OF SUPERVISORS
OF THE CITY AND COUNTY OF SAN FRANCISCO

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

AND WHEN RECORDED MAIL TO:

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

DEVELOPMENT AGREEMENT
BY AND BETWEEN
THE CITY AND COUNTY OF SAN FRANCISCO
AND PARKMERCED INVESTORS LLC
RELATIVE TO THE DEVELOPMENT KNOWN AS
THE PARKMERCED DEVELOPMENT PROJECT

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DEVELOPMENT AGREEMENT
BY AND BETWEEN
THE CITY AND COUNTY OF SAN FRANCISCO
AND PARKMERCED INVESTORS LLC
RELATIVE TO THE DEVELOPMENT KNOWN AS
THE PARKMERCED DEVELOPMENT PROJECT

THIS DEVELOPMENT AGREEMENT (this "**Agreement**") dated for reference purposes only as of this _____ day of _____, 2011, is by and between the CITY AND COUNTY OF SAN FRANCISCO, a political subdivision and municipal corporation of the State of California (the "**City**"), acting by and through its Planning Department, and PARKMERCED INVESTORS, LLC, a Delaware limited liability company, its permitted successors and assigns (the "**Developer**"), pursuant to the authority of Section 65864 *et seq.* of the California Government Code and Chapter 56 of the San Francisco Administrative Code.

RECITALS

This Agreement is made with reference to the following facts:

A. Determination of Public Benefits. The City has determined that as a result of the development of the Project Site in accordance with this Agreement, the Basic Approvals and the Implementing Approvals, clear benefits to the public will accrue that could not be obtained through application of existing City ordinances, regulations, and policies. These public benefits to be provided by Developer at its cost include, without limitation:

A.1 One-for-one replacement of 1,538 rent-controlled dwelling units currently existing on the Project Site that will be demolished by Developer as part of the Project (the "**Existing Units**") with new rent-controlled units (*i.e.*, units that are subject to the provisions of the San Francisco Rent Ordinance), each with the same or greater number of bedrooms and bathrooms as the Existing Unit being replaced (each, a "**Replacement Unit**" and collectively, the "**Replacement Units**"). Although none of the Existing Units have a washing machine or dryer, each Replacement Unit will have a washing machine, a dryer and a dish washer installed by Developer before occupancy. All Existing Tenants shall be entitled to relocate to a Replacement Unit of approximately similar or greater size and with the same or greater number of bedrooms and bathrooms as their Existing Unit in the manner further described in Article 4 of this Agreement;

A.2 The non-applicability of certain provisions of the Costa-Hawkins Rental Housing Act (California Civil Code sections 1954.50 *et seq.*; the "**Costa-Hawkins Act**"), and Developer's waiver of any and all rights under the Costa-Hawkins Act and the Ellis Act (California Government Code section 7060 et seq.; the "**Ellis Act**") and any other laws or regulations so that (i) each Replacement Unit will be subject to rent control and other provisions protecting tenants under the City's Rent Ordinance, and (ii) each BMR Unit will be subject to the City's BMR Unit requirements as set forth in Planning Code section 415;

A.3 Relocation by Developer of Existing Tenants from their Existing Units to the Replacement Units, with an initial rent and pass through charges equal to the rent and pass through charges charged to the Existing Tenant for his or her Existing Unit at the time of relocation to the Replacement Unit, with the right to remain in the Replacement Unit for an unlimited term subject to the eviction rules, procedures and protections set forth in the San Francisco Rent Ordinance, and with no pass through charges added to rent of the Replacement Unit for the capital costs of the Project;

A.4 Construction of two new transit stations, relocation of an existing transit station, and construction of a new alignment for the SFMTA light rail "M" Oceanview that will leave 19th Avenue at Holloway Avenue and proceed through the neighborhood core in Parkmerced as further described in the Transportation Plan, each integrated into the SFMTA transit system, and the provision of a free (to Project residents and employees) low emissions shuttle bus from Parkmerced to the Daly City BART station and to the Stonestown retail center;

A.5 Reconfiguration of the street grid within the Project Site to conform to the City's Better Streets design guidelines, including the realignment of existing streets and the creation of new publicly-owned streets and privately-owned but publicly-accessible streets that accommodate bicycles, pedestrians and motor vehicles;

A.6 Improvement and reconfiguration of streets and intersections on the periphery of the Project Site to improve access and safety for all modes of transportation;

A.7 Creation and implementation of a Transportation Demand Management ("**TDM**") program (including, but not limited to, transit pass subsidies for residents of and employees in the Project Site) to facilitate and encourage the use of transportation modes other than the private automobile, to minimize the amount of automobile traffic originating from Parkmerced and to improve traffic flow on adjacent roadways such as 19th Avenue and Brotherhood Way, as further described in the Transportation Plan;

A.8 Reconfiguration of the existing open space at Parkmerced to provide more usable open spaces and related public benefits such as a new park, athletic fields, an organic farm, walking and bicycling paths, and community gardens;

A.9 Construction of a series of bioswales, ponds, and other natural filtration systems to capture and filter stormwater runoff from buildings and streets in accordance with the Infrastructure Plan and the Sustainability Plan. The filtered stormwater will either percolate into the groundwater that feeds the Upper Westside Groundwater Basin and Lake Merced or (if appropriate permits are obtained) be released directly into Lake Merced. This feature of the Project will reduce the amount of stormwater flows directed to the Oceanside Water Pollution Control Plant and help reduce the chance of combined sewage overflows to the ocean; and,

A.10 Zoning of a parcel within the Project Site that does not principally permit any use except a school, which may be publicly or privately owned and operated.

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

C. Property Subject to this Agreement. The real property subject to this Agreement is the approximately 152-acre site located in the Lake Merced District in the southwest corner of San Francisco and is generally bounded by Vidal Drive, Font Boulevard, Pinto Avenue, and Serrano Drive to the north, 19th Avenue and Junipero Serra Boulevard to the east, Brotherhood Way to the south, and Lake Merced Boulevard to the west. The Project Site is located at 3711 19th Avenue on Assessor's Blocks and Lots 7303-001, 7303-A-001, 7308-001, 7309-001, 7309-A-001, 7310-001, 7311-001, 7315-001, 7316-001, 7317-001, 7318-001, 7319-001, 7320-003, 7321-001, 7322-001, 7323-001, 7325-001, 7326-001, 7330-001, 7331-004, 7332-004, 7333-001, 7333-003, 7333-A-001, 7333-B-001, 7333-C-001, 7333-D-001, 7333-E-001, 7334-001, 7335-001, 7336-001, 7337-001, 7338-001, 7339-001, 7340-001, 7341-001, 7342-001, 7343-001, 7344-001, 7345-001, 7345-A-001, 7345-B-001, 7345-C-001, 7356-001, 7357-001, 7358-001, 7359-001, 7360-001, 7361-001, 7362-001, 7363-001, 7364-001, 7365-001, 7366-001, 7367-001, 7368-001, 7369-001, and 7370-001 (the "**Project Site**"). The Project Site is generally diagrammed on Exhibit A attached hereto and more particularly described on Exhibit B attached hereto. Developer owns fee title to the Project Site, subject to the rights of [_____] (the "**Existing Lender**"). On or before the Effective Date, the Existing Lender and City shall have entered into a consent and subordination agreement satisfactory to both.

D. Permitted Development; Intent of the Parties. The Project is a long-term mixed-use development program to comprehensively replan and redesign the Project Site. The Project will, upon implementation, increase residential density, provide a neighborhood core with new commercial and retail services, reconfigure the street network and public realm, improve and enhance the open space amenities, modify and extend existing neighborhood transit facilities, and improve utilities within the Project Site. Developer intends to retain approximately half of the existing apartments as part of the Project. The remaining half would be demolished over time and replaced with the Replacement Units. Approximately 5,679 net new residential units would be added to the Project Site over time. In total, upon completion of the Project, there will be up to 8,900 residential units on the Project Site (1,683 existing-to-be-retained units + 1,538 newly constructed Replacement Units + 5,679 newly constructed units = 8,900 units). The Project Site would also be developed with a mixed-use residential and commercial development with accessory parking and loading, as more particularly described in Article 3 below. The Parties wish to ensure appropriate development of the Project Site, to provide for the replacement of the 1,538 rent-controlled units and tenant amenities in the residential structures currently existing on the Project Site and proposed to be demolished, and to protect the tenants of the existing residential structures from displacement due to the proposed development of the

Project Site. The Parties acknowledge that this Agreement is entered into in consideration of the respective burdens and benefits of the Parties contained in this Agreement.

E. Compliance with All Legal Requirements. It is the intent of the Parties that all acts referred to in this Agreement shall be accomplished in a way as to fully comply with the California Environmental Quality Act (California Public Resources Code section 21000 *et seq.*; "**CEQA**"), the Development Agreement Statute, Chapter 56, the Planning Code, the Enacting Ordinance and all other applicable laws and regulations. This Agreement does not limit the City's obligation to comply with applicable environmental laws, including CEQA, before taking any discretionary action regarding the Project, or Developer's obligation to comply with all applicable laws in connection with the development of the Project. The City agrees to rely on the FEIR, to the greatest extent possible in accordance with applicable laws, in all future discretionary actions relating to the Project; *provided, however*, that nothing shall prevent or limit the discretion of the City to conduct additional environmental review in connection with any Implementing Approvals to the extent that such additional environmental review is required by CEQA.

F. Project's Compliance with CEQA. The Final Environmental Impact Report ("**FEIR**") prepared for the Project and certified by the Planning Commission on February 10, 2011, together with the CEQA Findings adopted concurrently therewith (the "**CEQA Findings**"), comply with CEQA, the CEQA Guidelines, and Chapter 31 of the Administrative Code. The FEIR thoroughly analyzes the Project and Project alternatives, and the Mitigation Measures were designed to mitigate significant impacts to the extent they are susceptible to feasible mitigation. The information in the FEIR has been considered by all City departments that have reviewed and approved this Agreement.

G. Public Review. The Project has been presented and reviewed by the Parkmerced community and other stakeholders in over 250 public meetings, including those held before the Planning Commission, the SFMTA Board of Directors, the SFPUC Commission, the Board of Supervisors, and in other local forums.

H. Planning Commission Hearing and Findings. On February 10, 2011 the Planning Commission held a public hearing on this Agreement, duly noticed and conducted pursuant to the Development Agreement Statute and Chapter 56. Following the public hearing, the Commission made the CEQA Findings and adopted the Mitigation Measures, and determined that the Project and this Agreement are, as a whole and taken in their entirety, consistent with the objectives, policies, general land uses and programs specified in the General Plan and the Planning Principles set forth in Section 101.1 of the Planning Code (together, the "**General Plan Consistency Findings**"). With respect to any Implementing Approval that includes a proposed change to the Project, the City agrees to rely on the General Plan Consistency Findings to the greatest extent possible in accordance with applicable laws; *provided, however*, that nothing shall prevent or limit the discretion of the City in connection with any Implementing Approvals that, as a result of amendments to the Basic Approvals, require new or revised General Plan consistency findings.

I. Board of Supervisors Hearing and Findings. On _____, 2011 the Board, having received the Planning Commission's final recommendation, held a public hearing

on this Agreement, duly noticed and conducted pursuant to the Development Agreement Statute and Chapter 56. Following the public hearing, the Board made the CEQA Findings required by CEQA and approved this Agreement, incorporating by reference the General Plan Consistency Findings.

J. Enacting Ordinance. On _____, 2011, the Board adopted Ordinance No. _____, approving this Agreement and authorizing the Planning Director to execute this Agreement on behalf of the City (the "**Enacting Ordinance**"). The Enacting Ordinance took effect on _____, 2011. The following land use approvals, entitlements, and permits relating to the Project were approved by the Board concurrently with this Agreement: the General Plan amendment (Board of Supervisors Ord. No. _____), the Planning Code text amendment (Board of Supervisors Ord. No. _____), the Zoning Map amendment (Board of Supervisors Ord. No. _____; the "**Zoning Map Amendment**"), the Coastal Zone Permit (Board of Supervisors Ord. No. _____), and the Parkmerced Plan Documents. [*add PUC and MTA approvals*]

Now therefore, incorporating the foregoing recitals, the Parties agree as follows:

AGREEMENT

1. GENERAL PROVISIONS

1.1 Incorporation of Preamble, Recitals and Exhibits. The preamble paragraph, Recitals, and Exhibits, and all defined terms contained therein, are hereby incorporated into this Agreement as if set forth in full.

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

1.2.1 "**Acceptance Period**" shall have the meaning set forth in Section 4.4.7.

1.2.2 "**Adjoining Landowners**" shall have the meaning set forth in Section 3.6.9(e).

1.2.3 "**Administrative Code**" shall mean the San Francisco Administrative Code.

1.2.4 "**Affiliated Project**" shall have the meaning set forth in Section 4.2.3.

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

1.2.6 "**Agency Design Standards**" shall have the meaning set forth in Section 2.4.

1.2.7 "**Agreement**" shall have the meaning set forth in the preamble paragraph.

1.2.8 "**Alternate Community Improvement**" shall have the meaning set forth in Section 3.6.4.

1.2.9 "**Alternate Existing Unit**" shall have the meaning set forth in Section 4.6.2(b).

1.2.10 "**Assignment and Assumption Agreement**" shall have the meaning set forth in Section 11.3.1.

1.2.11 "**Basic Approvals**" shall mean the following land use approvals, entitlements, and permits relating to the Project that were approved by the Board concurrently with this Agreement: the General Plan amendment (Board of Supervisors Ord. No. _____), the Planning Code text amendment (Board of Supervisors Ord. No. _____), the Zoning Map amendments (Board of Supervisors Ord. No. _____), the Coastal Zone Permit (Board of Supervisors Ord. No. _____), and the Parkmerced Plan Documents, all of which are incorporated by reference into this Agreement.

1.2.12 "**BMR Requirement**" shall have the meaning set forth in Section 4.2.1.

1.2.13 "**BMR Units**" shall mean inclusionary affordable units required by the City's Inclusionary Affordable Housing Program, as set forth in Planning Code section 415 et seq.

1.2.14 "**Board of Supervisors**" or "**Board**" shall mean the Board of Supervisors of the City and County of San Francisco.

1.2.15 "**Building Code**" shall mean the San Francisco Building Code.

1.2.16 "**Building Vacancy Date**" shall have the meaning set forth in Section 4.5.1.

1.2.17 "**Caltrans**" shall have the meaning set forth in Section 3.6.1.

1.2.18 "**CC&Rs**" shall have the meaning set forth in Section 3.5.3.

1.2.19 "**CEQA**" shall have the meaning set forth in Recital E.

1.2.20 "**CEQA Findings**" shall have the meaning set forth in Recital F.

1.2.21 "**CEQA Guidelines**" shall mean California Code of Regulations, title 14, section 15000 et seq.

1.2.22 "**CFD**" shall have the meaning set forth in Section 3.8.

1.2.23 "**Chapter 56**" shall have the meaning set forth in Recital B.

1.2.24 "**Chapter 83**" shall have the meaning set forth in Section 6.6.1.

1.2.25 "**City**" shall have the meaning set forth in the preamble paragraph. Unless the context or text specifically provides otherwise, references to the City shall mean the City acting by and through the Planning Director or, as necessary, the Planning Commission or the Board of Supervisors. The City's approval of this Agreement will be evidenced by the signatures of the Planning Director and the Clerk of the Board of Supervisors. Any other City Agency's approval will be evidenced by its written consent, which will be attached to and be a part of this Agreement, but a City Agency's failure to consent to this Agreement will not cause this Agreement to be void or voidable. The Parties understand and agree that City Agencies are not separate legal entities, and that the City may dissolve a City Agency and/or transfer jurisdiction or responsibilities from one City Agency to another City Agency. With respect to commitments made by a City Agency under this Agreement, the City shall keep Developer informed of any jurisdictional transfer or change in the City Agency that will be responsible, as the successor agency, for such commitment.

1.2.26 "**City Agency**" or "**City Agencies**" shall mean, where appropriate, all City departments, agencies, boards, commissions, and bureaus that execute or consent to this Agreement and that have subdivision or other permit, entitlement or approval authority or jurisdiction over any Development Phase on the Project Site, or any Community Improvement or Public Improvement located on or off the Project Site, including the City Administrator, Planning Department, DBI, MOH, OEWD, SFMTA, SFPUC, DPW, SFFD, and the Rent Board, together with any successor City agency, department, board, or commission.

1.2.27 "**City Attorney's Office**" shall mean the Office of the City Attorney of the City and County of San Francisco.

1.2.28 "**City Costs**" shall mean the actual and reasonable costs incurred by a City Agency in performing its obligations under this Agreement, as determined on a time and materials basis, including any defense costs as set forth in Section 8.3, but excluding work and fees covered by Processing Fees.

1.2.29 "**Coastal Zone**" shall have the meaning set forth in the California Coastal Act (California Public Resources Code section 30000 et seq.).

1.2.30 "**Community Improvements**" shall mean any capital improvement or facility, on-going service provision or monetary payment, or any service required by the Basic Approvals and this Agreement for the public benefit that is not: (1) a Mitigation Measure for the Project required by CEQA; (2) a public or private

improvement or monetary payment required by Existing Standards or Uniform Codes (including, for example, utility connections required by Uniform Codes, the payment of Impact Fees and Exactions, and Planning Code-required open space); (3) Stormwater Management Improvements; or (4) the privately-owned residential and commercial buildings constructed on the Project Site, with the exception of the fitness/community center and the school, which are Community Improvements and may be privately-owned. Furthermore, Community Improvements shall not include: (1) any units constructed by Developer or fee paid by Developer in compliance with the BMR Requirement, or (2) the Replacement Units, which also provide the City with a negotiated benefit of substantial economic value and are subject to the provisions of Article 4 of this Agreement.

With the exception of Alternate Community Improvements, all Community Improvements required by the Basic Approvals and this Agreement are shown on the Phasing Plan. Section 3.5 of this Agreement sets forth the ownership and maintenance responsibilities of the City and Developer for the Community Improvements. Community Improvements include the following types of infrastructure or facilities:

(1) **Publicly-Owned Community Improvements.** These facilities are listed on Exhibit C attached hereto. Because these improvements shall be dedicated to and accepted by the City, they also fall within the definition of Public Improvements. They may be publicly-maintained or privately-maintained based on the specific terms of Section 3.5 of this Agreement.

(2) **Privately-Owned Community Improvements.** These are facilities or services, defined in Section 1.2.115 and listed on Exhibit C.

1.2.31 "**Complete**" and any variation thereof shall mean, as applicable, that (i) a specified scope of work has been substantially completed in accordance with approved plans and specifications, (ii) the City Agencies or Non-City Responsible Agencies with jurisdiction over any required permits have issued all final approvals required for the contemplated use, and (iii) with regard to any Public Improvement, (A) the site has been cleaned and all equipment, tools and other construction materials and debris have been removed, (B) releases have been obtained from all contractors, subcontractors, mechanics and material suppliers or adequate bonds reasonably acceptable to the City posted against the same, (C) copies of all as-built plans and warranties, guaranties, operating manuals, operations and maintenance data, certificates of completed operations or other insurance within Developer's possession or control, and all other close-out items required under any applicable authorization or approval have been provided, and (D) the City Agencies or Non-City Responsible Agencies have certified the work as complete, operational according to the approved specifications and requirements, and ready for its intended use, and the City has agreed to initiate acceptance of the Public Improvement.

1.2.32 "**Construction Contract**" shall have the meaning set forth in Section 6.13.

1.2.33 "**Contractor**" shall have the meaning set forth in Section 6.13.

1.2.34 "**Continuing Obligation**" shall have the meaning set forth in Section 3.6.3.

1.2.35 "**Cost Estimator**" shall have the meaning set forth in Section 3.6.8.

1.2.36 "**Costa-Hawkins Act**" shall have the meaning set forth in Recital A.2.

1.2.37 "**CPUC**" shall have the meaning set forth in Section 3.6.1.

1.2.38 "**DBI**" shall mean the San Francisco Department of Building Inspection.

1.2.39 "**Design Review Application**" shall have the meaning set forth in Section 3.3.1.

1.2.40 "**Design Review Approval**" shall have the meaning set forth in Section 3.3.1.

1.2.41 "**Developer**" shall have the meaning set forth in the preamble paragraph, and, subject to the provisions of Article 11, any and all Transferees (with respect to the rights and obligations under this Agreement that are Transferred to such Transferee).

1.2.42 "**Developer's Move**" shall have the meaning set forth in Section 4.4.8(a).

1.2.43 "**Development Agreement Statute**" shall have the meaning set forth in Recital B.

1.2.44 "**Development Phase(s)**" shall have the meaning set forth in Section 3.3.2.

1.2.45 "**Development Phase Application**" shall have the meaning set forth in Section 3.4.4.

1.2.46 "**Development Phase Approval**" shall have the meaning set forth in Section 3.4.4.

1.2.47 "**Director**" or "**Planning Director**" shall mean the Director of Planning of the City and County of San Francisco.

1.2.48 "**Dislocation Allowance**" shall have the meaning set forth in Section 4.4.8(a).

1.2.49 "**DPW**" shall mean the San Francisco Department of Public Works.

1.2.50 "**Effective Date**" shall have the meaning set forth in Section 1.3.

1.2.51 "**Ellis Act**" shall mean California Government Code section 7060 et seq.

1.2.52 "**Enacting Ordinance**" shall have the meaning set forth in Recital J.

1.2.53 "**Event of Default**" shall have the meaning set forth in Section 12.3.

1.2.54 "**Excusable Delay**" shall have the meaning set forth in Section 10.2.2.

1.2.55 "**Existing Preschool Space**" shall have the meaning set forth in Section 3.14.

1.2.56 "**Existing Lender**" shall have the meaning set forth in Recital C.

1.2.57 "**Existing Standards**" shall have the meaning set forth in Section 2.1.

1.2.58 "**Existing Tenant**" shall have the meaning set forth in Section 4.3.2.

1.2.59 "**Existing Unit(s)**" shall have the meaning set forth in Recital A.1.

1.2.60 "**Extension Period**" shall have the meaning set forth in Section 3.6.5.

1.2.61 "**Federal or State Law Exception**" shall have the meaning set forth in Section 2.5.1.

1.2.62 "**FEIR**" shall have the meaning set forth in Recital F.

1.2.63 "**First Certificate of Occupancy**" shall mean the first certificate of occupancy (such as a temporary certificate of occupancy) issued by DBI for a portion of the building that contains residential units or leasable commercial space. A First Certificate of Occupancy shall not mean a certificate of occupancy issued for a portion of the residential or commercial building dedicated to a sales office or other marketing office for residential units or leasable commercial space.

1.2.64 "**First Construction Document**" shall mean, with respect to any building, the first building permit issued for such building, or, in the case of a site permit, the first building permit addendum issued or other document that authorizes construction of the development project. Construction document shall not include permits or addenda for demolition, grading, shoring, pile driving, or site preparation work.

1.2.65 "**Future Changes to Existing Standards**" shall have the meaning set forth in Section 2.2.1.

1.2.66 "**First Refusal Notice**" shall have the meaning set forth in Section 12.8.4(g).

1.2.67 "**General Plan Consistency Findings**" shall have the meaning set forth in Recital H.

1.2.68 "**Gross Floor Area**" shall have the meaning set forth in Planning Code section 102.9.

1.2.69 "**Horizontal Obligation**" shall have the meaning set forth in Section 12.3.

1.2.70 "**Impact Fees and Exactions**" shall mean the fees, exactions and impositions charged by the City in connection with the development of the Project under the Existing Standards as of the Effective Date, as more particularly described on Exhibit E attached hereto, including but not limited to transportation improvement fees, water capacity charges and wastewater capacity charges, child care in-lieu fees, affordable housing fees, dedication or reservation requirements, and obligations for on- or off-site improvements. Impact Fees and Exactions shall not include Mitigation Measures, Processing Fees, permit and application fees, taxes or special assessments, and water connection fees. Water connection fees shall be limited to the type of fee assessed by the SFPUC for installing metered service for each building or units within such building.

1.2.71 "**Impact Findings**" shall have the meaning set forth in Section 4.6.2.

1.2.72 "**Implementing Approval**" shall mean any land use approval, entitlement, or permit (other than the Basic Approvals, a Design Review Approval, or a Development Phase Approval) from the City that are consistent with the Basic Approvals and that are necessary for the implementation of the Project or the Community Improvements, including without limitation, demolition permits, grading permits, site permits, building permits, lot line adjustments, sewer and water connection permits, encroachment permits, street improvement permits, certificates of occupancy, subdivision maps, and re-subdivisions. An Implementing Approval shall also mean any amendment to the foregoing land use approvals, entitlements, or permits, or any amendment to the Basic Approvals that are sought by Developer and approved by the City in accordance with the standards set forth in this Agreement, and that do not represent a Material Change to the Basic Approvals.

1.2.73 "**Indemnify**" shall mean to indemnify, defend, reimburse, and hold harmless.

1.2.74 "**Infrastructure Plan**" shall mean the Parkmerced Infrastructure Plan, dated as of _____, as amended from time to time.

1.2.75 "**Interim Replacement Units**" shall have the meaning set forth in Section 3.4.1(c).

1.2.76 "**Lease Termination Notice**" shall have the meaning set forth in Section 4.5.1.

1.2.77 "**Long-Term Existing Tenant**" shall have the meaning set forth in Section shall have the meaning set forth in Section 3.4.1(c).

1.2.78 "**Long-Term Existing Tenant Notice**" shall have the meaning set forth in Section shall have the meaning set forth in Section 3.4.1(c).

1.2.79 "**Losses**" shall have the meaning set forth in Section 6.10.

1.2.80 "**Low Income Household**" shall mean a household whose combined annual gross income for all members does not exceed sixty percent (60%) of the median income for the City and County of San Francisco, as calculated by MOH using data from the United States Department of Housing and Urban Development (or, if unavailable, alternative data used by MOH for such purposes) and adjusted for household size.

1.2.81 "**Major MUNI Project Permits**" shall have the meaning set for in Section 3.6.9(d).

1.2.82 "**Market Rate Units**" shall mean housing units constructed on the Project Site that are not Replacement Units or BMR Units.

1.2.83 "**Master HOA**" shall have the meaning set forth in Section 3.5.3.

1.2.84 "**Material Change to the Basic Approvals**" shall mean any substantive and material change to the Project, as defined by the Basic Approvals, as reasonably determined by the Planning Director and/or an affected City Agency. Without limiting the foregoing, the following shall each be deemed a Material Change to the Basic Approvals: (i) any reduction in the number of Replacement Units for each To-Be-Replaced Building; (ii) any change in the permitted uses or building heights contained in the Planning Code text amendment and the Zoning Map amendment; (iii) any increase in the parking ratio above that of one (1) parking space per residential dwelling unit, one (1) parking space per 500 square feet of occupied grocery store use, one (1) parking space per 1,000 square feet of occupied school, fitness or community center use and one (1) parking space per 750 square feet of occupied space for all other non-residential uses as set forth in Section 3.3.2 below; (iv) any reduction of more than ten percent (10%) in the size of any park or open space designated as a Community Improvement, unless such change is approved as an Alternate Community Improvement in accordance with the terms of this Agreement; and (v) any material change to the Parkmerced Plan Documents, as reasonably determined by the affected City Agency and the Planning Director.

1.2.85 "**Meet and Confer Period**" shall have the meaning set forth in Section 12.8.3.

1.2.86 "**Median Income Household**" shall mean a household whose combined annual gross income for all members does not exceed one hundred percent (100%) of the median income for the City and County of San Francisco, as calculated by MOH using data from the United States Department of Housing and Urban Development (or, if unavailable, alternative data used by MOH for such purposes) and adjusted for household size.

1.2.87 "**Mitigation Measures**" shall mean the mitigation measures (as defined by CEQA) applicable to the Project by the FEIR or other environmental review

document. Mitigation Measures shall include any mitigation measures that are identified and required as part of an Implementing Approval.

1.2.88 "**Mitigation Monitoring Program**" shall mean that certain mitigation monitoring program applicable to the project by the FEIR or other environmental review document.

1.2.89 "**Modified Tier 5 MUNI Realignment**" shall have the meaning set forth in Section 3.6.9(b).

1.2.90 "**MOH**" shall mean the San Francisco Mayor's Office of Housing.

1.2.91 "**MUNI Project**" shall have the meaning set forth in Section 3.6.9(b).

1.2.92 "**MUNI Realignment**" shall have the meaning set forth in Section 3.6.9.

1.2.93 "**Municipal Code**" shall mean the San Francisco Municipal Code. The Municipal Code can currently be found at http://www.amlegal.com/library/ca/sfrancisco.shtml.

1.2.94 "**New Tenant**" shall have the meaning set forth in Section 4.5.3.

1.2.95 "**No Relocation Benefits Statement**" shall have the meaning set forth in Section 4.5.3.

1.2.96 "**Non-City Regulatory Approval**" shall have the meaning set forth in Section 3.6.1.

1.2.97 "**Non-City Responsible Agency**" or "**Non-City Responsible Agencies**" shall have the meaning set forth in Section 3.6.1.

1.2.98 "**Notice of Default**" shall have the meaning set forth in Section 12.3.

1.2.99 "**Objective Requirements**" shall have the meaning set forth in Section 3.3.1.

1.2.100 "**Occupied Floor Area**" shall have the meaning set forth in Planning Code section 102.10 as of the Effective Date, as follows: the floor area devoted to, or capable of being devoted to, a principal or conditional use and its accessory uses. For purposes of computation, "occupied floor area" shall consist of the gross floor area, as defined in the Planning Code, minus the following: (a) nonaccessory parking and loading spaces and driveways, and maneuvering areas incidental thereto; (b) exterior walls of the building; (c) mechanical equipment, appurtenances and areas, necessary to the operation or maintenance of the building itself, wherever located in the building; (d) restrooms, and space for storage and services necessary to the operation and maintenance of the building itself, wherever located in the building; (e) space in a retail store for store management, show windows and dressing rooms, and for incidental repairs, processing, packaging and

stockroom storage of merchandise for sale on the premises; and (f) incidental storage space for the convenience of tenants.

1.2.101 "**OEWD**" shall mean the San Francisco Office of Economic and Workforce Development.

1.2.102 "**Official Records**" shall mean the official real estate records of the City and County of San Francisco, as maintained by the City's Recorder's Office.

1.2.103 "**Parkmerced**" shall mean the Project Site.

1.2.104 "**Parkmerced Design Standards and Guidelines**" shall mean the Parkmerced Design Standards and Guidelines dated as of ___, as amended from time to time.

1.2.105 "**Parkmerced Plan Documents**" shall mean the Parkmerced Vision Plan, the Phasing Plan, the Parkmerced Design Standards and Guidelines, the Transportation Plan, the Sustainability Plan, and the Infrastructure Plan, all dated as of _____ and approved by the Board of Supervisors, as each may be revised or updated in accordance with this Agreement. A copy of each of the approved Parkmerced Plan Documents, including any approved amendments, will be maintained and held by the Planning Department.

1.2.106 "**Parkmerced Special Use District**" shall have the meaning set forth in Section 3.3.1.

1.2.107 "**Party**" means, individually or collectively as the context requires, the City and Developer (and, as Developer, any Transferee that is made a Party to this Agreement under the terms of an Assignment and Assumption Agreement). "Parties" shall have a correlative meaning.

1.2.108 "**Permitted Change**" shall have the meaning set forth in Section 11.5.

1.2.109 "**Phasing Plan**" shall mean the Phasing Plan attached hereto as Exhibit F.

1.2.110 "**Planning Code**" shall mean the San Francisco Planning Code.

1.2.111 "**Planning Commission**" or "**Commission**" shall mean the Planning Commission of the City and County of San Francisco.

1.2.112 "**Planning Department**" shall mean the Planning Department of the City and County of San Francisco.

1.2.113 "**Principal Project**" shall have the meaning set forth in Section 4.2.3.

1.2.114 "**Prior Approvals**" shall mean, at any specific time during the Term, the applicable provisions of each of the following: this Agreement, the Basic Approvals,

the then-existing Implementing Approvals (including any Development Phase Approval), the Existing Standards and permitted Future Changes to Existing Standards.

1.2.115 "**Privately-Owned Community Improvements**" shall mean those facilities and services that are privately-owned and privately-maintained for the public benefit, with varying levels of public accessibility, that are not dedicated to the City. The Privately-Owned Community Improvements are listed on Exhibit C. Privately-Owned Community Improvements will include certain streets, paseos, pedestrian paths and bicycle lanes, storm drainage facilities, parks and open spaces, and community or recreation facilities to be built on land owned and retained by Developer. Exhibit D sets forth the provisions pertaining to the use, maintenance, and security of the Privately-Owned Community Improvements.

1.2.116 "**Processing Fees**" shall mean the standard fee imposed by the City upon the submission of an application for a permit or approval, which is not an Impact Fee and Exaction, in accordance with the then-current City practice on a City-wide basis.

1.2.117 "**Project**" shall mean the development project at the Project Site as described in this Agreement and the Parkmerced Plan Documents, including the Public Improvements and the Community Improvements, which development project is consistent with the Basic Approvals and the Implementing Approvals.

1.2.118 "**Project Site**" shall have the meaning set forth in Recital C.

1.2.119 "**Project Website**" shall mean the website maintained by Developer to provide to the public the information required under this Agreement. The Project Website can currently be found at http://www.parkmerced.com/, which may change from time to time at the sole discretion of Developer.

1.2.120 "**Proportionality, Priority and Proximity Requirement**" shall have the meaning set forth in Section 3.4.2.

1.2.121 "**Public Health and Safety Exception**" shall have the meaning set forth in Section 2.5.1.

1.2.122 "**Public Improvements**" shall mean the facilities, both on- and off-site, to be improved, constructed and dedicated to (and, upon Completion in accordance with this Agreement, accepted by) the City by Developer. Public Improvements include streets within the Project Site, sidewalks, bioswales and other Stormwater Management Improvements in the public right-of-way, all public utilities within the streets (such as gas, electricity, water and sewer lines but excluding any non-municipal utilities), bicycle lanes and paths in the public right of way, off-site intersection improvements (including but not limited to curbs, medians, signaling, traffic controls devices, signage, and striping), and SFMTA Infrastructure. The Public Improvements do not include Privately-Owned Community Improvements, including paseos, pedestrian paths within the Project Site, parks and open spaces, and community or recreation facilities to be built on land owned and retained by Developer.

1.2.123 "**Recognized Residents' Association**" shall mean an organization with more than ten (10) members (defined as tenants of the Project Site, each occupying a separate unit), that has been in existence for not less than twenty four (24) months and that has notified or notifies Developer and the Planning Department of its existence in writing.

1.2.124 "**Recorded Restrictions**" shall have the meaning set forth in Section 3.10.2.

1.2.125 "**Relocating Tenant**" shall have the meaning set forth in Section 4.3.3.

1.2.126 "**Relocation Notice**" shall have the meaning set forth in Section 4.4.4(c).

1.2.127 "**Relocation Payment Benefits**" shall mean the payments made by Developer to Existing Tenants that choose not to take a Replacement Unit, or are deemed to reject a Replacement Unit, under this Agreement. Such payments shall be equal to the amounts, and payable in accordance with the procedures, set forth in Section 37.9C of the Rent Ordinance for no-fault evictions.

1.2.128 "**Reneging Act**" shall have the meaning set forth in Section 12.8.1.

1.2.129 "**Reneging Owner**" shall have the meaning set forth in Section 12.8.2.

1.2.130 "**Rental Terms**" shall have the meaning set forth in Section 12.8.3.

1.2.131 "**Rent Assistance**" shall have the meaning set forth in Section 12.8.3.

1.2.132 "**Rent Board**" shall mean the San Francisco Rent Stabilization and Arbitration Board.

1.2.133 "**Rent Control Liquidation Option**" shall have the meaning set forth in Section 12.8.3.

1.2.134 "**Rent Control Rejection**" shall have the meaning set forth in Section 12.8.3.

1.2.135 "**Rent Ordinance**" shall mean the City's Residential Rent Stabilization and Arbitration Ordinance (Chapters 37 and 37A of the Administrative Code) or any successor ordinance designated by the City.

1.2.136 "**Replacement Building**" shall have the meaning set forth in Section 4.3.1.

1.2.137 "**Replacement Preschool Space**" shall have the meaning set forth in Section 3.14.

1.2.138 "**Replacement Unit**" shall have the meaning set forth in Recital A.1.

1.2.139 "**Replacement Unit Acceptance Notice**" shall have the meaning set forth in Section 4.4.7.

1.2.140 "**Replacement Unit Availability Notice**" shall have the meaning set forth in Section 4.4.3.

1.2.141 "**Replacement Unit Preference Notice**" shall have the meaning set forth in Section 4.4.5(a).

1.2.142 "**Replacement Unit Rejection Notice**" shall have the meaning set forth in Section 4.4.7.

1.2.143 "**Replacement Unit Notice**" shall have the meaning set forth in Section 4.4.6.

1.2.144 "**ROFR**" shall have the meaning set forth in Section 12.8.3.

1.2.145 "**Second Replacement Unit Notice**" shall have the meaning set forth in Section 4.4.4(b).

1.2.146 "**Section 56.17**" shall mean Administrative Code section 56.17 as of the Effective Date.

1.2.147 "**Selection Period**" shall have the meaning set forth in Section 4.4.5(a).

1.2.148 "**SFFD**" shall mean the San Francisco Fire Department.

1.2.149 "**SFMTA**" shall mean the San Francisco Municipal Transportation Agency.

1.2.150 "**SFMTA Infrastructure**" shall mean the Public Improvements to be designed and constructed by Developer that the Parties intend the SFMTA to accept, operate, and maintain in accordance with this Agreement.

1.2.151 "**SFPUC**" shall mean the San Francisco Public Utilities Commission.

1.2.152 "**Stormwater Management Improvements**" shall mean the facilities, both those privately-owned and those dedicated to the City, that comprise the infrastructure and landscape system that is intended to manage the stormwater runoff associated with the Project, as described in the Infrastructure Plan. Stormwater Management Improvements include but are not limited to: (i) swales and bioswales (including plants and soils), (ii) bio-gutters and grates (including plants and soils), (iii) tree wells, (iv) ponds, wetlands, and constructed streams, (v) stormwater cisterns, (vi) permeable paving systems, (vii) stormwater culverts, (viii) trench drains and grates, (ix)

stormwater piping, (x) stormwater collection system, and (xi) other facilities performing a stormwater control function.

1.2.153 "**Stormwater Management Ordinance**" shall mean Article 4.2 (Sewer System Management) of the San Francisco Public Works Code.

1.2.154 "**Subdivision Code**" shall mean the San Francisco Subdivision Code, with such additions and revisions as set forth in Section 2.6.

1.2.155 "**Substitute Community Improvement**" shall have the meaning set forth in Section 3.6.4.

1.2.156 "**Sustainability Plan**" shall mean the Parkmerced Sustainability Plan, dated as of _____, as amended from time to time.

1.2.157 "**TDM**" shall have the meaning set forth in Recital A.7 and as further defined in the Transportation Plan.

1.2.158 "**Tenant Protection Fund**" shall have the meaning set forth in Section 12.8.3.

1.2.159 "**Tenant Relocation Plan**" shall have the meaning set forth in Section 4.4.2.

1.2.160 "**Term**" shall have the meaning set forth in Section 1.4.

1.2.161 "**Third-Party Challenge**" shall have the meaning set forth in Section 8.3.1.

1.2.162 "**Tier 5 Improvements**" shall have the meaning set forth in Section 3.6.9(a).

1.2.163 "**Tier 5 Modification Process**" shall have the meaning set forth in Section 3.6.9(b).

1.2.164 "**To-Be-Replaced Building(s)**" shall have the meaning set forth in Section 4.3.2.

1.2.165 "**Traffic Improvements**" shall have the meaning set forth in Section 3.7.1.

1.2.166 "**Transfer**" shall mean the transfer all or any portion of Developer's rights, interests, or obligations under this Agreement, together with the conveyance of the affected real property.

1.2.167 "**Transferee**" shall mean the developer to whom Developer transfers all or a portion of its obligations under this Agreement under an Assignment and Assumption Agreement. A Transferee shall be deemed "Developer" under this

Agreement with respect to all of the rights, interests and obligations assigned to and assumed by Transferee under the applicable Assignment and Assumption Agreement.

1.2.168 "**Transferred Property**" shall have the meaning set forth in Section 11.1.2.

1.2.169 "**Transportation Plan**" shall mean the Parkmerced Transportation Plan, dated as of _____, as amended from time to time.

1.2.170 "**Uniform Codes**" shall have the meaning set forth in Section 2.4.

1.2.171 "**Vertical Obligation**" shall have the meaning set forth in Section 12.3.

1.2.172 "**Voluntary Rent Control Option**" shall have the meaning set forth in Section 12.8.3.

1.2.173 "**Zoning Map Amendment**" shall mean have the meaning set forth in Recital J.

1.3 Effective Date. Pursuant to Section 56.14(f) of the Administrative Code, this Agreement shall take effect upon the later of (i) the full execution of this Agreement by the Parties, (ii) the execution and delivery of a consent and subordination agreement between the City and the Existing Lender, and (iii) the effective date of the Enacting Ordinance ("**Effective Date**"). The Effective Date is _____.

1.4 Term. The term of this Agreement shall commence upon the Effective Date and shall continue in full force and effect for thirty (30) years thereafter so as to accommodate the phased development of the Project, unless extended or earlier terminated as provided herein ("**Term**"). Following expiration of the Term, this Agreement shall be deemed terminated and of no further force and effect except for any provisions which, by their express terms, survive the expiration or termination of this Agreement.

2. APPLICABLE LAW

2.1 Existing Standards. Except as expressly provided in this Article 2, the City shall process, consider, and review all Developer requests for Implementing Approvals in accordance with (i) the Basic Approvals, (ii) the San Francisco General Plan, the Municipal Code (including the City's Subdivision Code and Administrative Code) and all other applicable City policies, rules and regulations as each of the foregoing is in effect on the Effective Date ("**Existing Standards**"), (iii) any permitted Future Changes to Existing Standards, (iv) any applicable laws, including CEQA and (v) this Agreement.

2.2 Future Changes to Existing Standards.

2.2.1 Future changes to Existing Standards and any other ordinances, laws, rules, regulations, plans or policies adopted by the City or adopted by voter initiative after the Effective Date ("b") shall apply to the Project and the Project Site except to the extent

they conflict with this Agreement or the terms and conditions of the Basic Approvals. In the event of such a conflict, the terms of this Agreement and the Basic Approvals shall prevail, subject to the terms of Section 2.4 below. All references to any part of the Municipal Code in this Agreement shall mean that part of the Municipal Code (including the Administrative Code and the Rent Ordinance) in effect on the Effective Date, with such changes and updates as are adopted from time to time, except for any changes or updates that conflict with this Agreement as set forth in Section 2.2.2 below.

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

(a) limit or reduce the density or intensity of the Project, or any part thereof, or otherwise require any reduction in the square footage or number of proposed buildings (including number of residential dwelling units) or other improvements from that permitted under this Agreement, the Existing Standards and the Basic Approvals;

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

(c) change or limit any land uses of the Project Site that are permitted under this Agreement, the Existing Standards and the Basic Approvals;

(d) materially change the Project site plan as shown in the Parkmerced Plan Documents;

(e) except as provided in this Agreement, limit or control in more than an insignificant manner the rate, timing, phasing, or sequencing of the approval, development, or construction of all or any part of the Project, including the demolition of existing buildings at the Project Site, so long as all requirements of this Agreement are satisfied and all necessary infrastructure to serve such development is constructed by Developer as required by the Basic Approvals;

(f) require the issuance of permits or approvals by the City other than those required under the Existing Standards. Any permits or approvals that replace (but do not expand the purpose or scope of) a permit or approval shall apply to the Project, and shall not be considered new categories of permits or approvals;

(g) materially limit or control the availability of public utilities, services or facilities or any privileges or rights to public utilities, services, or facilities for the Project as contemplated by the Parkmerced Plan Documents and FEIR (provided nothing in the foregoing shall limit Developer's rights and obligations to Complete the Community Improvements, Stormwater Management Improvements, and/or Public Improvements as contemplated and required under this Agreement);

(h) impose any ordinance or regulation that controls commercial or residential rents or purchase prices charged within the Project or on the Project Site, except as such imposition is expressly required by this Agreement;

(i) materially limit or delay the processing or procuring of applications and approvals of Implementing Approvals that are consistent with Basic Approvals; or,

(j) impose any new Impact Fees and Exactions on the Project (not including permitted increases or replacements as set forth in Section 2.3 of this Agreement).

2.2.3 Developer may, with the concurrence of any affected City Agencies, elect to have a Future Change to Existing Standards that conflicts with this Agreement applied to the Project or the Project Site by giving the City written notice of its election to have a Future Change to Existing Standards applied, in which case such Future Change to Existing Standards shall be deemed to be an Existing Standard.

2.2.4 The Parkmerced Plan Documents may be amended with Developer's consent from time to time without the amendment of this Agreement as follows: (a) nonmaterial amendments may be agreed to by the Planning Director and the Director of any affected City Agency (as appropriate), each in their reasonable discretion, and (b) material amendments may be agreed to by the Planning Commission, the City Administrator and the affected City Agency (either by its Director or, if existing, its applicable Commission), each in their sole discretion, provided that any material amendment to a Parkmerced Plan Document that requires an amendment to this Agreement shall also be subject to the approval of the Board of Supervisors in accordance with Section 10.1. Without limiting the foregoing, the Parties agree that any change to the Transportation Plan must be approved by DPW and the SFMTA, any change to the Infrastructure Plan must be approved by DPW, the SFMTA and the SFPUC, and any change to Sustainability Plan must be approved by DPW and the SFPUC.

2.3 Impact Fees and Exactions.

2.3.1 The Project shall only be subject to the Impact Fees and Exactions, as set forth in Exhibit E, and the City shall not impose any new impact fees or exactions on the development of the Project or impose new conditions or requirements for the right to develop the Project (including required contributions of land, public amenities or services) except as set forth in this Agreement; provided, however, that Developer shall pay the Impact Fees and Exactions in the dollar amount that applies, on a City-wide basis, at the time that Developer applies for a permit or approval in connection with the Project. Accordingly, Developer shall be subject to all increases in the Impact Fees and Exactions as established by the City from time to time during the Term and that are generally applicable to all development of the same type in the City. However, Developer shall not be subject to new categories of impact fees or exactions (including impact fees and exactions that are imposed by development conditions of approval), that

are adopted by the City from and after the Effective Date in connection with the development of the Project. Any substitute impact fees or exactions that replace (but do not expand the purpose or scope of) an Impact Fees and Exaction shown on Exhibit E shall apply to the Project, and shall not be considered new categories of impact fees as set forth above.

2.3.2 The City shall assess Impact Fees and Exactions only against the net new Gross Floor Area for each use at the Project Site. Notwithstanding the foregoing, the City shall not assess Impact Fees and Exactions against the Replacement Units regardless of whether the Replacement Units have a larger Gross Floor Area than the Existing Units that they are replacing. In addition, the City shall not assess Impact Fees and Exactions against a percentage of the Gross Floor Area of the common area of the Replacement Building, which percentage shall be the percentage of Gross Floor Area of all Replacement Units compared to the Gross Floor Area of all of the residential units in the Replacement Building. The foregoing shall be calculated in the following manner: (i) the total Gross Floor Area of the Replacement Building comprised of residential units (both Replacement Units and non-Replacement Units) shall be subtracted from the total Gross Floor Area of the Replacement Building, the result of which shall represent the common area; and (ii) the Gross Floor Area of the Replacement Units shall be compared to the Gross Floor Area of the non-Replacement Units to determine the percentage of common area that shall not be subject to Impact Fees and Exactions. For example, for a Replacement Building that contains 20,000 Gross Floor Area of Replacement Units and 40,000 Gross Floor Area of non-Replacement Units, one-third (1/3) of the common area (20,000/60,000) shall not be subject to Impact Fees and Exactions. As water connection fees are excluded from the definition Impact Fees and Exactions, payment of the water connection fees shall be paid for installing new water service connections on the Project Site.

2.4 Applicability of Uniform Codes to All Permit Activity within the Project, including all Buildings and Community Improvements. The Parties acknowledge that, in addition to submitting Design Review Applications and Development Phase Applications, Developer must submit a variety of applications for Implementing Approvals before commencement of construction of the Project, including building permit applications for the construction of the residential and commercial buildings on the Project Site, and street improvement permits, encroachment permits, and building permit applications for the construction of Community Improvements. Developer shall be responsible for obtaining all Implementing Approvals required under applicable law before commencement of construction. When considering any such application for Implementing Approvals, the City shall apply the provisions, requirements, rules, or regulations applicable City-wide that are contained in the California Building Standards Code, as amended by the City in accordance with the California Health and Safety Code, including requirements of the San Francisco Building Code, Public Works Code (which includes the Stormwater Management Ordinance), Subdivision Code, Mechanical Code, Electrical Code, Plumbing Code, Fire Code or other uniform construction codes (collectively, the "**Uniform Codes**"). In addition, upon submittal of the Design Review Application, the City Agencies shall apply their then-existing technical design standards and specifications with respect to Public Improvements (and Stormwater Management Improvements) to be dedicated to that City Agency, including any applicable standards or requirements of Non-City Responsible Agencies with jurisdiction (the "**Agency Design**

Standards"), so that Public Improvements and Stormwater Management Improvements integrate and function with existing City systems and applicable law; provided, however, that the City cannot impose standards or requirements on Developer that (i) it would not apply to itself if the Public Improvement or Stormwater Management Improvement was to be constructed by the City on its own in a different location in the City or (ii) materially alter the location and dimensions of the streets, easements, and sidewalks as set forth in the Parkmerced Design Standards and Guidelines. The Parties understand and agree that any Public Improvement or Stormwater Management Improvement identified in this Agreement or the Parkmerced Plan Documents, including the SFMTA Infrastructure, may become part of a larger City system and that the proposed Public Improvements and Stormwater Management Improvements must be constructed so as to integrate and work with the existing City systems in every material respect.

2.5 Changes in State and Federal Rules and Regulations.

2.5.1 Notwithstanding any provision in this Agreement to the contrary, each City Agency having jurisdiction over the Project shall exercise its sole discretion under this Agreement in a manner that is consistent with the public health and safety and shall at all times retain its respective authority to take any action that is necessary to protect the physical health and safety of the public (the "**Public Health and Safety Exception**") or to comply with changes in Federal or State law, including applicable federal and state regulations (the "**Federal or State Law Exception**"), including the authority to condition or deny an Implementing Approval or to adopt a new City regulation applicable to the Project so long as such condition or denial or new regulation is limited solely to addressing a specific and identifiable issue related to the protection of the public health and safety or compliance with a Federal or State law and not for independent discretionary policy reasons that are inconsistent with this Agreement. Developer retains the right to dispute any City reliance on the Public Health and Safety Exception or the Federal or State Law Exception. If the Parties are not able to reach agreement on such dispute following a reasonable meet and confer period, then Developer or City may seek judicial relief with respect to the matter.

2.5.2 Pursuant to Section 65869.5 of the Development Agreement Statute, in the event that state or federal laws or regulations enacted after this Agreement have gone into effect and preclude or prevent compliance with one or more provisions of this Agreement, such provisions of this Agreement shall be modified or suspended as may be necessary to comply with such state or federal laws or regulations. In such event, this Agreement shall be modified only to the extent necessary or required to comply with such law or regulation. In the event that Developer believes in its reasonable judgment that such modifications render the Project economically infeasible for Developer or the City believes in its reasonable judgment that such modifications materially reduce the economic value of the Community Improvements or other public benefits to the City, then the Parties may negotiate additional amendments to this Agreement as may be necessary to satisfy both Developer and City, each in their reasonable discretion. If the Parties cannot reach agreement on additional amendments despite good faith negotiations, the Parties shall seek to resolve such dispute in accordance with the provisions of Section 12.7 herein, and thereafter either Party shall have the right to initiate judicial action.

2.5.3 This Agreement has been entered into in reliance upon the provisions of the Development Agreement Statute as those provisions existed as of the Effective Date. No amendment or addition to those provisions which would affect the interpretation or enforceability of this Agreement or increase the obligations or diminish the development rights to Developer hereunder, or increase the obligations or diminish the benefits to the City, shall be applicable to this Agreement unless such amendment or addition is specifically required by law or is mandated by a court of competent jurisdiction. If such amendment or change is permissive rather than mandatory, this Agreement shall not be affected. The Parties shall cooperate and shall undertake such actions as may be necessary to implement and reflect the intent of the Parties to allow and encourage development of the Project consistent with all of the terms of this Agreement.

2.6 Subdivision Code Requirements for Public Improvements. For purposes of the design, review, permitting, approval and acceptance of the Public Improvements, the Parties agree to follow the Subdivision Code subject to revisions in Exhibit M and Section 2.2 of this Agreement.

2.7 Compliance with Applicable Federal and State Laws. Developer shall comply, at no cost to the City, with all applicable federal or state laws relating to the Project or the use, occupancy or development of the Project Site under this Agreement, including but not limited to any applicable tenant relocation laws and the Development Agreement Statute. Developer shall Indemnify the City against any and all Losses resulting from Developer's failure to comply with any applicable state or federal law.

2.8 General. The Parties acknowledge that the provisions contained in this Article 2 are intended to implement the intent of the Parties that Developer have the right to develop the Project pursuant to specified and known criteria and rules, and that the City receive the benefits which will be conferred as a result of such development, without abridging the right of the City to act in accordance with its powers, duties and obligations.

3. DEVELOPMENT OF PROJECT SITE

3.1 Development Rights. Developer shall have the vested right to develop the Project Site in accordance with and subject to the provisions of this Agreement, the Basic Approvals, and any Implementing Approvals, and the City shall process all Implementing Approvals related to development of the Project Site in accordance with and subject to the provisions of this Agreement. Developer agrees that all improvements it constructs on the Project Site shall be done in accordance with this Agreement, the Basic Approvals (including but not limited to the Parkmerced Plan Documents), and any Implementing Approvals, and in accordance with all applicable laws.

3.2 Compliance with CEQA. The Parties acknowledge that the FEIR prepared for the Project complies with CEQA. The Parties further acknowledge that (i) the FEIR and CEQA Findings contain a thorough analysis of the Project and possible alternatives to the Project, (ii) the Mitigation Measures have been adopted to eliminate or reduce to an acceptable level certain adverse environmental impacts of the Project, and (iii) the Board of Supervisors adopted a statement of overriding considerations in connection with the Project Approvals, pursuant to

CEQA Guidelines section 15093, for those significant impacts that could not be mitigated to a less than significant level. For these reasons, the City does not intend to conduct any further environmental review or mitigation under CEQA for any aspect of the Project vested by this Agreement, as more particularly described by the Basic Approvals, except as may be required by applicable law in taking future discretionary actions relating to the Project.

3.3 Vested Rights; Demolition; Permitted Uses and Density; Building Envelope. By approving the Basic Approvals, the City has made a policy decision that the Project, as currently described and defined in the Basic Approvals, is in the best interest of the City and promotes the public health, safety and general welfare. Accordingly, the City in granting the Basic Approvals and vesting them through this Agreement is limiting its future discretion with respect to Project approvals that are consistent with the Basic Approvals. Consequently, the City shall not use its discretionary authority in considering any application for an Implementing Approval to change the policy decisions reflected by the Basic Approvals or otherwise to prevent or to delay development of the Project as set forth in the Basic Approvals. Instead, Implementing Approvals that substantially conform to or implement the Basic Approvals, subsequent Development Phase Approvals, and subsequent Design Review Approvals shall be issued by the City so long as they substantially comply with and conform to this Agreement (including the requirements and limitations set forth in Article 2 and Section 6.2), the Basic Approvals, Existing Standards and permitted Future Changes to Existing Standards, if applicable. Nothing in the foregoing shall impact or limit the City's discretion with respect to (i) Design Review Approvals (as provided in Section 3.3.1 of this Agreement), (ii) Implementing Approvals that seek a Material Change to the Basic Approvals, (iii) Board of Supervisor approvals of subdivision maps, as required by law, or (iv) requests for approval that may materially impair, alter or decrease the scope and economic benefit of the Community Improvements described in the Parkmerced Plan Documents, the Phasing Plan and this Agreement.

3.3.1 Design Review Approvals. The Basic Approvals include a Planning Code text amendment that creates a special use district for the Project Site (the "**Parkmerced Special Use District**"). The Parkmerced Special Use District and the Parkmerced Design Standards and Guidelines were created and adopted to ensure that the urban, architectural and landscape design of the buildings, public realm and Community Improvements at Parkmerced will be of high quality and appropriate scale, include sufficient open space, and promote the public health, safety and general welfare. To ensure that all new buildings, the public realm associated with each new building and any Community Improvements related to implementation of the Project meet the Parkmerced Design Standards and Guidelines, Developer must submit a design review application (a "**Design Review Application**") and obtain design review approval (a "**Design Review Approval**") before obtaining separate permits consistent with Section 2.4 of this Agreement to commence construction of any proposed building or Community Improvement within or adjacent to the Project Site (as more particularly described in the Parkmerced Special Use District). The City shall review and approve, disapprove, or approve with recommended modifications each Design Review Application in accordance with the requirements of this Agreement, the Parkmerced Plan Documents and the procedures specified in the Parkmerced Special Use District section of the Planning Code, as the same may be amended from time to time. Notwithstanding anything to the contrary in this Agreement, the City may exercise its reasonable

discretion in approving the aspects of a Design Review Application that relate to the qualitative or subjective requirements of the Parkmerced Design Standards and Guidelines, including the choice of building materials and fenestration. Also notwithstanding anything to the contrary in this Agreement, in considering a Design Review Application for those aspects of a proposed building or Community Improvement that meet the quantitative or objective requirements of the Parkmerced Design Standards and Guidelines and the other Parkmerced Plan Documents (the "**Objective Requirements**"), including without limitation, the building's proposed height, bulk, setbacks, streetwalls, location of uses and size of such uses, and amount of open space and parking, the City acknowledges and agrees that (i) it has exercised its discretion in approving the Parkmerced Special Use District, the Parkmerced Design Standards and Guidelines, and the other Parkmerced Plan Documents, and (ii) any proposed Design Review Application that meets the Objective Requirements shall not be rejected by the City based on elements that conform to or are consistent with the Objective Requirements, so long as the proposed building or Community Improvement meets the Uniform Codes and Agency Design Standards as required by Section 2.4 above.

3.3.2 Subject to the terms of this Agreement, Developer shall have a vested right to develop the Project at the Project Site, including 5,679 net new residential units, 1,538 rent-controlled Replacement Units, 310,000 square feet of commercial use, 64,000 square feet of recreational/fitness center/community center use, 100,000 square feet of building and property maintenance use, 25,000 square feet of educational use, and net new off-street parking for up to 6,252 vehicles, all as more particularly described in the Basic Approvals. The Project shall be built in phases ("**Development Phases**") in the manner described in Section 3.4. At all times during the phased construction, the parking ratio shall not be less than 0.25 off-street parking spaces per residential unit or greater than one (1) parking space per residential dwelling unit, one (1) parking space per 500 square feet of occupied grocery store use, one (1) parking space per 1,000 square feet of occupied school, fitness or community center use and one (1) parking space per 750 square feet of occupied space for all other non-residential uses. Any off-street parking constructed that would result in the cumulative off-street parking in the Project exceeding the above ratios may not be used for any parking purpose and must be physically separated to preclude use of such spaces for any duration of time to the satisfaction of the Planning Department until such time that sufficient additional residential or non-residential development is completed to bring the overall parking ratio into conformance with the parking ratios listed above. At the Completion of the Project, the number of off-street parking spaces accessory to the residential units shall not exceed the lesser of (i) the ratios described above applied to the Completed Project and (ii) 8,900 residential parking spaces and 550 non-residential parking spaces.

3.3.3 Provided that Developer constructs and develops the Project as described in the Basic Approvals, Developer shall have a vested right to construct buildings on the Project Site up to the maximum heights permissible under the Zoning Map Amendment and in a manner consistent with building envelope requirements, including but not limited to bulk, as set forth in the Parkmerced Special Use District.

3.3.4 Each Basic Approval or Implementing Approval shall remain in effect during the Term of this Agreement. Notwithstanding anything to the contrary above, each street improvement, building, grading, demolition or similar permit shall expire at the time specified in the permit or the applicable public improvement agreement approved under the City's Subdivision Code, with extensions as normally allowed under the Uniform Codes or as set forth in such public improvement agreement.

3.4 Commencement of Construction; Development Phases; Development Timing.

3.4.1 Development Phases. The Parties currently anticipate that the Project will be constructed in Development Phases over approximately twenty (20) to thirty (30) years. The Parties acknowledge that Developer cannot guarantee the exact timing in which Development Phases will be constructed, whether certain development will be constructed at all, or the characteristics of each Development Phase (including without limitation the number of units constructed during each Development Phase and the parcels included within each Development Phase). Such decisions depend on numerous factors that are not within the control of Developer or the City, such as market absorption and demand, interest rates, availability of project financing, competition, and other similar factors. To the extent permitted by this Agreement, Developer shall have the right to develop the Project in Development Phases in such order and time, and with such characteristics (subject to the Proportionality, Priority and Proximity Requirements of this Agreement), as Developer requests, as determined by Developer in the exercise of its subjective business judgment, but subject to the City's approval of each Development Phase, which approval shall not be unreasonably withheld, conditioned, or delayed.

(a) First Development Sites. The Parties acknowledge that the construction of Replacement Units before the demolition of any Existing Units is a key requirement of this Agreement and is intended to ensure that the Existing Tenants are protected from displacement. Therefore, notwithstanding anything to the contrary above, no demolition shall occur and no other buildings shall be constructed on the Project Site until Replacement Units have been Completed on one of the three sites identified on Exhibit V.

(b) Phasing of Tenant Relocation. The Parties also understand that the Existing Tenants may have strong social and community bonds with each other, and the Parties seek to respect and maintain those social and community bonds. Accordingly, Relocating Tenants residing within the same existing numerically-identified blocks as shown in Exhibit W shall have the right in connection with the exercise of their relocation options pursuant to Article 4 to elect to be collectively moved to Replacement Units within the same new block (subject to the rights of Existing Tenants to move on an interim basis and the rights of individual Relocating Tenants as described in Article 4) such that Relocating Tenants will remain neighbors within the same block notwithstanding their relocation. For the purposes of this Agreement, blocks 37W and 37E shall be considered separate blocks.

(c) Interim Replacement Units; Long-Term Resident Protection. In order to provide Replacement Units with the same style and quality of life as the existing garden apartments, the City shall not approve a Development Phase Application that would result in demolition of the apartment buildings, collectively consisting of 208 Existing Units, located on the three (3) existing blocks identified on Exhibit Y (the "**Interim Replacement Units**") until the earlier of (i) the date upon which development of all other residential parcels have been Completed or (ii) twenty (20) years from the Effective Date of the Agreement. The Interim Replacement Units shall be offered to Existing Tenants that have occupied an Existing Unit for more than ten (10) years (a "**Long-Term Existing Tenant**") as of the Effective Date. Within sixty (60) days of the Effective Date of this Agreement, Developer shall deliver written notice to all Long-Term Existing Tenants (the "**Long-Term Existing Tenant Notice**"). The Long-Term Existing Tenant Notice shall request that the Long-Term Existing Tenant complete and return an attached response form that notifies Developer of the Long-Term Existing Tenant's interest in relocating to an Interim Replacement Unit, as an alternative to being relocated to a Replacement Unit before the Building Vacancy Date for their existing building. The purpose of such response form is solely to provide information to Developer in order to plan for and facilitate the future relocation process to an Interim Replacement Unit. Existing Tenant's response indicating interest in accepting or rejecting an Interim Replacement Unit shall be non-binding and delivery or lack of delivery of such response form shall have no legal effect on an Existing Tenant's ability to later request an Interim Replacement Unit or a Replacement Unit in accordance with this Agreement. Long Term Existing Tenants shall have the additional option to request relocation to an Interim Replacement Unit any time after receipt of an Existing Tenant Notice and before receipt of the Relocation Notice. Upon request to relocate to an Interim Replacement Unit, Developer shall move such Long-Term Existing Tenant to a vacant Interim Replacement Unit, if they are available at that time, and Developer shall be responsible for all Relocation Costs for consistent with Section 4.4.8(a). Long Term Existing Tenants will be allowed to stay in the Interim Replacement Unit until such time as the Interim Replacement Units receive a Relocation Notice or, if the Long Term Existing Tenant rejects a Replacement Unit, until the applicable Building Vacancy Date, consistent with Article 4

3.4.2 Proportionality, Priority and Proximity Requirement. Because (i) the Project will be built over a long time period, and future portions of the Project may not, in fact, be developed after Developer completes a Development Phase, and (ii) Developer has requested and the City has agreed to allow Developer flexibility in the order and timing of the proposed development included in the Project, including allowing discretion in the amount of net new development included in a Development Phase, the City must approve each Development Phase Application to ensure that (A) the Community Improvements for each Development Phase (or Sub-Phase, if applicable) are proportional to the cumulative amount of private development to occur in that Development Phase (or Sub-Phase, if applicable), (B) the Community Improvements are implemented in order of public policy priority as set forth in the Phasing Plan, (C) to the extent that the priority

requirement in the immediately preceding subsection is satisfied and a choice exists with regard to Community Improvements to be included in that Development Phase or Sub-Phase, that such Community Improvements are selected with reference to geographic proximity to the proposed Development Phase or Sub-Phase, and (D) the timing and phasing of the Community Improvements are consistent with the operational needs and plans of the affected City Agencies, and are phased in such a way as to not interfere with the utility and transportation systems operated and maintained by the City, except for scheduled work agreed to by an affected City Agency in the course of the construction of the Project (the "**Proportionality, Priority and Proximity Requirement**"). With regard to those Public Improvements subject to a street improvement permit (including but not limited to any major or minor encroachment permit) that must be completed to obtain First Certificates of Occupancy for a building, the Proportionality, Priority and Proximity Requirement shall be deemed to be satisfied by virtue of the requirement that, pursuant to existing Municipal Code, all such improvements must be substantially complete before issuance of a First Certificate of Occupancy for each and every building within the Project. With regard to any proposed Community Improvements not associated with any individual building permit application, the City must review the proposed Development Phase Application to ensure that the Proportionality, Priority and Proximity Requirement is satisfied. Without limiting the foregoing, the Parties agree that any Community Improvement to be located within one thousand (1,000) feet of any new proposed building of over forty thousand (40,000) square feet in size shall be deemed to bear a reasonable geographic proximity to the parcels proposed for development in that Development Phase. The foregoing notwithstanding, nothing in this Section 3.4.2 or other provisions of this Agreement shall affect the Mitigation Measures, which must be completed as and when required based upon the trigger dates established with respect to each applicable Mitigation Measure.

3.4.3 Phasing Plan. The Community Improvements and certain Public Improvements to be constructed by Developer are listed in the Phasing Plan, attached hereto as Exhibit F. The Phasing Plan reflects the Parties' mutual acknowledgement that (i) the content and boundaries of each Development Phase (including sub-phases within such Development Phase), the exact number of net new residential units and the exact amount of commercial floor area in each Development Phase (and sub-phases therein) is currently unknown, and (ii) the need for certain Community Improvements and certain Public Improvements is related to the amount and location of net new residential units and commercial floor area proposed by each Development Phase (and the sub phases therein) combined with the cumulative amount of net new residential units and commercial floor area Completed to date. The Phasing Plan defines certain minimum requirements to aid in determining satisfaction of the Proportionality, Priority and Proximity Requirement described in Section 3.4.2. For example, the Phasing Plan requires that all sidewalks and bioswales be completed before the issuance of the First Certificate of Occupancy for the immediately adjacent building. In addition, for all Community Improvements and Public Improvements related to transportation, the Phasing Plan sets forth the precise number of net new cumulative residential units and commercial square footage that can be constructed in relation to each such Community Improvement or Public Improvement. The Parties agree that the requirements of the Phasing Plan are generally representative of the Proportionality, Priority and Proximity

Requirement but are not determinative such that the City must reasonably review and approve each Development Phase Application as consistent with the Proportionality, Priority and Proximity Requirement pursuant to Section 3.4.4. The Parties acknowledge and agree that (i) the minimum requirements of the Phasing Plan must be satisfied at each stage of development, including during and within each Development Phase (i.e., the net amount of commercial floor area and/or residential units in each Development Phase must be equal to or less than the corresponding Community Improvements and/or Public Improvements shown on the Phasing Plan, as measured by the development metrics identified on the Phasing Plan), and (ii) the City cannot disproportionably burden a Development Phase in violation of the Proportionality, Priority and Proximity Requirement. The Parties acknowledge that certain transit, infrastructure or utility improvements may be required at an early stage of development in accordance with operational or system needs and the City may reasonably request Developer to advance certain Community Improvements at such earlier stage in order to achieve system functionality. The Parties shall cooperate in good faith to amend the Developer's originally proposed Development Phase Application to advance such improvements and to delay other improvements while maintaining the Proportionality, Priority and Proximity Requirement.

3.4.4 Development Phase Application and Approval. Prior to the commencement of the each Development Phase, Developer shall submit to the Planning Department an application (a "**Development Phase Application**") in substantial conformance with the sample attached hereto as Exhibit G. Each Development Phase Application shall include, at a minimum: (i) an overall summary of the proposed Development Phase; (ii) a site plan that clearly indicates the parcels subject to the proposed Development Phase (including sub-phases within such Development Phase); (iii) the amount of new residential and commercial square footage and the number of net new units in the proposed Development Phase (including sub-phases within such Development Phase); (iv) the existing buildings that would be demolished in the proposed Development Phase (including sub-phases within such Development Phase); (v) the number of BMR Units and Replacement Units to be Completed during the proposed Development Phase (including sub-phases within such Development Phase); (vi) a description and approximate square footage of any land to be dedicated to the City or vacated by the City in the proposed Development Phase (including sub-phases within such Development Phase); (vii) a brief description of each proposed Community Improvement and Mitigation Measure to be Completed during the proposed Development Phase (including sub-phases within such Development Phase) with specific references to the pages in the Parkmerced Plan Documents containing detailed descriptions and schematic drawings of each improvement, and calculations showing that the Proportionality, Priority and Proximity Requirements of the Phasing Plan will be satisfied; (viii) a description of the proposed Stormwater Management Improvements that comply with the submittal requirements and performance standards set forth in Appendix E of the Infrastructure Plan; (ix) a general description of the proposed order of construction of the private development and Community Improvements within the proposed Development Phase (including sub-phases within such Development Phase); (x) information sufficient to demonstrate compliance with the Sustainable Energy Requirements as set forth in Exhibit Q, the Parkmerced Sustainable Energy Requirements

and Implementation Plan; and (xi) a statement describing any requested modification or deviation from the Parkmerced Plan Documents, if any. If Developer submits a Development Phase Application before the Completion of a previous Development Phase, then the Development Phase Application shall include a proposed order of development for all development in both Development Phases in its response to item (ix) above. In order to ensure that each Development Phase pertains to a portion of the overall development proposed by the Project, each Development Phase Application shall not propose the construction of not less than five-hundred (500) new residential units (both Replacement Units and non-Replacement Units) or more than twenty-five hundred (2,500) new residential units (both Replacement Units and non-Replacement Units) within such Development Phase. Sub-phases may include fewer than five-hundred (500) new residential units. Upon receipt, the Planning Director shall forward a copy of the Development Phase Application to each affected City Agency. The Planning Director and affected City Agencies shall have the right to request additional information from Developer as may be needed to understand the proposed Development Phase Application and to ensure compliance with this Agreement, including but not limited to the Parkmerced Plan Documents and the Proportionality, Priority and Proximity Requirement. If the Planning Director or any affected City Agency objects to the proposed Development Phase Application, it shall do so in writing, stating with specificity the reasons for the objection and any items that it or they believe may or should be included in the Development Phase Application in order bring the application into compliance with the Proportionality, Priority and Proximity Requirement and this Agreement. The Planning Director and affected City Agencies agree to act reasonably in making determinations with respect to each Development Phase Application, including the determination as to whether the Proportionality, Priority and Proximity Requirement has been satisfied. The Parties agree to meet and confer in good faith to discuss and resolve any differences in the scope or requirements of a Development Phase Application. If there are no objections, or upon resolution of any differences, the Planning Director shall issue to Developer in writing an approval of the Development Phase Application with such revisions, conditions or requirements as may be permitted in accordance with the terms of this Agreement (each, a "**Development Phase Approval**").

3.4.5 Commencement of Development Phase. Upon receipt of a Development Phase Approval, Developer shall submit a tentative subdivision map application (if not already submitted) covering all of the real property within the Development Phase or Sub-Phase. Following submittal of the tentative subdivision map application, Developer shall have the right to submit any individual Design Review Applications and associated permits required to commence the scope of development described in each Development Phase Approval; provided, however, that the City is not required to approve such Design Review Applications until approval of the tentative subdivision map. Each Development Phase (or Sub-Phase, if applicable) shall be deemed to have commenced if (i) site or building permits have been issued by the City for all or a portion of the buildings located in that Development Phase (or Sub-Phase, if applicable) and (ii) some identifiable construction, such as grading, of all or a portion of that Development Phase (or Sub-Phase) has been initiated. Upon commencement of work in a Development Phase (or Sub-Phase, if applicable), Developer shall continue the work at a commercially reasonable pace in light of market conditions to Completion of that

Development Phase (or Sub-Phase), including all Community Improvements, Stormwater Management Improvements and Public Improvements within the Development Phase (or Sub-Phase) in accordance with applicable permits and requirements under this Agreement to ensure that there are no material gaps between the start and Completion of all work within that Development Phase (or Sub-Phase), subject to any Excusable Delay or amendment of the Development Phase Approval as permitted by Section 3.4.6.

3.4.6 Amendment of a Development Phase Approval. At any time after receipt of a Development Phase Approval, Developer may request an amendment to the Development Phase Approval. Such amendment may include but is not limited to changes to the number and location of units proposed during that Development Phase, the substitution of a Community Improvement for another Community Improvement, or the elimination of a Community Improvement from the Development Phase due to a proposed reduction of net new private development proposed for that Development Phase. Any such requested amendment shall be subject to the review and approval process and the standards (including the Proportionality, Priority and Proximity Requirements) set forth above in Section 3.4.4 for a Development Phase Application. Notwithstanding anything to the contrary above, Developer shall not have the right to eliminate any Community Improvement or Public Improvement for which construction or service has already commenced in that Development Phase.

3.4.7 Without limiting the foregoing, it is the desire of the Parties to avoid the result in Pardee Construction Co. v. City of Camarillo, 37 Cal.3d 465 (1984), in which the California Supreme Court held that because the parties had failed to consider and expressly provide for the timing of development, a later-adopted initiative restricting the timing of development prevailed over the parties' agreement. Accordingly, the Parties hereto expressly acknowledge that except for the construction phasing required by this Section 3.4, a Development Phase Approval, the Parkmerced Plan Documents, the Phasing Plan, the Mitigation Measures, Section 3.6.9, and any express construction dates set forth in an Implementing Approval, Developer shall have the right to develop the Project in such order and at such rate and at such times as Developer deems appropriate within the exercise of its subjective business judgment.

3.5 Community Improvements, Stormwater Management Improvements and/or Public Improvements.

3.5.1 Developer Responsibilities. Developer shall undertake the design, development and installation of the Community Improvements. Public Improvements shall be designed and constructed, and shall contain those improvements and facilities, as reasonably required by the applicable City Agency that is to accept, and in some cases operate and maintain, the Public Improvement in keeping with the then-current Citywide standards and requirements of the City Agency as if it were to design and construct the Public Improvement on its own at that time, including the requirements of any Non-Responsible City Agency with jurisdiction. With regard to the Community Improvements that are ongoing programs or services, such as shuttles and transit services, Developer shall consult with the relevant City Agencies before commencing such programs or services. Without limiting the foregoing, any Community Improvement,

whether a Publicly-Owned Community Improvement or a Privately-Owned Community Improvement, shall obtain a Design Review Approval from the Planning Department as set forth in Section 3.3.1 of this Agreement before obtaining all necessary permits and approvals (including review of all design and construction plans) from any responsible agencies having jurisdiction over the proposed Community Improvement pursuant to Section 2.4 of this Agreement. Without limiting the foregoing, (i) the SFMTA must approve all of the plans and specifications for the SFMTA Infrastructure, (ii) the SFPUC must approve all of the plans and specifications for the Stormwater Management Improvements and all water, street light and sewer facilities, and (iii) DPW must approve all of the plans and specifications for all Public Improvements unless the DPW Director waives this requirement. With the exception of any and all construction relating to the realignment of the SFMTA light rail "M" Oceanview, construction of Community Improvements must be Completed by Developer on or before issuance of the First Certificate of Occupancy for any building containing new residential units or commercial gross floor area permitted by the Phasing Plan in exchange for construction of such Community Improvement (or as otherwise described in a Development Phase Approval), subject to Excusable Delay. If Developer fails to complete the Community Improvement within such time frame, the City may cease issuing any further Project approvals, not accept any additional applications for the Project, and include in any estoppel certificate language reflecting Developer's failure to complete such Community Improvements. In addition, failure to continue to diligently prosecute such Community Improvement to Completion shall, following notice and cure as set forth in Article 12, be an Event of Default.

3.5.2 Dedication of Public Improvements. Upon Completion of each Public Improvement in accordance with this Agreement, Developer shall dedicate and the City shall accept the Public Improvement.

3.5.3 Maintenance and Operation of Community Improvements by Developer and Successors. The Parties agree that Developer shall, in perpetuity, own, operate and maintain in good and workmanlike condition, and otherwise in accordance with all applicable laws and any applicable permits, all Community Improvements and Public Improvements that are not accepted by the City for maintenance. A map of the Project Site identifying all Community Improvements and Public Improvements subject to this on-going service, maintenance and operations obligation, and the respective land area of each sub-category of space (including, for example, the shuttle service, the park and open space system, bio-swales, sidewalk and streetscape areas, etc.) is attached hereto as Exhibit H and incorporated herein. The provisions of this Section 3.5.3 shall survive the expiration of this Agreement. In order to ensure that the Community Improvements owned by Developer are maintained in a clean, good and workmanlike condition, Developer shall record a declaration of covenants, conditions, and restrictions against the portion of the Project Site on which the Community Improvement will be located, but excluding any property owned by the City as and when acquired by the City ("**CC&Rs**"), that include a requirement that a master homeowner's association ("**Master HOA**") provide all necessary and ongoing maintenance and repairs to the Community Improvements and Public Improvements not accepted by the City for maintenance, and all ongoing services (including requirements of the Transit Subsidy Program), at no cost

to the City, with appropriate homeowners' dues to provide for such maintenance and services. The CC&Rs therefore may be recorded against the Project Site in phases. Notwithstanding anything to the contrary above or contained in any Master HOA governing document, Developer shall make commercially reasonable efforts to enforce the maintenance and repair obligations of the Master HOA during the Term. The CC&Rs identified herein shall be subject to reasonable review and approval by the City Attorney, OEWD, and the Planning Department prior to the issuance of the First Certificate of Occupancy for the first building constructed on the Project Site and shall expressly provide the City with a third-party right to enforce the maintenance and repair provisions of the CC&Rs. On or before the recordation of the CC&Rs, OEWD and the Planning Department shall reasonably approve the proposed budget for the on-going maintenance and operations of the Community Improvements, based on a third-party consultant study verifying the commercial reasonableness of an initial and 20-30 year "build-out" budget.

(a) Maintenance of Stormwater Management Improvements. Pursuant to the requirements of Appendix E of the Infrastructure Plan and the Public Works Code, the SFPUC must approve a Stormwater Control Plan that describes the activities required by Developer to appropriately design, install, and maintain the Stormwater Management Improvements within each Development Phase. In order to ensure that the Stormwater Management Improvements installed by Developer are maintained in the manner described in the Stormwater Control Plan, Developer shall record CC&Rs that include a requirement that the Master HOA provide ongoing maintenance and repairs to the Stormwater Management Improvements in the manner required by the Stormwater Control Plan, at no cost to the City, with appropriate homeowners' dues to provide for such maintenance. As set forth above, Developer shall make commercially reasonable efforts to enforce the maintenance and repair obligations of the Master HOA during the Term.

3.5.4 Permits to Enter City Property. Subject to the rights of any third-party and the City's reasonable agreement with respect to the scope of the proposed work and insurance or security requirements, and provided Developer is not then in default under this Agreement, each City Agency with jurisdiction shall grant permits to enter City-owned property on the City's standard form permit and otherwise on commercially reasonable terms in order to permit Developer to enter City-owned property as needed to perform investigatory work, construct Public Improvements and Stormwater Management Improvements, and complete the Mitigation Measures as contemplated by each Development Phase Approval. Such permits may include release, indemnification and security provisions in keeping with the City's standard practices.

3.6 Non-City Regulatory Approvals for Stormwater Management Improvements and Public Improvements.

3.6.1 Cooperation to Obtain Permits. The Parties acknowledge that certain Stormwater Management Improvements and Public Improvements, most particularly the proposed intersection improvements to 19th Avenue, the outfall of stormwater from the Project Site to Lake Merced, the realignment of the SFMTA light rail "M" Oceanview

and construction within the Coastal Zone, require the approval of federal, state, and local governmental agencies that are independent of the City and not a Party to this Agreement ("**Non-City Responsible Agencies**"), including but not limited to the California State Department of Transportation ("**Caltrans**") the California Public Utilities Commission ("**CPUC**"), and the California Coastal Commission. The Non-City Responsible Agencies may, at their sole discretion, disapprove installation of such Stormwater Management Improvements or Public Improvements, making such installation impossible. The City will cooperate with reasonable requests by Developer to obtain permits, agreements, or entitlements from Non-City Responsible Agencies for each such improvement, and as may be necessary or desirable to effectuate and implement development of the Project in accordance with the Basic Approvals (each, a "**Non-City Regulatory Approval**"). The City's commitment to Developer under this Section 3.6 is subject to the following conditions:

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

(b) Developer shall not agree to conditions or restrictions in any Non-City Regulatory Approval that could create: (1) any obligations on the part of any City Agency, unless the City Agency agrees to assume such obligations at the time of acceptance of the Public Improvements; or (2) any restrictions on City-owned property (or property to be owned by City under this Agreement), unless in each instance the City, including each affected City Agency, has previously approved the conditions or restrictions in writing, which approval may be given or withheld in its sole discretion.

3.6.2. Costs. Developer shall bear all costs associated with applying for and obtaining any necessary Non-City Regulatory Approval. Developer, at no cost to the City (excepting any City Cost approved by the City), shall be solely responsible for complying with any Non-City Regulatory Approval and any and all conditions or restrictions imposed as part of a Non-City Regulatory Approval, whether the conditions apply to the Project Site or outside of the Project Site. Developer shall have the right to appeal or contest any condition in any manner permitted by law imposed under any Non-City Regulatory Approval, but only with the prior consent of the affected City Agency if the City is a co-applicant or co-permittee or the appeal impacts the rights, obligations or potential liabilities of the City. If Developer demonstrates to the City's satisfaction that an appeal would not affect the City's rights, obligations or potential liabilities, the City shall not unreasonably withhold or delay its consent. In all other cases, the affected City Agencies shall have the right to give or withhold their consent in their sole discretion. Developer must pay or otherwise discharge any fines, penalties, or corrective actions imposed as a result of Developer's failure to comply with any Non-City Regulatory Approval, and Developer shall Indemnify the City for any and all Losses relating to Developer's failure to comply with any Non-City Regulatory Approval.

3.6.3 Continuing City Obligations. Certain Non-City Regulatory Approvals may include conditions that entail special maintenance or other obligations that continue after the City accepts the dedication of Completed Public Improvements (each, a "**Continuing Obligation**"). Standard maintenance of Public Improvements, in keeping with City's existing practices, shall not be deemed a Continuing Obligation. Developer must notify all affected City Agencies in writing and include a clear description of any Continuing Obligation, and each affected City Agency must approve the Continuing Obligation in writing in its sole discretion before Developer agrees to the Non-City Regulatory Approval and the Continuing Obligation. Upon the City's acceptance of any Public Improvements that has a Continuing Obligation that was approved by the City as set forth above, the City will assume the Continuing Obligation and notify the Non-City Responsible Agency that gave the applicable Non-City Regulatory Approval of this fact.

3.6.4 Notice to City. In the event that Developer has not obtained, despite its good faith diligent efforts, a necessary Non-City Regulatory Approval for a particular Community Improvement within three (3) years of Developer's or the City's application for the same, Developer shall provide written notice to the City of its intention to (i) continue to seek the required Non-City Regulatory Approval from the Non-City Responsible Agency, (ii) substitute the requirement that Developer construct such Community Improvement with a requirement that Developer construct another Community Improvement listed on the Phasing Plan (a "**Substitute Community Improvement**") or (iii) substitute the requirement that Developer construct the Community Improvement with a requirement that Developer construct a new Community Improvement not listed on the Phasing Plan (an "**Alternate Community Improvement**"); *provided, however*, the provisions of this Section 3.6.4 shall not apply to the SFMTA light rail "M" Oceanview, which are addressed separately in Section 3.6.9.

3.6.5 Extensions and Negotiations for Substitute or Alternate Community Improvements. If Developer provides notice to the City of its intention to continue to seek Non-City Regulatory Approval of the Community Improvement, as permitted by Section 3.6.4, the Parties shall continue to make good faith and commercially reasonable efforts to obtain the required Non-City Regulatory Approval for a reasonable period agreed to by the Parties (the "**Extension Period**"). The Parties shall meet and confer in good faith to determine what work within the Development Phase can continue during the Extension Period in light of the failure to obtain the Non-City Regulatory Approval, subject to the Mitigation Measures and the Proportionality, Priority and Proximity Requirement. If, after the expiration of the Extension Period, Developer has not yet obtained the required Non-City Regulatory Approval for the Community Improvement, Developer shall provide written notice to the City of its intention to (i) pursue a Substitute Community Improvement, or (ii) pursue an Alternate Public Improvement. The Parties, by mutual consent, may also agree in writing to an extension of the Extension Period to obtain required approvals for any Community Improvement, Substitute Community Improvement or Alternate Community Improvement, which shall not require an amendment to this Agreement.

3.6.6. Substitute Community Improvement. If Developer provides notice of its intention to pursue a Substitute Community Improvement pursuant to Section 3.6.4 or

Section 3.6.5, the City shall review the proposed Substitute Community Improvement as set forth in an amendment to the Development Phase Approval (which amendment process is set forth in Section 3.4.6 of this Agreement). Upon approval of such amended Development Phase Application, Developer shall continue to file Design Review Applications and obtain Design Review Approvals and any associated permits necessary to construct and complete the amended Development Phase in which the original Community Improvement would have been required in accordance with the amended Development Phase Approval. The time permitted for Developer to complete construction of the Substitute Community Improvement shall be established in writing (without the need for an amendment to this Agreement), and the City shall allow a commercially reasonable time for Developer to Complete the Substitute Community Improvement without delaying or preventing, or denying approvals for, any other development set forth in the amended Development Phase Approval.

3.6.7 Alternate Community Improvement. If Developer provides notice of its intention to pursue an Alternate Community Improvement pursuant to Section 3.6.4 or Section 3.6.5, the Parties shall make reasonable and good faith efforts to identify such Alternate Community Improvement in a timely manner. The Parties shall negotiate in good faith to reach agreement on the Alternate Community Improvement. The Parties acknowledge and agree that any Alternate Community Improvement should be designed so as to replicate the anticipated public benefits from the Community Improvement to be eliminated to the greatest possible extent but without increasing the cost to Developer of the original Community Improvement, thus maintaining the benefit of the bargain for both Parties. The estimated cost to Developer shall be determined by the methodology set forth in Section 3.6.8. In addition, any proposed Alternate Community Improvement should minimize disruptions or alterations to the Phasing Plan and Project design. The City shall review the proposed Alternate Community Improvement pursuant to the Development Phase Approval amendment process set forth in Section 3.4.6 of this Agreement. Upon City approval of such amended Development Phase Application, Developer may file Design Review Applications and obtain Design Review Approvals and any associated permits necessary to construct and complete the amended Development Phase in which the original Community Improvement would have been required. The time permitted for Developer to complete construction of the Alternate Community Improvement shall be established in writing (without need for an amendment to this Agreement), and the City shall allow a commercially reasonable time for Developer to Complete the Alternate Community Improvement without delaying, preventing or denying approvals for any other development set forth in the amended Development Phase Approval. The Parties understand and agree that any Alternate Community Improvement may require additional environmental review under CEQA, and Developer shall be responsible for any and all costs associated with such CEQA review. So long as the Parties continue to diligently work together to negotiate proposed adjustments relating to an Alternate Community Improvement, any delay caused thereby shall be deemed to be an Excusable Delay. In the event that the Parties are not able to agree upon an Alternate Community Improvement within a reasonable amount of time, the Developer shall pay to City the estimated cost to complete the original Community Improvement as determined by the methodology set forth in Section 3.6.8 below. The City shall use such payments to fund the design and construction of improvements or the

provision of services that are proximate to the Project Site and that, as reasonably determined by the City, replicate the public benefits of the original Community Improvement to the extent possible.

3.6.8 Methodology for Determining the Estimated Cost to Complete the Original Community Improvement. In the event a Community Improvement is replaced with an Alternate Community Improvement or payment of an in lieu payment is required as set forth in Section 3.6.7, an economic value must be assigned to the original Community Improvement so that the benefit of the bargain of this Agreement may be preserved for both the City and Developer. Accordingly, Developer shall select one construction manager, contractor or professional construction cost estimator (the "**Cost Estimator**"), who shall develop an estimate of the total costs remaining to complete the original Community Improvement as of the date of the cost estimate. The Cost Estimator shall be qualified to prepare cost estimates for the applicable Community Improvement (e.g., transportation engineer, landscape architect, etc.). The Cost Estimator shall be provided with plans, designs, and construction specifications for the original Community Improvement to the extent completed as of such date. The cost estimate shall include both hard construction costs and soft costs, with as much cost detail for individual cost line items as possible. After the Cost Estimator completes the cost estimate, the City shall have forty-five (45) days to review and consider the cost estimate. If the City rejects the cost estimate in its reasonable discretion, the City shall select a Cost Estimator with the qualifications required by this Section. After completion of the City's cost estimate, the Parties agree to meet and confer in good faith to reach agreement on the cost. If the Parties are not able to reach such agreement within twenty (20) days, then the two Cost Estimators shall select a third Cost Estimator who shall decide which of the two original cost estimates shall be used as the cost. The determination of the third Cost Estimator shall be binding and final. When an in lieu payment is required, the cost that results from the process detailed in this Section shall represent the value of the in lieu payment.

3.6.9 SFMTA Light Rail "M" Oceanview Light Rail Line Realignment and Tier 5 Improvements.

(a) Generally. The Parties acknowledge that the future extension and realignment of the SFMTA light rail "M" Oceanview as shown in the Parkmerced Plan Documents (the "**MUNI Realignment**") through the Project Site represents a fundamental component of the Project's land use program and environmental sustainability goals, and represents a major public benefit of the Project. The Parties further acknowledge that the MUNI Realignment requires approval of Non-City Responsible Agencies, including but not limited to Caltrans and the CPUC, and that Non-City Responsible Agencies may, at their sole discretion, disapprove the MUNI Realignment, making such installation impossible. The Parties further acknowledge that the design of the MUNI Realignment may be affected by further conceptual transportation improvements identified in the 19th Avenue Corridor Study "Tier 5" analysis (the "**Tier 5 Improvements**"). The City has not refined or selected any of the conceptual Tier 5 Improvements at this time and therefore the timing of implementation of any such improvements is

speculative. The Parties acknowledge that, over time, a continued lack of certainty about whether Non-City Responsible Agencies will approve the MUNI Realignment or whether the Tier 5 Improvements may affect the MUNI Realignment may create significant Project Site planning challenges for the Project and capital planning challenges for SFMTA and the City. The Parties further acknowledge that the disapproval of the MUNI Realignment by Non-City Responsible Agencies may materially affect the Project and the City's community benefit program by compromising the Project's land use plan and environmental sustainability goals.

(b) Good Faith Efforts; Notice by City; Tier 5 Modification of the MUNI Realignment, Termination of MUNI Realignment Requirement and Selection of Alternate Community Improvement. In recognition of the foregoing, promptly following the Effective Date, the Parties shall make good faith and commercially reasonable efforts to study, refine and design the conceptual Tier 5 Improvements to a level of detail required to determine whether the City wishes to pursue approval of any of the potential Tier 5 Improvements (the "**Tier 5 Modification Process**"). Developer shall participate in such discussions and shall cooperate with the City to coordinate design proposals. On or before the date two (2) years from the Effective Date, the City acting through the SFMTA shall provide notice to Developer indicating whether the City intends to (i) seek approval from Non-City Responsible Agencies of the original MUNI Realignment, (ii) seek approval of a modified MUNI Realignment to allow for any proposed Tier 5 Improvements (the "**Modified Tier 5 MUNI Realignment**") or (iii) seek approval of both simultaneously from Non-City Responsible Agencies (collectively, the "**MUNI Project**"). If the City fails to give such notice, Developer shall request such notice from the City, and City shall respond to such request within thirty (30) days. Upon notice by the City, the Parties agree to make good faith and commercially reasonable efforts to seek approval of the MUNI Project from City and Non-City Responsible Agencies, which shall include the diligent preparation and submittal by both Parties of all permit applications and information required to obtain the necessary permits or approvals. In light of the challenges created for both the SFMTA and Developer by continued uncertainty about the approval and construction of the MUNI Project, the Parties agree that, if the MUNI Project has not been approved by all necessary Non-City Responsible Agencies within five (5) years from the date of City's notice to Developer regarding the MUNI Project, any requirement in this Agreement or any of the Basic Approvals to install or pay funds for the MUNI Project shall no longer be of any force or effect provided the City and Developer have selected an Alternate Community Improvement of equivalent economic value to replace the former MUNI Project (which could include, for example, the enlargement of the existing MUNI platform at the intersection of 19th Avenue and Holloway Avenue), following the procedures set forth in Section 3.6.7 for selection of Alternate Community Improvements. Notwithstanding anything to the contrary in Section 3.6.7, the Parties shall take into consideration the net present value of any adverse economic impacts to the Project caused by the failure to extend the SFMTA light rail "M" Oceanview into the Project Site (and

add the net present value of any positive economic impacts to the Project caused by the Alternate Community Improvement) in determining economic equivalency as set forth above. To determine economic equivalency, the Parties shall determine the reasonably estimated cost to Developer of completing the MUNI Project and the Alternate Community Improvement, each as determined by the methodology set forth in Section 3.6.8. Any adjustments for the reasonably estimated economic loss attributable to the elimination of the MUNI Project and the reasonably estimated economic benefit attributable to the inclusion of the Alternate Community Improvement shall be determined by the methodology set forth in Section 3.6.8 except instead of using a Cost Estimator, the Parties shall select an appraiser or real estate professional who (A) is practicing and has worked for at least ten (10) years in either a national firm or a regional firm based in California, (B) is not an affiliate of the Developer and has no equity investment in Developer, (C) has particular experience in California real property transactions involving similar developments, and (D) has no conflict of interest as evidenced by contractual relationships with Developer at that time or in the immediately preceding twelve (12) months. Once an Alternate Community Improvement for the MUNI Project has been selected and agreed upon by both Parties, the Parties shall prepare an addendum to this Agreement to define the terms and conditions of the Alternate Community Improvement and the termination of any MUNI Project requirements. Any such addendum shall not be deemed an amendment to this Agreement, but shall be subject to the approval of the Executive Director of the SFMTA and the Planning Director.

(c) Permitted Tier 5 Improvements. Developer's contribution to any Modified Tier 5 MUNI Realignment shall equal the reasonably estimated cost of the MUNI Realignment contemplated by this Agreement and set forth in the Infrastructure Plan. The reasonably estimated cost shall be determined by the methodology set forth in Section 3.6.8.

(d) Commencement of Construction of the MUNI Project. Developer shall commence construction of the MUNI Project before or upon Completion of twenty-five hundred (2,500) net new residential units at the Project Site. Construction shall be deemed to have commenced if (i) site or building permits have been issued by the City for all or a portion of the MUNI Project, and (ii) some identifiable construction, such as grading, of all or a portion of the MUNI Project has occurred. Notwithstanding the foregoing, Developer may commence construction and Complete more than 2,500 net new residential units before commencement of construction of the MUNI Project: if (A) SFMTA requests a delay to the commencement of construction of the MUNI Project, provided that SFMTA shall not request such a delay to a date that is later than seven (7) years from the Effective Date, or if (B) Developer has submitted all applications to both City Agencies and Non-City Agencies for all approvals and permits required to commence and Complete construction of the physical rail facilities of the MUNI Project (including the alignment and grading of the track but excluding ancillary facilities the permitting of which will not affect the alignment, grading, or subsurface infrastructure work of the MUNI Project, such

as signage, station architecture, and finishing of pavements) (the "**Major MUNI Project Permits**") but has not yet received final and binding approval of all the Major MUNI Project Permits; *provided, however*, that Developer shall commence construction of the MUNI Project promptly following final and binding approval of the Major MUNI Project Permits. For the purposes of this Section, "final and binding approval" shall mean that all Major MUNI Project Permits have been issued, and no appeal has been filed within 90 days thereafter (or, if such an appeal has been filed, then the final adjudication of such appeal). Upon commencement of construction, Developer shall continue the work at a commercially reasonable pace to Completion of the MUNI Project in accordance with applicable permits to ensure that there are no material gaps between the start and Completion of all work, subject to any Excusable Delay. Notwithstanding anything to the contrary above, in no event shall Developer commence construction of more than 4,000 net new residential units until the MUNI Project is Complete (or, if Developer is constructing an Alternate Community Improvement to the MUNI Project in accordance with Section 3.6.9(b), then Developer shall have the right to continue constructing new residential units so long as Developer continues to meet the schedule of performance for such Alternative Community Improvement as set forth in Section 3.6.7).

(e) Phased Construction to preserve the option of a Modified Tier 5 MUNI Realignment. After one or both of the options described in subsection (b) above for the MUNI Project have been approved (i.e., the original MUNI Realignment and/or the Modified Tier 5 MUNI Realignment), the City shall allow Developer to begin construction of the MUNI Realignment if the City has not yet obtained the separate approvals and funding necessary to implement the Modified Tier 5 MUNI Realignment. However, the Parties acknowledge that the Modified Tier 5 MUNI Realignment represents a significant opportunity to the City and Developer to substantially improve the performance of the SFMTA light rail "M" Oceanview above and beyond the public benefits provided by the MUNI Realignment. Specifically, the Modified Tier 5 MUNI Realignment has the potential to decrease travel times and operating costs of the SFMTA light rail "M" Oceanview, improve pedestrian safety and accessibility throughout the 19th Avenue corridor, and provide a future link to the Daly City BART station. The Parties further acknowledge that the City may simultaneously pursue approval of both variants, the MUNI Realignment and the Modified Tier 5 MUNI Realignment, with Caltrans and the CPUC, while also meeting with San Francisco State University and the owners of the Stonestown Shopping Center (collectively, the "**Adjoining Landowners**") to secure the rights to develop the Modified Tier 5 MUNI Realignment. In the event that Caltrans and the CPUC approve both variants but the City has not obtained funding or approvals from the Adjoining Landowners to commence the Modified Tier 5 MUNI Realignment, the City may require that Developer delay commencement of construction of two key portions of the proposed MUNI Realignment to preserve the City's option to develop the Modified Tier 5 MUNI Realignment, while allowing the remainder of the MUNI Realignment to proceed. These two key portions are separately identified in the diagram attached hereto as Exhibit I and are: (i) the "Felix Avenue Rail

Extension" and (ii) the "Transit Plaza." The City may require such delayed commencement for a period of no longer than two (2) years from Developer's commencement of construction of the MUNI Project.

3.6.10 Stormwater Management System Discharge Alternatives

(a) Generally. The Project includes a series of bioswales, ponds, and other natural filtration systems to capture and filter stormwater runoff from buildings and streets in accordance with the Infrastructure Plan and the Sustainability Plan. As shown in the Basic Approvals, the Project further proposes to disconnect the stormwater infrastructure from the City's combined sewer system, so that the stormwater either (i) percolates into the aquifer beneath the Project Site or (ii) is discharged into Lake Merced though existing pipes or a newly-constructed outfall (the "**Outfall to Lake Merced**") (collectively, the "**Stormwater Discharge Alternatives**"). The Parties acknowledge that construction of the Outfall to Lake Merced may require Non-City Regulatory Approvals, including but not limited to the Regional Water Quality Control Board and the U.S. Army Corps of Engineers, and that Non-City Responsible Agencies may, at their sole discretion, disapprove some aspect of the Outfall to Lake Merced, making such disconnection impossible. The Parties further acknowledge that the design and advisability of the Stormwater Discharge Alternatives may be affected by other related processes and projects, including the SFPUC's efforts to maximize the utility of the Westside groundwater aquifer and to manage the water level and quality in Lake Merced. The City has not selected one of the Stormwater Discharge Alternatives studied in the Infrastructure Plan and the FEIR at this time and therefore the timing of implementation of any such improvement is speculative.

(b) Good Faith Efforts. In recognition of the foregoing, immediately upon the Effective Date, Parties shall make good faith and commercially reasonable efforts to study, refine and design the Stormwater Discharge Alternatives, to a level of detail required to determine whether the City wishes to pursue approval of any of the Stormwater Discharge Alternatives.

(c) Notice by City. On or before the date that is nine (9) months after the Effective Date, the SFPUC shall provide notice to Developer indicating (i) support for one of the Stormwater Discharge Alternatives (the "**Preferred Stormwater Discharge Alternative**") or (ii) direction to Developer to convey stormwater flows back into the City's combined sewer system. If the SFPUC fails to give such notice, Developer shall request such notice from the SFPUC, which must respond to such request within thirty (30) days.

(d) Implementation of the Preferred Stormwater Alternative. Upon notice by the SFPUC as described in Section 3.6.10(c) indicating the Preferred Stormwater Discharge Alternative, the Parties agree to make good faith and commercially reasonable efforts to seek any necessary approvals of the Preferred Stormwater Discharge Alternative from Non-City Responsible Agencies. If

applicable, the Outfall to Lake Merced shall be constructed and connected to the areas where appropriately separated stormwater infrastructure has been completed at the earliest possible date, in part to avoid duplicative costs of upgrading combined sewers for increased flows in the interim before the Outfall to Lake Merced is fully implemented.

(e) Termination of Outfall to Lake Merced Requirement. In light of the challenges created to both the SFPUC and Developer by continued uncertainty about the approval and construction of the Outfall to Lake Merced, the Parties agree that, if the Outfall to Lake Merced is the Preferred Stormwater Discharge Alternative and if the Outfall to Lake Merced has not received all necessary final, binding and non-appealable approvals required for construction within five (5) years from the date of City's notice to Developer as described in Section 3.6.10(c), any requirement in this Agreement or any of the Basic Approvals to install or pay funds for the Outfall to Lake Merced shall no longer be of any force or effect. SFPUC and Developer shall then select one of the remaining alternatives described in Appendix C of the Infrastructure Plan. Once a new Stormwater Discharge Alternative has been selected and agreed upon by both Parties, the Parties shall execute an addendum to this Agreement to reflect such agreement. Any such addendum shall not be deemed an amendment to this Agreement, but shall require the prior approval of the SFPUC Commission and the DPW Director.

(f) Compliance with Stormwater Management Ordinance. Notwithstanding the foregoing, Developer agrees to comply with all requirements of the City's Stormwater Management Ordinance at all times during Project construction, including during the review of the Outfall to Lake Merced.

3.7 Design and Construction of SFMTA Infrastructure.

3.7.1 Design of Intersections and Traffic Improvements.

(a) Developer shall be responsible for the design of upgrades and reconfiguration of intersections and other infrastructure affecting traffic in the public right of way as set forth in the Parkmerced Plan Documents (the "**Traffic Improvements**"). The SFMTA and DPW shall review the designs of intersections and Traffic Improvements to confirm that the designs meet SFMTA and other applicable performance requirements and specifications in accordance with the terms of this Agreement. Developer shall not construct any Traffic Improvement without the SFMTA's prior written approval of the design. The design shall include the layout of the intersection, traffic calming infrastructure, medians, bulb outs, striping, signal lights, signal controllers and ancillary equipment, street lights, and all necessary support infrastructure, such as poles, equipment cabinets, cabling, conduits, and duct banks, and other elements listed in Exhibit P.

(d) Developer's intersection and Traffic Improvement designs must conform to the then-current design requirements and performance and equipment specifications of the SFMTA, the CPUC and Caltrans in effect at the time the design is commenced.

(c) If requested by Developer and acceptable to SFMTA, SFMTA may design one or more of the intersections or Traffic Improvements, or elements thereof. The City shall have no liability whatsoever to Developer or its contractors and subcontractors for the accuracy or completeness of such designs. Said limitation of liability shall include, but is not limited to, delay to construction of the Public Improvements or delay to the Project.

3.7.2 Design of SFMTA Light Rail "M" Oceanview Relocation and Other Transit Improvements.

(a) Developer shall be responsible for the design of the extension of the SFMTA light rail "M" Oceanview and cutover from and to the existing alignment, as generally described in the Transportation Plan. Developer shall be responsible for the design of all elements of the light rail line extension, including but not limited to the station, trackway, signaling and control, and traction power elements listed in Exhibit P.

(b) Before starting any design work on the SFMTA light rail "M" Oceanview, Developer shall notify the SFMTA. At SFMTA's option, SFMTA may provide design services for the trackway and overhead traction power elements of the SFMTA light rail "M" Oceanview extension provided SFMTA can meet Developer's reasonable construction schedule and perform the design work at a commercially reasonable rate.

(c) At Developer's request, SFMTA may provide shelters, through its bus shelter contractor, for private shuttle bus stops. If Developer does not make such request, Developer shall be responsible for the design and construction of private shuttle bus stops within the development, in conformance with City, and Americans with Disabilities Act requirements. The SFMTA, through its bus shelter contractor, shall provide the shelters for SFMTA bus stops.

(d) Developer shall have no claim to revenue from advertising placed through SFMTA contractors on SFMTA bus shelters and SFMTA light rail "M" Oceanview platforms and stations. If the SFMTA provides shelters for private shuttle buses, Developer shall have no claim to advertising placed through SFMTA contractors on those shelters. Developer shall have the right, but not the obligation, to provide wayfinding and other non-commercial signage with SFMTA's agreement at bus shelters and SFMTA light rail "M" Oceanview stations.

3.7.3 Design Review.

(a) Within each Development Phase, SFMTA shall review and provide comments to Developer's designs of SFMTA Infrastructure upon completion of 35 percent, 90 percent and 100 percent of the design. SFMTA shall use its best efforts to complete said reviews expeditiously and within twenty (20) business days of receipt of designs from Developer, but may require more time depending on the scope and complexity of the design. Developer shall incorporate SFMTA's comments and requested corrections into its designs to the extent that it does not disagree with them. If Developer disagrees or otherwise objects to SFMTA's comments or corrections, Developer shall provide SFMTA with a written explanation and shall confer with SFMTA to resolve said disagreements or objections.

(b) The SFMTA shall expend reasonable care and effort in expeditiously reviewing Developer's designs, providing comments and approval, and inspecting constructed SFMTA Infrastructure. The foregoing notwithstanding, SFMTA shall have no liability for delay to the construction of a Public Improvement or the Project.

(c) Developer shall at all times be responsible for the accuracy, completeness, and compliance of its designs with all applicable laws and regulations and requirements imposed by City and Non-City Responsible Agencies with jurisdiction over at-grade light rail design, construction, and operation, including but not limited to Caltrans and the CPUC. Developer shall at all times be responsible for the costs of any delay or damages arising from its designs. The City shall have no liability for said designs unless and until the Public Improvement has been fully constructed and tested and the City has accepted and assumed ownership of said Public Improvement pursuant to applicable requirements for government design immunity. Nothing in this Agreement shall affect the City's sovereign or other governmental immunities under applicable law.

3.7.4 Construction Responsibilities.

(a) Construction. Developer shall be responsible for the construction, installation, testing and commissioning of every element of the SFMTA Infrastructure.

(b) Contracting. Developer shall establish prerequisites as to experience, expertise, and resources for contractors that may bid on the construction of the SFMTA Infrastructure. Developer shall provide SFMTA an opportunity to review and comment on these prerequisites. Intersection/signal contractors must have previously performed similar work in San Francisco. Contractors for the SFMTA light rail "M" Oceanview work must have previous experience with light rail construction subject to CPUC and Caltrans jurisdiction.

(c) Compensation. The City shall have no liability for the payment of compensation to contractors under contract with Developer to construct the SFMTA Infrastructure (but the City shall be responsible for the payment of contractors for any contract entered into by the City). The Developer agrees and stipulates for all purposes that the design and construction of the SFMTA Infrastructure are not public works and are not subject to stop notices or mechanics liens against the City. Developer agrees and stipulates for all purposes that the funds intended to reimburse the City for its costs of review and inspection of the design and construction of SFMTA Infrastructure are not contract funds subject to stop notices or other liens for Developer's refusal or failure (or that of any Developer contractor) to pay a subcontractor or material supplier.

(d) Access. Developer shall provide SFMTA access at all reasonable times to construction and job sites for review and inspection of SFMTA Infrastructure.

3.7.5 Financial Responsibility. Developer has prepared and SFMTA has reviewed design and construction cost estimates for the SFMTA Infrastructure. Developer is, and shall at all times be, wholly responsible for all of the costs of the SFMTA Infrastructure. The City has reviewed such cost estimates only as good faith effort to the support the Project and the City shall have no liability whatsoever for the accuracy of those estimates.

3.7.6 SFMTA Acceptance of SFMTA Infrastructure. SFMTA will accept each SFMTA Infrastructure only when Complete.

3.7.7 Warranty. All SFMTA Infrastructure shall have a two (2) year warranty provided by the construction contractor. The warranty period shall commence upon the City's acceptance of the SFMTA Infrastructure as Complete. All manufacturer warranties for equipment and materials used in SFMTA Infrastructure shall be transferred to the City upon the City's acceptance of the associated SFMTA Infrastructure.

3.7.8 Permits. Developer shall be responsible for obtaining all permits necessary for the construction of the SFMTA Infrastructure, including permits from Caltrans and the CPUC. SFMTA will assist Developer in obtaining such permits as necessary.

3.8 Financing of Any Public Improvements. At Developer's request, Developer and the City agree to use good faith efforts to pursue the creation of a Community Facilities District ("**CFD**") under the Mello-Roos Community Facilities Act of 1982 (California Government Code § 53311 et seq.) within the Project Site only to finance the capital costs for Public Improvements and maintenance and other costs for specified Community Improvements, including maintenance of the parks and open spaces in the Project Site and any ongoing commitments made by Developer such as the BART shuttle. Any and all costs incurred by the City in negotiating and forming a CFD shall be City Costs. The terms and conditions of any CFD must be agreed to by both Parties, each in their sole discretion. Upon agreement on the terms and conditions for a CFD, and subject to market conditions and fiscal prudence, Developer agrees to vote in favor of

the formation of the CFD and the City shall use reasonable efforts to issue or cause issuance (potentially through the Association of Bay Area Governments) of bonds for the formed CFD in keeping with standard City practices. Failure to form a CFD or to issue CFD bonds or other debt shall not relieve Developer of its obligations under this Agreement, including but not limited to the obligation to Complete Public Improvements or Public Improvements as and when required.

3.9 Cooperation.

3.9.1 Agreement to Cooperate. The Parties agree to cooperate with one another to expeditiously implement the Project in accordance with the Basic Approvals, Development Phase Approvals, Design Review Approvals, Implementing Approvals and this Agreement, and to undertake and complete all actions or proceedings reasonably necessary or appropriate to ensure that the objectives of the Basic Approvals are fulfilled during the Term. Nothing in this Agreement obligates the City to spend any sums of money or incur any costs other than City Costs that Developer must reimburse under this Agreement or costs that Developer must reimburse through the payment of Processing Fees. Subject to the requirements of Section 3.4.5, nothing in this Agreement obligates the Developer to proceed with the Project, including without limitation filing Development Phase Applications, unless it chooses to do so in its sole discretion. The Parties may agree to establish a task force, similar to the Mission Bay Task Force, to create efficiencies and coordinate the roles of various City departments in implementing this Agreement.

3.9.2 Role of Planning Department. The Parties agree that the Planning Department will act as the City's lead agency to facilitate coordinated City review of applications for Development Phase Approvals, Design Review Approvals, and Implementing Approvals. As such, Planning Department staff will: (i) work with Developer to ensure that all such applications are technically sufficient and constitute complete applications and (ii) interface with City Agency staff responsible for reviewing any application under this Agreement to ensure that City Agency review of such applications are concurrent and that the approval process is efficient and orderly and avoids redundancies.

3.9.3 City Agency Review of Individual Permit Applications. Following issuance of Design Review Approval as set forth in this Agreement, the Parties agree to prepare and consider applications for Implementing Approvals in the following manner:

(a) City Agencies. Developer will submit each application for Implementing Approvals, including applications for the design and construction of Community Improvements and Mitigation Measures, to the applicable City Agencies. Each City Agency will review submittals made to it for consistency with the Prior Approvals, and will use good faith efforts to provide comments and make recommendations to the Developer within thirty (30) days of the City Agency's receipt of such application. The City Agencies will not impose requirements or conditions that are inconsistent with the Prior Approvals, and will not disapprove the application based on items that are consistent with the Prior Approvals, including but not limited to denying approval of Community

Improvements based upon items that are consistent with the Prior Approvals. Any City Agency denial of an application for an Implementing Approval shall include a statement of the reasons for such denial. Developer will work collaboratively with the City Agencies to ensure that such application for an Implementing Approval is discussed as early in the review process as possible and that Developer and the City Agencies act in concert with respect to these matters.

(b) SFMTA. Upon submittal of an application that includes any SFMTA Infrastructure or any transportation-related Mitigation Measure within the SFMTA's jurisdiction, the SFMTA will review each such application, or applicable portions thereof, and use good faith efforts to provide comments to Developer within thirty (30) days of the SFMTA's receipt of such application.

(c) SFPUC. Upon submittal of an application that includes any Stormwater Management Improvements or Public Improvements that fall under the jurisdiction of SFPUC or any public utility-related Mitigation Measure within the SFPUC's jurisdiction, the SFPUC will review each such application, or applicable portions thereof, and use good faith efforts to provide comments to Developer within thirty (30) days of the SFPUC's receipt of such application. The SFPUC shall also review and approve each Development Phase Application as set forth in Exhibit Q.

(d) SFFD. Upon submittal of an application that includes any Community Improvements that fall under the jurisdiction of SFFD or any fire suppression-related Mitigation Measure within the SFFD's jurisdiction, the SFFD will review each such application, or applicable portions thereof, and use good faith efforts to provide comments to Developer within thirty (30) days of the SFFD's receipt of such application.

(e) DPW. Upon submittal of an application that includes any Community Improvements that fall under the jurisdiction of DPW or any Mitigation Measure within the DPW's jurisdiction, DPW will review each such application, or applicable portions thereof, and use good faith efforts to provide comments to Developer within thirty (30) days of DPW's receipt of such application.

(f) MOH. Upon submittal of an application that includes any BMR Units, MOH will review each such application, or applicable portions thereof, and use good faith efforts to provide comments to Developer within thirty (30) days of MOH's receipt of such application.

3.9.4 Specific Actions by the City. City actions and proceedings subject to this Agreement shall be processed through the Planning Department, as well as affected City Agencies (and when required by applicable law, the Board of Supervisors), and shall include:

(a) Street Vacation, Dedication, Acceptance, and Other Street Related Actions. Instituting and completing proceedings for opening, closing, vacating, widening, modifying, or changing the grades of streets, alleys, sidewalks, and other public rights-of-way and for other necessary modifications of the streets, the street layout, and other public rights-of-way in the Project Site, including any requirement to abandon, remove, and relocate public utilities (and, when applicable, city utilities) within the public rights-of-way as specifically identified and approved in a Development Phase Approval, and as may be necessary to carry out the Basic Approvals and the Implementing Approvals.

(b) Acquisition. Acquiring land and Public Improvements from Developer, by accepting Developer's dedication of land and Public Improvements that have been Completed in accordance with this Agreement, the Basic Approvals, Implementing Approvals and approved plans and specifications.

(c) Release of Security. Releasing security as and when required under the Subdivision Code in accordance with any public improvement agreement.

(d) Environmental Review. Complying with and implementing Mitigation Measures for which the City is responsible, reviewing feasibility studies for Mitigation Measures, or completing any subsequent environmental review at Developer's sole cost.

3.10 Subdivision Maps.

3.10.1 Developer shall have the right, from time to time and at any time, to file subdivision map applications (including phased final map applications) with respect to some or all of the Project Site, to subdivide or reconfigure the parcels comprising the Project Site as may be necessary or desirable in order to develop a particular Development Phase or Sub-Phase of the Project or to lease, mortgage or sell all or some portion of the Project Site, consistent with the density, block and parcel sizes set forth in the Parkmerced Design Standards and Guidelines. The City acknowledges that Developer intends to create and sell condominiums on the Project Site (excluding the Replacement Units), and that such intent is reflected in the Basic Approvals and Parkmerced Plan Documents.

3.10.2 Notwithstanding anything to the contrary set forth above, in any subdivision or condominium map placed on the Project Site, the Replacement Units and the Tower Units shall not be subdivided into separate condominium units so as to ensure that the Replacement Units and the Tower Units remain rental units, under common ownership for each such building, for the life of each such building in which a Replacement Unit or Tower Unit is located. In the event the City rescinds the Rent Ordinance by legislative action or operation of law, in which case the foregoing prohibition on any subdivision or condominium mapping of the Replacement Units (but not the Tower Units) shall remain in effect notwithstanding any such rescission. Developer shall record restrictions running with the land, in form and substance

satisfactory to the Planning Director and the City Attorney (the "**Recorded Restrictions**"), binding upon Developer and successor owners of all or part of the Replacement Units, that shall, without limitation: (i) require that the Replacement Units remain rental for the life of the buildings in which they are located, and require that the language set forth in Exhibit Z be included in all leases for each Replacement Unit; (ii) waive any and all rights to evict tenants under the Ellis Act and any other laws or regulations that permit owner move-in evictions; (iii) apply the terms of Rent Ordinance to the Replacement Units, and acknowledge the non-applicability of the Costa-Hawkins Act, and provide the City and each tenant in a Replacement Unit the express right to enforce these provisions and collect attorneys fees and costs in any enforcement action, and expressly include the remedies set forth in Section 12.8 and Section 12.9 if rent control under the Rent Ordinance is deemed not to apply to the Replacement Units for any reason; and (iv) waive any other laws or regulations that would limit the ability of the City or any tenant to enforce the rental-only requirements and the other benefits and amenities relative to the Replacement Units under this Agreement. Developer, on behalf of itself and successor owners, agrees that it shall not seek to challenge the applicability or enforceability of the Recorded Restrictions. Without limiting the City's rights and remedies as set forth in this Agreement, the Parties acknowledge and agree that the City shall have the right of specific performance to enforce the Recorded Restrictions against Developer and all successor owners. The City would not be willing to enter into this Agreement, permit the demolition of Existing Units, or approve a subdivision or condominium map, without the agreement and understanding as set forth above.

3.10.3 Nothing in this Agreement shall authorize Developer to subdivide or use any of the Project Site for purposes of sale, lease or financing in any manner that conflicts with the California Subdivision Map Act (California Government Code § 66410 et seq.), or with the Subdivision Code, or that removes the Replacement Units from the rental market for the life of the buildings in which they are located, or that removes or renders ineffective or unenforceable the Rent Ordinance, or a similar successor ordinance, as applied against the Replacement Units, whether or not the initial Existing Tenant moves into the Replacement Unit. Developer's commitment to maintain the Replacement Units as rent controlled under the Rent Ordinance shall survive the termination or expiration of this Agreement for so long as the Rent Ordinance, or a similar successor ordinance remains in effect, and does not depend upon the initial occupancy of the Replacement Unit by an Existing Tenant or any other person, and such commitments shall be evidenced by the Recorded Restrictions. Developer shall, as part of the Recorded Restrictions or as part of a subdivision map, waive any and all rights to evict tenants under the Ellis Act and any other laws or regulations that permit owner move-in evictions for any of the Replacement Units.

3.10.4 Nothing in this Agreement shall prevent the City from enacting or adopting changes in the methods and procedures for processing subdivision and parcel maps so long as such changes do not conflict with the provisions of this Agreement or with the Basic Approvals or any Implementing Approvals as set forth in Section 2.2.

3.10.5 Pursuant to Section 65867.5(c) of the Development Agreement Statute, any tentative map prepared for the Project shall comply with the provisions of

California Government Code section 66473.7 concerning the availability of a sufficient water supply.

3.11 Interim Uses. Notwithstanding the zoning designations set forth in the Parkmerced Special Use District, Developer may install interim or temporary uses on sites for up to four (4) years that might be inconsistent with the underlying zoning yet consistent with the principally permitted uses elsewhere on the Project Site or other permissible temporary or interim uses allowed under the Planning Code. Developer also may use sites for temporary or interim Community Improvements even though such use may not be permitted under the Parkmerced Special Use District.

3.12 Sustainable Energy Agreement. Developer shall comply with the terms and provision of the Parkmerced Sustainable Energy Requirements and Implementation Plan attached hereto as Exhibit Q.

3.13 Public Power. The SFPUC shall promptly prepare a study to determine the feasibility of providing electric service and natural gas to the Project Site (the "**Feasibility Study**"), which shall be completed within 6 months after the date that Developer provides to the SFPUC all Project information needed to complete the Feasibility Study (which Developer agrees to do within forty-five (45) days following the Effective Date). Subject to the agreement of the SFPUC to provide electricity and/or natural gas service following completion of the Feasibility Study, Developer understands and agrees that electricity and/or natural gas for the Project Site will be provided by Hetch Hetchy Water and Power or other City sources, so long as the Feasibility Study shows that: (i) the applicable service will be reasonably available for the Project's needs, (ii) the level of service will be substantially equivalent or better than that otherwise available, (iii) the applicable service can be separately metered and implemented at comparable business terms and without additional delay (including delivery of service to construction sites), and (iv) the projected price for the applicable service is comparable to or less than the otherwise applicable rates for comparable types of loads. If the SFPUC and Developer elect to provide power and/or gas as set forth above, the Parties will negotiate and enter into a service agreement that sets forth the terms of service. The costs of the Feasibility Study will be paid by the SFPUC, but if the City elects to provide power to the Project Site following the Feasibility Study, such costs shall be reimbursed by Developer under the implementation agreement. The SFPUC's failure to complete the Feasibility Study shall not be an event of default, but the SFPUC shall not have the right to provide power except following completion of the Feasibility Study as set forth above.

3.14 Replacement of Preschool Space. Approximately 4,000 square feet of space on the Project Site, as shown in Exhibit W (the "**Existing Preschool Space**"), is currently used for childcare services. Developer agrees that the Project shall include not less than 4,000 square feet of new space on the Project Site devoted exclusively for childcare or preschool services (the "**Replacement Preschool Space**"), and the Replacement Preschool Space shall be completed and open for business as a childcare or preschool facility before the operation of the Existing Preschool Space is terminated and the Existing Preschool Space is demolished. Developer shall record a restriction against the Replacement Preschool Space, in the form approved by the Planning Director, to ensure that the Replacement Preschool Space is located on the Project Site

(but may be relocated on the Project Site from time to time) for so long as the Project Space includes residential uses.

3.15 Payment to SFMTA. Developer shall pay to SFMTA the amount of fifty-thousand dollars ($50,000) to supplement the Sunset Elementary/ AP Giannini Safe Routes to School (SR2S) Project in the manner described in Exhibit X.

3.16 Transit Subsidy Program. Developer shall comply with the terms and provision of the Transi Subsidy Program attached hereto as Exhibit S. The requirements of the Transit Subsidy Program shall survive the expiration or termination of this Agreement, and shall be incorporated into the CC&Rs.

4. PUBLIC BENEFITS EXCEEDING THOSE REQUIRED BY EXISTING ORDINANCES, REGULATIONS, AND POLICIES RELATED TO HOUSING

4.1 Costa-Hawkins Rental Housing Act.

4.1.1 Non-Applicability of Costa-Hawkins Act. Chapter 4.3 of the California Government Code directs public agencies to grant concessions and incentives to private developers for the production of housing for lower income households. The Costa-Hawkins Act provides for no limitations on the establishment of the initial and all subsequent rental rates for a dwelling unit with a certificate of occupancy issued after February 1, 1995, with exceptions, including an exception for dwelling units constructed pursuant to a contract with a public agency in consideration for a direct financial contribution or any other form of assistance specified in Chapter 4.3 of the California Government Code (section 1954.52(b)). Based upon the language of the Costa-Hawkins Act and the terms of this Agreement, the Parties understand and agree that Section 1954.52(a) of the Costa-Hawkins Act does not and in no way shall limit or otherwise affect the restriction of rental charges for the Replacement Units or the BMR Units. This Agreement falls within the express exception to the Costa-Hawkins Act because this Agreement is a contract with a public entity in consideration for contributions and other forms of assistance specified in Chapter 4.3 (commencing with Section 65919 of Division 1 of Title 7 of the California Government Code). The City contributions and other forms of assistance include but are not limited to the following:

- Eliminating maximum density controls (which, before this Agreement, were set at one (1) unit per 800 square feet of lot area for the majority of the Project Site) such that density is limited only by other Code limitations, such as height, bulk, setbacks, open space, exposure, and unit mix as well as the Parkmerced Design Standards and Guidelines;

- Reducing the front setback from the lesser of fifteen (15) feet or fifteen percent (15%) of lot depth to approximately zero (0) to eight (8) feet;

- Increasing the permissible height and bulk envelope for new buildings in at least fifty percent (50%) of the existing Project Site. New height districts allow increases ranging from five (5) up to one hundred (100) feet in height;

- Reducing the size of required rear yards from approximately forty-five (45) percent of lot depth to approximately twenty-five percent (25%) of total lot area;

- Eliminating conditional use requirements for any new building exceeding forty (40) feet in height and for residential demolitions;

- Eliminating discretionary review for any vertical project consistent with the Development Agreement, Parkmerced Special Use District, and the Parkmerced Design Standards and Guidelines;

- Substantially increasing the amount of permitted commercial mixed-use development on the Project Site over that which would be permitted under existing RM-1 and RM-4 zoning (for a total of approximately 310,000 square feet);

- Vesting the BMR Requirement, so that any future increase in the required percentage of BMR Units will not apply to the Project;

- Excluding the Replacement Units from the BMR Requirement;

- Not assessing the Impact Fees and Exactions against the Replacement Units;

- Vesting and freezing development rights to the Project for thirty (30) years, with no required milestones or schedules of performance;

- Committing to issue approvals and permits and take other implementation measures including the transfer of City-owned real property, consistent with the Project; and

- Limiting Impact Fees and Exactions as set forth in Section 2.3.

The City and Developer would not be willing to enter into this Agreement without the understanding and agreement that Costa-Hawkins Act provisions set forth in California Civil Code section 1954.52(a) do not apply to the Replacement Units or the BMR Units as a result of the exemption set forth in California Civil Code section 1954.52(b).

4.1.2 Exception for Replacement Housing. In addition to the exception described in Section 4.1.1, the Parties further understand and agree that (i) Costa Hawkins does not affect the authority of a public entity to regulate or monitor the basis for evictions, and (ii) Government Code section 7060.2(d) provides an exception to Costa Hawkins, as recognized in Apartment Association of Los Angeles County, Inc. v. City of Los Angeles, 173 Cal.App.4th 13 (2nd Dist. 2009), to allow public entities to impose rent control on newly constructed units by ordinance or regulation when an existing rent controlled unit is demolished and a new unit is constructed on the same property within 5 years. San Francisco has adopted such as ordinance, as set forth in Administrative Code section 37.9A(b). Although Developer is not withdrawing rental units under the Ellis Act specifically, Developer is, under the terms of this Agreement, withdrawing existing rent controlled units from rent or lease in order to demolish them and construct new

replacement units on the same site. The Parties agree that (1) the removal and demolition of existing housing units under this Agreement is the functional equivalent to the removal and demolition of existing units under the Ellis Act, (2) the required notices to be delivered to existing tenants under this Agreement are the functional equivalent of, and are intended to replace, the notices required under Administrative Code section 37.9A for Ellis Act evictions, (3) without this Agreement, Developer would be required to proceed under the Ellis Act to evict existing tenants but that would not serve the best interests of Developer, the City or the existing tenants, and furthermore the City would not be willing to allow the demolition of the existing housing units following one or more Ellis Act evictions unless Developer provided new rent-controlled units as provided below in this Article 4, (4) the "property", for purposes of Government Code section 7060.2(d), shall mean the Project Site, and (5) there is no substantive basis to differentiate between replacement units constructed following an Ellis Act eviction and replacement units constructed under a development agreement designed to prevent Ellis Act evictions. The California legislature and California judiciary have both recognized an exception to Costa Hawkins for replacement housing constructed on real property where the existing housing was subject to rent control and the replacement housing is built within 5 years. The Parties rely on this exception, and reiterate that the City and Developer would not be willing to permit demolition of the Existing Units if they could not impose the Rent Ordinance on the Replacement Units and satisfy the needs of existing and future tenants through the relocation and rent control provisions set forth in this Article 4.

4.1.3 General Waiver. In the alternative, Developer, on behalf of itself and all of its successors and assigns of all or any part of the Project Site, agrees not to challenge and expressly waives, now and forever, any and all rights to challenge the requirements of this Agreement related to the establishment of the initial and all subsequent rental rates for the BMR Units and the Replacement Units under the Costa-Hawkins Act, and the right to evict tenants under the Ellis Act (as the Costa-Hawkins Act and Ellis Act may be amended or supplanted from time to time). If and to the extent such general covenants and waivers are not enforceable under law, the Parties acknowledge that they are important elements of the consideration for this Agreement and the Parties should not have the benefits of this Agreement without the burdens of this Agreement. Accordingly if any Developer breaches such general covenants (by, for example and without limitation, suing to challenge the Rent Ordinance, setting higher rents than permitted under this Agreement, or invoking the Ellis Act to evict tenants at the Project Site), then such breach will be an Event of Default and City shall have the right to terminate this Agreement as to that Developer and its Affiliates as set forth in Article 12.

4.1.4 Inclusion in All Assignment and Assumption Agreements and Recorded Restrictions. Developer shall include the provisions of this Section 4.1 in any and all Assignment and Assumption Agreements, any and all Recorded Restrictions and in any real property conveyance agreements for property that includes or will include BMR Units or Replacement Units.

4.1.5 Right to Set Rates Upon Vacancy, with Subsequent Rent Control. While each Replacement Unit shall be subject to the Rent Ordinance, including its supporting fee provisions, Developer does not waive its right to adjust the rent for a Replacement

Unit when a tenant has voluntarily vacated or abandoned the premises or been evicted in accordance with California Code of Civil Procedure section 1161 et seq. or any successor statute; provided, however, following any such rate adjustment, all provisions of the Rent Ordinance, including but not limited to the rent control provisions, shall apply to the new tenant (and each subsequent tenant) during the length of his or her tenancy for the life of the Replacement Building.

4.2 BMR Units.

4.2.1 BMR Requirement. Except as expressly modified by this Agreement, the Project shall satisfy the requirements of Planning Code section 415 as of the Effective Date (including but not limited to the percentage of required BMR Units by building type and location of buildings on or off site) for all of the residential units constructed on the Project Site from and after the Effective Date excluding the Replacement Units (the "**BMR Requirement**"). The Parties shall calculate numerical amounts needed to implement the BMR Requirement (including but not limited to household income eligibility requirements, permitted rental and sales prices, and in lieu fee amounts) using the formulas or methodologies provided by Planning Code section 415 as of the Effective Date but with then-current data (such as then-current household income data). Not less than one-third (1/3) of the BMR Requirement shall be satisfied with BMR Units constructed on the Project Site. BMR Units constructed on the Project Site or within 1,000 feet of the boundary of the Project Site shall be considered units constructed on the Project Site. The exact number and location of BMR Units (per building) in each Development Phase, and the number of in lieu payments (if any), shall be identified in each Development Phase Approval. If Developer constructs or pays an in lieu fee equivalent to a greater number of BMR Units than is required within a Development Phase to meet the BMR Requirement, then such additional BMR Units shall be counted against the total number of BMR Units required in the next Development Phase Approval.

4.2.2 Permitted Updates; No Conflicts. Notwithstanding the foregoing, the Parties shall implement the BMR Requirement in accordance with the provisions of Planning Code section 415 and the San Francisco Affordable Housing Monitoring Procedures Manual, as published by the Mayor's Office of Housing and as updated from time to time, except for any updates or changes that conflict with the requirements of this Agreement as set forth in Section 2.2.2. In addition, the following changes shall be deemed to conflict with this Agreement and therefore shall not apply to the Project Site: (i) any increase in the required number or percentage of BMR Units; (ii) any change in the minimum or maximum area median income (AMI) percentage levels for the BMR Units pricing or income eligibility; (iii) any change in the permitted on-site/off-site ratio as set forth in this Agreement; and (iv) any change that conflicts with the express provisions of this Section 4.2.

4.2.3 Satisfaction of BMR Requirement. The Parties acknowledge that the satisfaction of the BMR Requirement for the Project must occur in proportion to the construction of new Market Rate Units. However, the Parties further acknowledge and agree that it is desirable for the Project to maintain some flexibility as to the location of

the BMR Units at the Project Site to permit the siting of BMR Units in buildings where the costs of homeowners association dues and other miscellaneous fees may be lower. To ensure the foregoing policy goals are met, Developer shall submit a proposal to MOH before the submittal of a building permit application for a residential building indicating the manner in which the BMR Requirement will be satisfied with respect to such residential building (the "**Principal Project**"), which may include (i) construction of BMR Units within the Principal Project, (ii) construction of BMR Units within a different building within that Development Phase (or, if applicable, within that Sub-Phase) (the "**Affiliated Project**"), such that the total number of BMR Units otherwise required for the Principal Project shall be added to the total number of BMR Units required in the Affiliated Project, and (iii) payment of an in lieu fee. If a Development Phase is divided into Sub-Phases, then the Parties agree that the BMR Requirement must be satisfied in each Sub-Phase. The location and the minimum and maximum number of BMR Units in each Principal Project and Affiliated Project (or the satisfaction of the BMR Requirement through payment of an in lieu fee as permitted by this Agreement) shall be subject to the review and approval of the Director of MOH, which approval shall not be unreasonably withheld but shall be consistent with the practices and policies of MOH in other areas of the City; provided, however, that no more than fifty percent (50%) of the units within a single building located within the boundaries of the Project Site may be BMR Units. If the approved manner of satisfying the BMR Requirement for a Principal Project includes the construction of units in an Affiliated Project or the payment of an in lieu fee, then the construction of such units in the Affiliated Project must be Completed or payment of such in lieu fee must be made concurrently with or before the issuance of the First Certificate of Occupancy for the Principal Project.

4.3 Replacement Units.

Provision of Replacement Units. Developer shall replace each of the 1,538 Existing Units with a Replacement Unit located in a new residential building (each, a "**Replacement Building**") on a one-for-one basis. The Parties agree that leasing and occupancy of each such Replacement Unit shall be governed by the requirements of this Article 4 whether or not an Existing Tenant chooses to relocate to the Replacement Unit.

(a) Each Replacement Unit shall contain one (1) washing machine, one (1) dryer and one (1) dishwasher and shall be wired for telephone, cable, and internet access (provided that such internet access may be provided by telephone or cable outlets), together with, if applicable, any new technology that has been installed by the Developer or other landlord in the Existing Units at the time of relocation.

(b) If the lease for the Existing Unit includes the right to park at a reserved parking space or spaces, then the Replacement Unit shall include the same parking rights. The foregoing notwithstanding, the Parties acknowledge that a major component of the Project's parking strategy is to separate parking garages from the residential buildings at the Project Site, in order to concentrate parking spaces at the portion of the Project Site that is farthest from the MUNI light rail stations, and that such parking strategy furthers the City's Transit First policy.

The Parties therefore agree that the parking space(s) associated with the Replacement Unit may not be located within the building or parcel in which the Replacement Unit is located and may be located in an underground garage. The fact that such location is underground shall not, by itself, be considered a reduction in service under the Rent Ordinance. However, if the parking space(s) associated with a specific Replacement Unit are located at a farther distance from such Replacement Unit than the parking space(s) associated with an Existing Tenant's Existing Unit, such Existing Tenant shall have the right to petition the Rent Board for a determination that such additional distance to the parking space(s) for the Existing Unit represents a reduction in service under the Rent Ordinance.

4.3.2 Definition of Existing Tenant. For purposes of this Agreement, "**Existing Tenant**" shall mean each person or persons recognized as a tenant under the Rent Ordinance with respect to an Existing Unit in an existing building which will be demolished as part of the Project (each a, "**To-Be-Replaced Building**") on the date that Developer delivers the Existing Tenant Notice, as defined in Section 4.4.3(a). For the purposes of this Agreement, any person or persons who meet the criteria above shall remain an Existing Tenant until they either (i) become a Relocating Tenant in accordance with Section 4.3.3, (ii) voluntarily vacate their Existing Unit before delivery of the Replacement Unit Availability Notice, or (iii) are evicted from their Existing Unit for a "just cause" reason under the Rent Ordinance other than Sections 37.9(a)(10) or 37.9(a)(15). As further described below, Existing Tenants who decline an offer to relocate to a Replacement Unit in accordance with Section 4.4 shall retain all other rights afforded to tenants under the Rent Ordinance and the right to Relocation Payment Benefits. In the event of any dispute regarding whether a person or group of persons is an Existing Tenant or a Relocating Tenant, such person or persons may request a determination of the Rent Board, which determination shall be final and binding on the Parties, subject to any further adjudication as allowed by law. For the Existing Tenant determination, such request must be submitted to the Rent Board within forty-five (45) days after delivery of the Existing Tenant Notice, provided the Rent Board may accept a late submission for cause but not later than ninety (90) days after delivery of the Existing Tenant Notice.

4.3.3 Right of Existing Tenants to Relocate to Replacement Units. Each Existing Tenant shall have the right to relocate from an Existing Unit to a Replacement Unit in accordance with terms of this Article 4; provided, however, that if more than one person occupies an Existing Unit, the persons occupying the Existing Unit shall collectively be entitled to relocate to only one (1) Replacement Unit as further described in Section 4.4.5. Developer shall lease to each Existing Tenant who elects to and does relocate to a Replacement Unit in accordance with the terms of this Section 4.3 (each, a "**Relocating Tenant**") a Replacement Unit under the same terms and provisions as the Relocating Tenant's existing lease; provided, however, that (i) the date of initial occupancy shall continue to be the date of the existing lease for all purposes except for calculating future rent increases, as set forth in Section 4.3.6 below, (ii) such existing lease shall be amended to reflect the changed location of the leased premises (and the changed location of any parking space, if applicable), and (iii) such existing lease shall be

amended to add the language set forth in Exhibit Z, which language shall also be included in all future leases for each Replacement Unit and (iv) no other amendments to the lease shall be made (including but not limited to any provision regarding the permissibility of pets).

4.3.4 Size and Type of Replacement Units. The type and size of each Replacement Unit (including the size of dedicated storage space for that Replacement Unit) shall be determined by the type and size of the Existing Tenant's Existing Unit, as more particularly set forth on the Table 4.3.4 (and as set forth in Exhibit T). As shown on Table 4.3.4, Existing Tenants shall be offered a Replacement Unit of the same unit type (e.g., Medium 1-bedroom/1-bathroom) as their Existing Unit (e.g., Medium 1-bedroom/1-bathroom). The minimum size of that unit type of Replacement Unit in each Replacement Building shall be equal to or larger than the average size of that unit type of Existing Unit, as shown on Table 4.3.4. The minimum size of in-unit storage space for each type of Replacement Unit shall be equal to or larger than the average size of in-unit storage space of that type of Existing Unit, as shown on Table 4.3.4. If an Existing Unit has associated off-site storage space, Developer shall provide an off-site storage space on the Project Site of equal or greater size for the Replacement Unit.

Table 4.3.4: Type and Size of Existing and Replacement Units

Number of Units	Unit Type	Average Size (Square Feet) of Existing and Minimum Size of Replacement Units	Average In-Unit Storage Space (Square Feet) of Existing and Minimum Size of Replacement Units
252	Small 1-bedroom/ 1-bathroom	688	45
172	Medium 1-bedroom/ 1-bathroom	713	48
120	Large 1-bedroom/ 1-bathroom	749	42
157	Small 2-bedroom/ 1-bathroom	873	41
407	Medium 2-bedroom/ 1-bathroom	888	42
114	Large 2-bedroom/ 1-bathroom	916	50
106	Extra Large 2-bedroom/ 1-bathroom	1,022	75
18	Jumbo 2-bedroom/ 1-bathroom	1,046	81
122	Regular 3-bedroom/ 2-bathroom	1,192	80
68	Small 3-bedroom/ 2.5-bathroom	1,330	78
2	Large 3-bedroom/ 2.5-bathroom	1,506	115

4.3.5 Initial Rent. The initial rent payable by a Relocating Tenant for his or her Replacement Unit shall be the then-existing Base Rent (as defined by Section 37.2(a) of

the Rent Ordinance) for the Existing Unit at the time of relocation to the Replacement Unit, subject only to future increases permitted under the terms of the Rent Ordinance and the applicable lease. Developer shall not require a Relocating Tenant to pay a new or increased security deposit for the Replacement Unit, but shall transfer the Relocating Tenant's existing security deposit to his or her Replacement Unit. Each Replacement Unit shall be subject to the terms of the Rent Ordinance (or a successor rent-control ordinance) for the life of the Replacement Unit and for so long as the Rent Ordinance (or a successor rent-control ordinance) remains in effect, whether or not the initial Relocating Tenant remains the tenant of the Replacement Unit. Developer shall not, and waives any and all rights to, petition the Rent Board for a rent increase as a result of the construction of, and the relocation of the Relocating Tenants into, the Replacement Units or the construction of the Community Improvements.

4.3.6 Passthroughs. Developer shall not transfer any passthroughs assessed against an Existing Unit (including but not limited to utility passthroughs, bond measure passthroughs, water revenue bond passthroughs, capital improvement passthroughs) to the Replacement Unit. Developer shall have the right to assess new passthroughs to the Replacement Units as permitted by the Rent Ordinance; provided, however, that Developer shall assume all costs directly related to (i) the construction of the Project, including any debt service for such construction costs, and (ii) the relocation of the Relocating Tenants, such that no passthroughs for these costs are permitted. In addition, Developer shall not assess any passthroughs to the Relocating Tenants for any operating and maintenance costs relating to the operation or maintenance of items constructed as part of the Project, and Developer shall not have the right to increase the rent of any Relocating Tenant based on comparable rents under section 37.8(e)(4)(B) of the Rent Ordinance or section 6.11 of the Rent Board's Rules and Regulations. Upon relocation, each Relocated Tenant shall be assigned a date of occupancy, which is the day, month and year that the relocation occurred and was completed. Such date of occupancy shall be considered the date of occupancy under Section 37.2(a) of the Rent Ordinance for purposes of any future increase or adjustment to Base Rent for the Replacement Unit, but for all other purposes the date of initial occupancy of the Replacement Unit shall be deemed the date that the Relocated Tenant first occupied its Existing Unit.

4.3.7 New Tenants. Any Replacement Unit that is not leased to a Relocating Tenant may be leased to a new tenant; provided, however, that such Replacement Unit shall be subject to the Rent Ordinance (or a successor rent-control ordinance) for the life of the Replacement Unit and for so long as the Rent Ordinance (or a successor rent-control ordinance) remains in effect. Developer shall have the right to establish the initial rental rate for such Replacement Unit as if the Replacement Unit had been voluntarily vacated by the Relocating Tenant, and there shall be no limit on the initial rental rate that may be charged to a new tenant that occupies such Replacement Unit.

4.4. Relocation to Replacement Units; Presentation of Development Phase. Following each Development Phase Approval by the City pursuant to Section 3.4.4 but before issuance of the first building permit in that Development Phase, Developer shall hold at least one (1) duly noticed informational presentation to Existing Tenants regarding the details of the approved

Development Phase, so that the Existing Tenants are informed of whether their Existing Units are proposed for replacement during that approved Development Phase and the anticipated schedule of construction within such approved Development Phase.

4.4.1 Tenant Relocation Plan.

(a) Before submitting the first building permit application for a Replacement Building, Developer shall submit to the Planning Director and the Executive Director of the Rent Board (i) a Tenant Relocation Plan in substantial conformance with the tenant relocated plan attached to this Agreement as Exhibit R (the "**Tenant Relocation Plan**"), (ii) a site plan showing the location of the Replacement Building and the To-Be-Replaced Buildings occupied by Existing Tenants who will be offered the opportunity to relocate to a Replacement Unit in the Replacement Building, (iii) preliminary floor plans showing the location of the Replacement Units within the Replacement Building to be occupied by Existing Tenants, (iv) the address and names of Existing Tenants, (v) the date of initial occupancy of the Existing Unit for each Existing Tenant, (vi) the Unit Type as set forth in Table 4.3.4 for each Existing Tenant, and (vii) an approximate schedule for the proposed relocations. Each Tenant Relocation Plan shall ensure that Relocating Tenants within an existing block (as shown in Exhibit W) shall be provided the opportunity to move to Replacement Units located on the same block, so that the Relocating Tenants can remain neighbors of the same block despite their relocation.

(b) Developer requests any changes to the form of Tenant Relocation Plan attached as Exhibit R, then Developer shall provide a clear statement of the proposed changes with the submittal. If Developer requests any such changes or if the Tenant Relocation Plan is otherwise not in substantial conformance with Exhibit R, then the Tenant Relocation Plan shall not become effective until it has been approved by the Planning Director and Executive Director of the Rent Board, which approval shall not be unreasonably withheld or delayed, and which shall not be based on anything that is in conformance with Exhibit R.

(c) In the event the Planning Director or Executive Director of the Rent Board disapproves the Tenant Relocation Plan, he or she shall provide to Developer a written statement of the reasons for the disapproval within thirty (30) days following Developer's submittal. Before submittal of each Tenant Relocation Plan, Developer shall hold at least one (1) duly noticed informational presentation with Existing Tenants of the To-Be-Replaced Buildings regarding the Tenant Relocation Plan and the information required in (ii) and (iii) above. The notice for such meeting shall include the information required in (ii) and (iii) above. Developer shall also make available copies of the materials required by this Section at the Parkmerced resident services office.

4.4.2 Existing Tenant Notice.

(a) Within sixty (60) days after commencement of construction of the Replacement Building, Developer shall deliver written notice (the "**Existing Tenant Notice**") to every occupied unit in the To-Be-Replaced Building(s) (regardless of whether Developer knows of an Existing Tenant to reside at such unit), to the Rent Board, and to each Recognized Residents' Association of the To-Be-Replaced Building of the following: (i) the name of each Existing Tenant known by Developer at such address; (ii) the Existing Tenant's date of initial occupancy and numerical rank in seniority for the unit type for which the Existing Tenant qualifies (pursuant to Section 4.3.4 and Table 4.3.4 of this Agreement); (iii) if more than one person occupies an Existing Unit, the numerical rank in seniority of each person occupying such Existing Unit as compared to the other persons occupying such unit; (iv) a detailed explanation of the rights of Existing Tenants to relocate to a Replacement Unit in accordance with the terms of this Agreement; (v) notice that further information regarding such rights can be obtained from the Rent Board, including but not limited to, notice that any party can file a request for determination of tenancy status with the Rent Board if there is a dispute about whether an occupant is an Existing Tenant; (vi) the anticipated completion date for the Replacement Building; and (vii) the anticipated relocation dates for Existing Tenants who choose to become Relocating Tenants. For the purposes of this section, commencement of construction shall have occurred when (A) site or building permits have been issued by the City for the Replacement Building in which the Replacement Units will be located, and (B) some identifiable construction under the First Construction Document has commenced. Construction of residential buildings within a particular Development Phase or Development Sub-Phase shall be completed in commercially reasonable pace as set forth in Section 3.4.5.

(b) At such time as the Existing Tenant Notice is delivered to the occupied units, Developer shall also post in the commons areas (such as mailbox area, laundry rooms or common passageways) of the To-Be-Replaced Buildings a notice indicating that the Existing Tenant Notices have been delivered to the occupied units.

(c) The Existing Tenant Notice shall also request that the Existing Tenant complete and return an attached response form that notifies Developer of the Existing Tenant's preliminary intention to accept or reject a Replacement Unit. The purpose of such response form is solely to provide information to Developer in order to plan for and facilitate the relocation process. Existing Tenant's response indicating interest in accepting or rejecting a Replacement Unit shall be non-binding and delivery or lack of delivery of such response form shall have no legal effect on an Existing Tenant's ability to later accept or reject a Replacement Unit in accordance with this Agreement.

(d) In the event of any dispute regarding whether (i) a person or group of persons is an Existing Tenant, (ii) if a group of persons is an Existing Tenant, each person's seniority within such group of persons, and/or (iii) the Existing Tenant's date of initial occupancy or seniority/numerical rank in the To-Be-

Replaced Building in relation to other Existing Tenants as stated in the Existing Tenant Notice, such person or persons shall have the right to request a determination of the Rent Board, which determination shall be final and binding on the Parties, subject to any other further adjudication as allowed by law. Such request must be submitted to the Rent Board within forty-five (45) days after delivery of the Existing Tenant Notice, provided the Rent Board may accept a late submission for cause but not later than ninety (90) days after delivery of the Existing Tenant Notice.

4.4.3 Replacement Unit Availability Notice. Not sooner than one (1) year and no later than six (6) months before the anticipated completion date of a Replacement Building, Developer shall deliver written notice to Existing Tenants and any Recognized Residents' Association of the To-Be-Replaced Building (the "**Replacement Unit Availability Notice**") of the following: (i) a detailed explanation of the rights of Existing Tenants to relocate to a Replacement Unit in accordance with the terms of this Agreement, including the requirements for qualifying as an Existing Tenant; (ii) notice that further information regarding such rights can be obtained from the Rent Board; (iii) the anticipated completion date of the Replacement Building; (iv) the anticipated relocation dates for Relocating Tenants; (v) the final determination of the Existing Tenant's numerical rank in seniority for the unit type for which the Existing Tenant qualifies pursuant to Section 4.3.4 and Table 4.3.4; (vi) if more than one person occupies an Existing Unit, the numerical rank in seniority of each person occupying such Existing Unit as compared to the other persons occupying such unit; (vii) at least (3) three dates and times when Developer will arrange for an opportunity for the Existing Tenant to visit a model Replacement Unit (one of which shall be a time on Saturday between 9:00 am and 6:00 pm, Sunday between 10:00 am and 5:00 pm or on weekday evenings between 6:00 pm and 9:00 pm) provided that the first site visit offered by Developer shall be no sooner than ten (10) days after the delivery of the Replacement Unit Availability Notice (unless an earlier date is agreed to by Developer and the Existing Tenant) and the last site visit shall be no more than thirty (30) days after delivery of the Replacement Unit Availability Notice; (viii) notice that the Existing Tenant must deliver a Replacement Unit Preference Notice (in accordance with the terms of Section 4.4.5, and the date by which such Replacement Unit Preference Notice must be delivered to Developer, in order to exercise his or her right to relocate to a Replacement Unit; and (ix) a floor plan of the Replacement Building indicating the Unit Type within such building that the Existing Tenant qualifies.

4.4.4 Site Visits. The site visit shall provide an opportunity for the Existing Tenant to visit a model Replacement Unit with completed finishes. The model Replacement Unit may be different than the Unit Type for which the Existing Tenant qualifies pursuant to Section 4.3.4 and Table 4.3.4. The site visit shall include a tour of the exterior of the Replacement Building so that the Existing Tenant may understand the location of the Replacement Units in the building. The site visit shall also provide an opportunity for the Existing Tenant to tour the interior of the Replacement Building under construction, if such a tour can be accommodated in a safe manner as reasonably determined by Developer and appropriate waivers of liability are executed by such Existing Tenants. At such time as the Replacement Unit Availability Notice is delivered

to Existing Tenants, Developer shall also deliver to the Rent Board and post in the common areas (such as laundry rooms or exterior passageways) of the To-Be-Replaced Building(s) a notice containing the information specified in (i) through (iv) and in (vii) through (ix) above.

4.4.5 Replacement Unit Preference Notice.

(a) Each Existing Tenant desiring to exercise his or her right to relocate to a Replacement Unit must, within the latter of (i) twenty (20) days following the last of the three dates provided in the Replacement Unit Availability Notice for the Existing Tenant's visit of the model Replacement Unit or (ii) forty-five (45) days from receipt of the Replacement Unit Availability Notice (collectively, the "**Selection Period**"), deliver written notice to Developer of (i) his or her decision to relocate or not to relocate to a Replacement Building, and (ii) for Existing Tenants choosing to relocate, their selection of all available Replacement Units (of the unit type for which they qualify), ranked in the order of preference in accordance with the Tenant Relocation Plan (the "**Replacement Unit Preference Notice**"). Delivery of the Replacement Unit Preference Notice to Developer shall determine which Existing Tenants become Relocating Tenants and which remain Existing Tenants qualifying for Relocation Payment Benefits under this Agreement.

(b) If an Existing Tenant fails to return the Replacement Unit Preference Notice before the expiration of the Selection Period, the Existing Tenant will be assigned a Replacement Unit by Developer after the Existing Tenants who returned the Replacement Unit Preference Notice have been assigned Replacement Units in accordance with their seniority and their respective preferences as set forth in Section 4.4.6. If an Existing Tenant returns a Replacement Unit Preference Notice indicating a decision to not accept a Replacement Unit, such Existing Tenant shall no longer qualify for a Replacement Unit but shall instead have the right to remain in the Existing Unit until the Building Vacancy Date and shall qualify for Relocation Payment Benefits.

(c) If more than one person occupies an Existing Unit (and thereby collectively constitute the Existing Tenant of that Existing Unit), then such persons shall be collectively entitled to relocate to one (1) Replacement Unit. If the person with the most seniority of those persons residing in an Existing Unit submits a Replacement Unit Preference Notice indicating a choice to accept a Replacement Unit, then (A) all such persons within such Existing Unit shall collectively qualify for a single Replacement Unit and none shall qualify for the Relocation Payment Benefits, and (B) any such persons who choose not to move to the Replacement Unit shall have the right to remain in the Existing Unit under the existing lease until the Building Vacancy Date (but, as set forth above, shall not qualify for the Relocation Payment Benefits). If the person with the most seniority of those persons residing in an Existing Unit submits a Replacement Unit Preference Notice indicating a choice to reject a Replacement Unit, then all

such persons within such Existing Unit shall collectively qualify for the Relocation Payment Benefits and none of such persons shall qualify for a Replacement Unit.

(d) If there is more than one person in an Existing Unit with equal seniority, and they are the person(s) with the most seniority in that Existing Unit, and they cannot agree on either the selection of a Replacement Unit or whether to accept a Replacement Unit instead of Relocation Payment Benefits, then such persons shall have the right to remain in the Existing Unit under the existing lease until the Building Vacancy Date. Upon the Building Vacancy Date, such persons shall qualify for the Relocation Payment Benefits.

4.4.6 Assignment of Replacement Units. Replacement Units shall be allocated in order of tenant seniority, as determined by the commencement date of the Relocating Tenant's lease. Developer shall first allocate a Replacement Unit to each Relocating Tenant who delivers a Replacement Unit Preference Notice before the end of the Selection Period based on the unit preference set forth in each Replacement Unit Preference Notice. Any conflict in such preferences shall be resolved by the Relocating Tenant's seniority status. Developer shall notify each Relocating Tenant who delivered a Replacement Unit Preference Notice of the location of his or her respective Replacement Unit (the "**Replacement Unit Notice**"), which notice shall also explain that the Relocating Tenant must deliver a Replacement Unit Acceptance Notice in accordance with the terms of Section 4.4.7 in order to exercise his or her right to relocate to the Replacement Unit. The Parties acknowledge that, as one Relocating Tenant's unit assignment affects all other Relocating Tenants' unit assignments, fairness requires that disputes regarding the assignment of units be determined as expeditiously and fairly as possible. Furthermore, the Parties recognize that any disputes regarding a person's status as an Existing Tenant or Relocating Tenant, or an Existing Tenant's seniority, shall have been previously filed and must be resolved in accordance with the procedures of Section 4.4.2(d). Accordingly, the Rent Board Administrative Law Judge shall be the sole arbiter of technical disputes concerning whether Developer has made a ministerial error in assigning a Replacement Unit. The decision of the Rent Board Administrative Law Judge shall be binding, final, and non-appealable to the Rent Board Commission. Any such request for review by the Rent Board Administrative Law Judge must be submitted to the Rent Board within thirty (30) days after delivery of the Replacement Unit Notice. The Rent Board Administrative Law Judge shall use good faith efforts to render a decision of such dispute within forty-five (45) days of the request for such hearing.

4.4.7 Acceptance of Replacement Unit. Within thirty (30) days of delivery of the Replacement Unit Notice (the "**Acceptance Period**"), if the Relocating Tenant does not file a request for arbitration with the Rent Board's Administrative Law Judge under Section 4.4.6, the Existing Tenant shall send written notification of acceptance or rejection of the specified Replacement Unit to Developer (the "**Replacement Unit Acceptance Notice**" or "**Replacement Unit Rejection Notice**" as applicable). In the event that the Existing Tenant does not respond within the Acceptance Period, Developer shall send a second written notice (the "**Second Replacement Unit Notice**") informing the Existing Tenant of his or her right to occupy the specified Replacement Unit and shall

send a copy the Second Replacement Unit Notice to the Rent Board. The City acknowledges and agrees that any and all rights of an Existing Tenant to a Replacement Unit provided by this Agreement shall be waived if such Existing Tenant (i) fails to notify Developer of his or her intention to relocate to a Replacement Unit within ten (10) days of receipt of the Second Replacement Unit Notice (the "**Second Acceptance Period**") or (ii) delivers to Developer a Replacement Unit Rejection Notice. In such event, the Existing Tenant shall not be deemed a Relocating Tenant and shall no longer qualify for a Replacement Unit but instead shall have the right to remain in their Existing Unit until the Building Vacancy Date, shall retain all rights afforded to tenants under the Rent Ordinance until the Building Vacancy Date, and shall qualify for Relocation Payment Benefits. If a Relocating Tenant files for arbitration with the Rent Board's Administrative Law Judge under Section 4.4.6, then such Relocation Tenant's rights to select a Replacement Unit shall be as determined by the Administrative Law Judge in accordance with Section 4.4.6.

4.4.8 Relocation Notice. Upon issuance of the Certificate of Occupancy for the Replacement Units, Developer shall deliver written notice of the completion of the Replacement Building (the "**Relocation Notice**") within thirty (30) days to each Existing Tenant who delivered a Replacement Unit Acceptance Notice. Such Relocation Notice shall indicate that Developer intends to relocate the Relocating Tenant to his or her Replacement Unit on a date reasonably agreed upon by Developer and the Relocating Tenant, which date shall be not sooner than thirty (30) days and not later than sixty (60) days after delivery of the Relocation Notice unless an earlier or later date is mutually acceptable to Developer and the Relocating Tenant.

(a) Relocation Obligations. Developer shall be responsible at Developer's cost for moving the possessions of each Relocating Tenant (including the packing and unpacking of such possessions) from the Relocating Tenant's Existing Unit to the applicable Replacement Unit ("**Developer's Move**"). Developer shall contract with one or more licensed and bonded moving companies, and shall pay all costs and fees to such moving companies. Alternatively, each Relocating Tenant shall have the right to a dislocation allowance, as set forth in Government Code section 7262(b), equal to the Residential Moving Expense and Dislocation Allowance Payment Schedule established by Part 24 of Title 49 of the Code of Federal Regulation ("**Dislocation Allowance**"). Developer shall, upon request, inform Relocating Tenants of the Dislocation Allowance amount. If the Relocating Tenant consists of more than one person and such persons are not able to collectively agree on whether to select the Developer's Move or the Dislocation Allowance, then the person with the highest seniority shall make the selection. For Existing Tenants that choose the Dislocation Allowance, then Developer shall pay the Dislocation Allowance directly to the Existing Tenant within thirty (30) days following such selection, and the Existing Tenant shall then be responsible for completing the move to the Replacement Unit at its sole cost.

4.5 Rental of Units in To-Be-Replaced Buildings.

4.5.1 Right to Stay in To-Be-Replaced Building Until Demolition. If an Existing Tenant rejects or is deemed to have rejected a Replacement Unit pursuant to Section 4.4, Developer shall continue to rent to the Existing Tenant his or her Existing Unit under the terms of his or her existing lease until such time as (i) the Existing Tenant voluntarily terminates his or her lease or (ii) each of the following has occurred: (A) Developer stops leasing unoccupied units in the To-Be-Replaced Building to new tenants, and (B) Developer delivers a written notice of lease termination to the Existing Tenant, which notice shall be delivered not less than sixty (60) days before the lease termination date specified therein (a "**Lease Termination Notice**"). Once Developer delivers a Lease Termination Notice in a To-Be-Replaced Building (the "**Building Vacancy Date**"), (i) Developer shall no longer have the right to enter into any new leases for unoccupied units in the To-Be-Replaced Building, and (ii) Developer shall deliver a Lease Termination Notice to all remaining occupants in the To-Be-Replaced Building. Developer shall also notify the applicable Recognized Residents' Association at such time as Developer applies to the City for a demolition permit for each To-Be-Replaced Building. The City acknowledges and agrees that, in accordance with Section 37.9(a)(15) of the Rent Ordinance, Developer has the right to terminate the lease as provided herein and may lawfully evict such Existing Tenant on or after the lease termination date specified in the Lease Termination Notice. The City shall have no liability or responsibility in connection with any and all evictions of Existing Tenants at the Project Site, and Developer shall Indemnify the City for any and all claims made in connection with any eviction.

4.5.2 Relocation Payment Benefits. Although payment of relocation expenses is not required pursuant to Section 37.9(a)(15) of the Rent Ordinance, Developer agrees to pay Relocation Payment Benefits to Existing Tenants who reject or are deemed to have rejected a Replacement Unit in accordance with the provisions of this Agreement in the amounts and manner set forth in Section 37.9C of the Rent Ordinance. An Existing Tenant who vacates a To-Be-Replaced Unit after receipt of the Replacement Unit Availability Notice is eligible for Relocation Payment Benefits unless he or she was evicted for a "just cause" reason, excluding Section 37.9(a)(10) or Section 37.9(a)(15) of the Rent Ordinance.

4.5.3 New Tenants. Developer may continue to rent unoccupied units in a To-Be-Replaced Building (whether vacated due to relocation or otherwise) to new tenants (each, a "**New Tenant**") after (i) the date on which Developer has delivered an Existing Tenant Notice to residents of that particular building or (ii) the relocation of the Existing Tenants from such building and before the Building Vacancy Date; provided Developer shall include a written lease addendum with each New Tenant's lease at the time of initial execution a clear statement of (i) Developer's intent to demolish the To-Be-Replaced Building (including an anticipated date for demolition), (ii) Developer's right to terminate the lease upon sixty (60) days prior written notice to the New Tenant, and (iii) Developer's right to not provide a Replacement Unit or pay the Relocation Payment Benefit to such New Tenant (items (i) through (iii) above, collectively, the "**No Relocation Benefits Statement**"). Developer shall also inform each New Tenant, before entering into a lease with a New Tenant, of Developer's then-current estimate of the demolition date of the To-Be-Replaced Building. Developer may terminate any lease to a

New Tenant by delivering to such New Tenant a Lease Termination Notice, which notice shall be delivered not less than sixty (60) days before the lease termination date specified therein. The City acknowledges and agrees that, in accordance with Section 37.9(a)(15) of the Rent Ordinance, Developer has the right to terminate the lease with the No Relocation Benefits Statement as provided herein and may lawfully evict such New Tenant on or after the lease termination date specified in the Lease Termination Notice. In accordance with Section 37.9(a)(15) of the Rent Ordinance, New Tenants shall not qualify for reimbursement of relocation expenses under the Rent Ordinance. The City shall have no liability or responsibility in connection with any and all evictions of New Tenants at the Project Site, and Developer shall Indemnify the City for any and all claims made in connection with any such eviction. No New Tenant who rents a unit in a To-Be-Replaced Building pursuant to this Section 4.5.3 shall be considered an Existing Tenant under this Agreement.

4.6 Construction Noise and Disruption.

4.6.1 Rent Abatement. Any tenant legally occupying a residential unit at the Project Site shall have the right to petition the Rent Board for a finding of a reduction in service as a result of adverse construction impacts in accordance with the Rent Ordinance. Any such petition shall be determined in accordance with the standard practices and procedures of the Rent Board applied on a Citywide basis pursuant to the Rent Ordinance.

4.6.2 Additional Remedies. The Rent Board has advised the Parties that the Rent Ordinance does not permit remedies other than rent abatement if a tenant experiences adverse construction impacts. The Parties acknowledge that rent abatement may be an insufficient remedy in the event that construction creates significant adverse impacts to tenants. For the purposes of this Agreement, "significant adverse construction impacts" shall mean construction noise or disruption that a resident of the City would not reasonably expect to experience in an urban environment. Accordingly, persons legally occupying an Existing Unit on the Effective Date may, if significantly and adversely impacted by construction from the Project, may request either (i) Relocation Payment Benefits or (ii) relocation to an equivalent unit on the Project Site. To receive these remedies, (i) the persons must demonstrate by substantial evidence to Developer or the Rent Board that they are suffering significant adverse impacts from construction exposure that merit the right to vacate the Existing Unit, and (ii) all of the persons legally occupying the Existing Unit must be willing to vacate the Existing Unit (the "**Impact Findings**").

(a) Relocation Payment Benefits. If the persons occupying the Existing Unit requested Relocation Payment Benefits and Developer or the Rent Board makes the Impact Findings, then such persons shall vacate the Existing Unit within ninety (90) days and upon such vacation Developer shall pay to such persons the Relocation Payment Benefits (less any rent due and owing from such persons). Any persons who subsequently occupy an Existing Unit vacated under this Section 4.6.2 shall be deemed a New Tenant, and shall not have the right to a

Replacement Unit or the right to Relocation Payment Benefits so long as Developer includes in each written lease the No Relocation Benefits Statement.

(b) Relocation to an Equivalent Unit. If the persons occupying the Existing Unit request relocation on the Project Site, and the Rent Board or Developer makes the Impact Findings, then such persons shall have the right to select an equivalent residential unit on the Project Site (either a Tower Unit or an Alternate Existing Unit) from those identified by Developer as vacant. The persons shall have the right to occupy the equivalent residential unit under the same terms of their existing lease, subject to the Rent Ordinance and the lease revisions set forth in Section 4.3.3. Such persons shall be moved to the selected residential unit at Developer's cost. For purposes of this Section 4.6.2, an "equivalent residential unit" shall mean a residential unit on the Project Site with the same number of bedrooms and bathrooms as the Existing Tenant's Existing Unit and acceptable to the Existing Tenant in its sole discretion. An Existing Tenant may, but shall not be required to, accept a smaller or larger residential unit subject to such adjustments in rent as may be agreed upon by the Existing Tenant and Developer.

I) If an Existing Tenant elects to move into a Tower Unit under this Section 4.6.2, then such Existing Tenant will have the right to stay in the Tower Unit under their existing lease (with the lease revisions set forth in Section 4.3.3) and shall no longer qualify for the Relocation Payment Benefits or for a Replacement Unit under Article 4.

II) If an Existing Tenant elects to temporarily move into a different Existing Unit under this Section 4.6.2 (an "**Alternate Existing Unit**"), then such Existing Tenant will have the right to relocate into a Replacement Unit in the same manner and the time frame, with the same notices, as if the Existing Tenant never left the Existing Unit but (i) the notices to such Existing Tenant shall be triggered by the date of demolition of the Alternate Existing Unit instead of the Existing Unit, and (ii) the Existing Tenant's date of initial occupancy shall not change but the Existing Tenant's seniority, for purposes of selecting a Replacement Unit, shall be determined in relation to the other Existing Tenants in the To-Be-Replaced Building in which the Alternate Existing Unit is located. No person shall have the right to more than two (2) temporary relocations under this Section 4.6.2. If the Existing Tenant moves to an Alternate Existing Unit and rejects or is deemed to reject the Replacement Unit as set forth in Section 4.4, then the Existing Tenant shall not become a Relocating Tenant but instead shall have the right to remain in the Alternate Existing Unit under the terms of their existing lease, subject

to the Rent Ordinance, until the Building Vacancy Date, and shall (A) no longer qualify for a Replacement Unit, but (B) shall continue to qualify for Relocation Payment Benefits as an alternative to the Replacement Unit.

4.7 Disputes. The rights of any occupant of the Project Site to challenge his or her status as an Existing Tenant or Relocating Tenant, to challenge his or her numerical rank by seniority for the unit type for which the Existing Tenant qualifies pursuant to Section 4.3.4 and Table 4.3.4 (and, if applicable, a person's seniority within an Existing Tenant if the Existing Tenant is more than one person), or to challenge the assignment of Replacement Units under this Agreement shall be limited to the express procedural requirements set forth in this Article 4. Nothing in this Agreement shall affect the right of any occupant of the Project Site to seek judicial remedies at any time.

4.8 Housing Vouchers. Developer currently accepts "Section 8" vouchers from Existing Tenants (under the Housing Choice Voucher Program sponsored by the U.S. Department of Housing and Urban Development, Code of Federal Regulations, 24 CFR Section 982.4). Nothing in this Article 4 shall change Developer's acceptance of Section 8 vouchers from Existing Tenants, and Developer shall continue to accept Section 8 vouchers from Existing Tenants for the applicable Replacement Unit. Nothing in this Agreement shall require Developer to accept Section 8 vouchers from any new tenant or tenant applicant that is not an Existing Tenant participating in the Section 8 program at the time of relocation.

4.9 Newsletter; Meeting. In addition to the notices and other public meetings (including the public meetings regarding the approved Development Phase and Tenant Relocation Plan) required under this Article 4, upon submittal of the Development Phase Application for the each Development Phase, Developer shall prepare and deliver to each residential unit on the Project Site a newsletter that includes a description of the Project, work completed to date and work anticipated to be completed in the following year, and addresses any commonly asked questions about the Project. Such newsletter shall also include the date, time and location of any known public hearings relating to the Project, contact information provided by the City for the Planning Department and the Rent Board, and information on how a group of tenants can become a Recognized Resident's Association. The newsletter shall also include the time, date and location of a public meeting during which Developer's representatives will answer questions relating to the Project. All of the information in the newsletter shall also be posted on the Project Website.

4.10 Notices and Responses. All tenant notifications under this Article 4 shall be by regular and certified U.S. Mail to the applicable residential unit on the Project Site and any other notice address set forth in the lease, with copies submitted to the Rent Board. Developer shall provide stamped certified U.S. Mail envelopes with all notifications requiring responses by tenants. All responses by tenants under this Article 4 shall be by certified U.S. Mail to Developer, using the envelope provided by Developer. Notifications of meetings shall be posted in the common area of affected buildings and on the Project Website.

5. DEVELOPER REPRESENTATIONS, WARRANTIES AND COVENANTS

5.1 Interest of Developer; Due Organization and Standing. Developer represents that it is the legal owner of the Project Site, and that all other persons with an ownership or security interest in the Project Site have consented to this Agreement. Developer is a Delaware limited liability company, duly organized and validly existing and in good standing under the laws of the State of Delaware. Developer has all requisite power to own its property and authority to conduct its business as presently conducted. Developer has made all required state filings required to conduct business in the State of California and is in good standing in the State of California.

5.2 Priority of Development Agreement. Developer warrants and represents that there is no prior lien or encumbrance (other than mechanics or materialmen's liens, or liens for taxes or assessments, that are not yet due) against the Project Site that, upon foreclosure, would be free and clear of the obligations set forth in this Agreement and that, as of the date of execution of this Agreement, the only beneficiary under an existing deed of trust encumbering the Project Site is Existing Lender. On or before the Effective Date of this Agreement, the Developer shall provide title insurance in form and substance satisfactory to the Planning Director and the City Attorney confirming the absence of any such liens or encumbrances. If there are any such liens or encumbrance, then Developer shall obtain written instruments from the beneficiaries of any such liens or encumbrances, in the form approved by the Planning Director and the City Attorney (and for mortgages or deeds of trust, in the form attached hereto as Exhibit U), subordinating their interest in the Project Site to this Agreement.

5.3 No Conflict With Other Agreements; No Further Approvals; No Suits. Developer warrants and represents that it is not a party to any other agreement that would conflict with Developer's obligations under this Agreement. Neither Developer's articles of organization, bylaws, or operating agreement, as applicable, nor any other agreement or law in any way prohibits, limits or otherwise affects the right or power of Developer to enter into and perform all of the terms and covenants of this Agreement. No consent, authorization or approval of, or other action by, and no notice to or filing with, any governmental authority, regulatory body or any other person is required for the due execution, delivery and performance by Developer of this Agreement or any of the terms and covenants contained in this Agreement. To Developer's knowledge, there are no pending or threatened suits or proceedings or undischarged judgments affecting Developer or any of its members before any court, governmental agency, or arbitrator which might materially adversely affect Developer's business, operations, or assets or Developer's ability to perform under this Agreement.

5.4 No Inability to Perform; Valid Execution. Developer warrants and represents that it has no knowledge of any inability to perform its obligations under this Agreement. The execution and delivery of this Agreement and the agreements contemplated hereby by Developer have been duly and validly authorized by all necessary action. This Agreement will be a legal, valid and binding obligation of Developer, enforceable against Developer in accordance with its terms.

5.5 Conflict of Interest. Through its execution of this Agreement, Developer acknowledges that it is familiar with the provisions of Section 15.103 of the City's Charter,

Article III, Chapter 2 of the City's Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the California Government Code, and certifies that it does not know of any facts which constitute a violation of said provisions and agrees that it will immediately notify the City if it becomes aware of any such fact during the Term.

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

5.7 Other Documents. No document furnished or to be furnished by Developer to the City in connection with this Agreement contains or will contain to Developer's knowledge any untrue statement of material fact or omits or will omit a material fact necessary to make the statements contained therein not misleading under the circumstances under which any such statement shall have been made.

5.8 No Suspension or Debarment. Neither Developer, nor any of its officers, have been suspended, disciplined or debarred by, or prohibited from contracting with, the U.S. General Services Administration or any federal, state or local governmental agency.

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

5.10 Taxes. Without waiving any of its rights to seek administrative or judicial relief from such charges and levies, Developer shall pay and discharge all taxes, assessments and governmental charges or levies imposed on it or on its income or profits or on any of its property before the date on which penalties attach thereto, and all lawful claims which, if unpaid, would become a lien upon the Project Site.

5.11 Notification. Developer shall promptly notify City in writing of the occurrence of any event which might materially and adversely affect Developer or Developer's business, or that would make any of the representations and warranties herein untrue, or that would, with the giving of notice or passage of time over the Term, constitute a default under this Agreement.

6. OBLIGATIONS OF DEVELOPER

6.1 Completion of Project. Upon commencement, Developer shall diligently prosecute to Completion all construction on the Project Site in accordance with the Basic Approvals and any Implementing Approvals. The foregoing notwithstanding, expiration of any building permit or other Project Approval shall not limit Developer's vested rights as set forth in this Agreement, and Developer shall have the right to seek and obtain subsequent building permits or approvals consistent with this Agreement at any time during the Term. Developer shall pay for all costs relating to the Project, including the Community Improvements, at no cost to the City.

6.1.1 Real Estate Transfers. In connection with the Project, the Parties agree that the City shall transfer certain real property to Developer and Developer shall transfer certain real property to the City in order to reconfigure the public rights-of-way as generally shown on Exhibit J. The actual real property transfers to be completed in each Development Phase shall be set forth in each applicable Development Phase Approval. Developer shall, following the Development Phase Approval, prepare all maps and legal descriptions as required to effectuate the proposed real estate transfers subject to the City's approval, which will not be unreasonably withheld. As and when needed in connection with the development of an approved Development Phase (and subject to the requirements set forth in this Agreement), the City shall convey any real property to Developer, following the vacation and abandonment of any public rights and the relocation of any utilities in such real property, by quitclaim deed in the form attached as Exhibit K. Developer shall convey any real property to the City by grant deed in the form attached as Exhibit L. Each Party shall have the right to perform physical, title and other customary due diligence before accepting title to exchanged land, and shall have the right to object to the condition of the property, in its reasonable discretion. It shall be a condition precedent to the City's acceptance of any real property that the City obtain title insurance, at Developer's sole cost, in form and from an issuer reasonably acceptable to City in the amount of the fair market value of the land. Developer shall have the right, but not the obligation, to obtain title insurance for the real property that it accepts at Developer's sole cost. If the accepting Party objects to the condition of the real property, including any title exceptions, then the Parties shall meet and confer for a period of thirty (30) days, or such longer period as may be agreed to by the Parties, to try to reach a reasonable resolution. It is the Parties' intent that Developer shall pay all reasonable costs of remedying any objectionable property condition. If the Parties are not able to reach resolution, then neither Party shall be required to complete the real property transfer.

6.1.2 Potential Payments for Real Property; Indemnification. All real property exchanged under this Agreement shall be valued on a square foot basis, and shall be deemed equal in value per square foot. If any real property exchange under this Agreement results in a net loss of acreage for the City, then Developer shall pay to the City the fair market value of the real property loss at the time of transfer based on the then-current use of the property so transferred. The City shall not be required to pay for any net gain in real property; provided, however, such gain can be applied against future real property transfers for purposes of determining whether there has been a net loss as

described above. Notwithstanding any such credit against future transfers, the City will not be required to reimburse any payments made for real property in connection with a previous transfer. Developer shall Indemnify the City against any and all Losses relating to real property conveyed by Developer to City under this Agreement, including but not limited to any Loss relating to the presence of hazardous materials in or on the real property at the time of transfer to the City.

6.2 Compliance with Conditions and CEQA Mitigation Measures. Developer shall comply with all applicable conditions of the Basic Approvals and any Implementing Approvals, and shall comply with all Mitigation Measures.

6.2.1 The Parties expressly acknowledge that the FEIR and the associated Mitigation Monitoring Program are intended to be used in connection with each of the Basic Approvals and the Implementing Approvals to the extent appropriate and permitted under applicable law. Consistent with the CEQA policies and requirements applicable to the FEIR, the City agrees to rely upon the FEIR in connection with the processing of any Implementing Approval to the extent the Implementing Approval does not change the Basic Approvals and to the extent allowed by law.

6.2.2 Nothing in this Agreement shall limit the ability of the City to impose conditions on any new, discretionary permit resulting from material changes to the Project from that described by the Basic Approvals as such conditions are determined by the City to be necessary to mitigate adverse environmental impacts identified through the CEQA process and associated with the granting of such permit or otherwise to address significant environmental impacts as defined by CEQA created by the approval of such permit; provided, however, any such conditions must be in accordance with applicable law.

6.3 Progress Reports. Developer shall make reports of the progress of construction of the Project in such detail and at such time as the Planning Director reasonably requests.

6.4 Cooperation By Developer.

6.4.1 Developer shall, in a timely manner, provide the City and each City Agency with all documents, applications, plans and other information reasonably necessary for the City to comply with its obligations under this Agreement.

6.4.2 Developer shall timely comply with all reasonable requests by the Planning Director and each City Agency for production of documents or other information evidencing compliance with this Agreement.

6.5 Nondiscrimination.

6.5.1 Developer Shall Not Discriminate. In the performance of this Agreement, Developer agrees not to discriminate against any employee, City and County employee working with Developer's contractor or subcontractor, applicant for employment with such contractor or subcontractor, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all

business, social, or other establishments or organizations, on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes.

6.6 First Source Hiring Program.

6.6.1 Incorporation of Administrative Code Provisions by Reference. The provisions of Chapter 83 of the Administrative Code ("**Chapter 83**") 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 Chapter 83, including but not limited to the remedies provided therein. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 83. On or before each Development Phase Approval, Developer shall have entered into a First Source Hiring Agreement with respect to such Development Phase substantially in a form that is mutually acceptable. Without limiting the foregoing, each First Source Hiring Agreement shall:

(a) Set appropriate hiring and retention goals for entry level positions. The Employer shall agree to achieve these hiring and retention goals, or, if unable to achieve these goals, to establish good faith efforts as to its attempts to do so, as set forth in the agreement. The agreement shall take into consideration the Employer's participation in existing job training, referral and/or brokerage programs. Within the discretion of the FSHA, subject to appropriate modifications, participation in such programs may be certified as meeting the requirements of this Chapter. Failure either to achieve the specified goal, or to establish good faith efforts will constitute noncompliance and will subject the Employer to the provisions of Section 83.10 of the Administrative Code;

(b) Set first source interviewing, recruitment and hiring requirements, which will provide the San Francisco Workforce Development System with the first opportunity to provide qualified economically disadvantaged individuals for consideration for employment for entry level positions. Employers shall consider all applications of qualified economically disadvantaged individuals referred by the System for employment; provided, however, if the Employer utilizes nondiscriminatory screening criteria, the Employer shall have the sole discretion to interview and/or hire individuals referred or certified by the San Francisco Workforce Development System as being qualified economically disadvantaged individuals. The duration of the first source interviewing requirement shall be determined by the FSHA and shall be set forth in each agreement, but shall not exceed ten (10) days. During that period, the Employer may publicize the entry level positions in accordance with the agreement. A need for urgent or temporary hires must be evaluated, and appropriate provisions for such a situation must be made in the agreement;

(c) Set appropriate requirements for providing notification of available entry level positions to the San Francisco Workforce Development System so that the System may train and refer an adequate pool of qualified economically disadvantaged individuals to participating Employers. Notification should include such information as employment needs by occupational title, skills, and/or experience required, the hours required, wage scale and duration of employment, identification of entry level and training positions, identification of English language proficiency requirements, or absence thereof, and the projected schedule and procedures for hiring for each occupation. Employers should provide both long-term job need projections and notice before initiating the interviewing and hiring process. These notification requirements will take into consideration any need to protect the Employer's proprietary information;

(d) Set appropriate record keeping and monitoring requirements. The FSHA shall develop easy-to-use forms and record keeping requirements for documenting compliance with the agreement. To the greatest extent possible, these requirements shall utilize the Employer's existing record keeping systems, be nonduplicative, and facilitate a coordinated flow of information and referrals;

(e) Establish guidelines for Employer good faith efforts to comply with the first source hiring requirements of Chapter 83. The FSHA will work with City departments to develop Employer good faith effort requirements appropriate to the types of contracts and property contracts handled by each department. Employers shall appoint a liaison for dealing with the development and implementation of the Employer's agreement. In the event that the FSHA finds that the Employer under a City contract or property contract has taken actions primarily for the purpose of circumventing the requirements of Chapter 83, that Employer shall be subject to the sanctions set forth in Section 83.10 of Chapter 83;

(f) Set the term of the agreement;

(g) Set appropriate enforcement and sanctioning standards consistent with Chapter 83;

(h) Set forth the City's obligations to develop training programs, job applicant referrals, technical assistance, and information systems that assist the Employer in complying with this Chapter; and

(i) Require the Employer to include notice of the requirements of this Chapter in leases, subleases, and other occupancy contracts.

6.6.2 Miscellaneous. Developer or its contractor, as applicable, shall make the final determination of whether an economically disadvantaged individual referred by the System is "qualified" for the position. Upon application by an Employer, the First Source Hiring Administration may grant an exception to any or all of the requirements of Chapter 83 in any situation where it concludes that compliance with Chapter 83 would

cause economic hardship. In the event Developer breaches the requirements of this Section 6.6, Developer shall be liable to the City for liquidated damages as set forth in Chapter 83. As set forth in the First Source Hiring Agreement, any contract or subcontract entered into by Developer shall require the contractor or subcontractor to comply with the requirements of Chapter 83 and shall contain contractual obligations substantially the same as those set forth in this Section 6.6.

6.7 Payment of Fees and Costs.

6.7.1 Developer shall timely pay to the City all Impact Fees and Exactions applicable to the Project or the Project Site as set forth in Section 2.3 of this Agreement.

6.7.2 Developer shall timely pay to the City all Processing Fees applicable to the processing or review of applications for the Basic Approvals or the Implementing Approvals under the Municipal Code. In connection with any environmental review relative to an Implementing Approval, Developer shall reimburse City or pay directly all reasonable and actual costs relating to the hiring of consultants and the performing of studies as may be necessary to perform such environmental review. Prior to engaging the services of any consultant or authorizing the expenditure of any funds for such consultant, the City shall consult with Developer in an effort to mutually agree to terms regarding (i) the scope of work to be performed, (ii) the projected costs associated with the work, and (iii) the particular consultant that would be engaged to perform the work.

6.7.3 Developer shall pay to the City all City Costs during the Term within thirty (30) days following receipt of a written invoice from the City. Each City Agency shall submit to OEWD monthly or quarterly invoices for all City Costs incurred by the City Agency for reimbursement under this Agreement, and OEWD shall gather all such invoices so as to submit one City bill to Developer each month or quarter. To the extent that a City Agency fails to submit such invoices, then OEWD or its designee shall request and gather such billing information, and any City Cost that is not invoiced to Developer within twelve (12) months from the date the City Cost was incurred shall not be recoverable.

6.7.4 The City shall not be required to process any requests for approval or take other actions under this Agreement during any period in which payments from Developer are past due. If such failure to make payment continues for a period of more than sixty (60) days following notice, it shall be a Default for which the City shall have all rights and remedies as set forth in Section 12.5.

6.8 Nexus/Reasonable Relationship Waiver. Developer consents to, and waives any rights it may have now or in the future, to challenge with respect to the Project or the Basic Approvals, the legal validity of, the conditions, requirements, policies, or programs required by this Agreement or the Existing Standards, including, without limitation, any claim that they constitute an abuse of police power, violate substantive due process, deny equal protection of the laws, effect a taking of property without payment of just compensation, or impose an unlawful tax. In the event Developer challenges any Future Change to an Existing Standard, or any increased or new fee permitted under Section 2.3, then the City shall have the right to withhold

additional development approvals or permits until the matter is resolved; provided, however, Developer shall have the right to make payment or performance under protest, and thereby receive the additional approval or permit while the matter is in dispute.

6.9 Taxes. Nothing in this Agreement limits the City's ability to impose new or increased taxes or special assessments, or any equivalent or substitute tax or assessment, provided (i) the City shall not institute on its own initiative proceedings for any new or increased special tax or special assessment for a land-secured financing district (including the special taxes under the Mello-Roos Community Facilities Act of 1982 (California Government Code § 53311 et seq.)) that includes the Project Site unless the new district is City-wide or Developer gives its prior written consent to such proceedings, and (ii) no such tax or assessment shall be targeted or directed at the Project, including, without limitation, any tax or assessment targeted solely at the Project Site. Nothing in the foregoing prevents the City from imposing any tax or assessment against the Project Site, or any space therein, that is enacted in accordance with law and applies to similarly-situated property on a City-wide basis.

6.10 Indemnification of City. Developer shall Indemnify the City and its officers, agents and employees from and, if requested, shall defend them against any and all loss, cost, damage, injury, liability, and claims ("**Losses**") arising or resulting directly or indirectly from this Agreement and Developer's performance (or nonperformance) of this Agreement, regardless of the negligence of and regardless of whether liability without fault is imposed or sought to be imposed on the City, except to the extent that such Indemnity is void or otherwise unenforceable under applicable law, and except to the extent such Loss is the result of the active negligence or willful misconduct of City. The foregoing Indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs, and the City's cost of investigating any claims against the City. All Indemnifications set forth in this Agreement shall survive the expiration or termination of this Agreement.

6.11 Equal Opportunity and Employment and Training Program. In accordance with Administrative Code section 56.7, this Agreement must include a detailed equal opportunity program and employment and training program (the "**Equal Opportunity and Employment Program**") containing goals and timetables and a program for implementation. Before the first Development Phase Application, the Parties agree to negotiate for a detailed agreement for the Equal Opportunity and Employment Program, which will be subject to the review and approval of Developer, the OEWD Director and the Planning Director, each in their reasonable discretion. Developer's rights under this Agreement are subject to and conditioned upon entering into such agreement before the first Development Phase Approval. If the Parties are unable to reach such agreement within one (1) year after the Effective Date, then either Party may initiate arbitration under Section 12.7 to seek to resolve their differences. If the Parties remain unable to reach agreement on or before the date that is two (2) year following the Effective Date, then this Agreement shall terminate without cost, liability or penalty to either Party.

6.12 Prevailing Wages. During the Term, Developer agrees that any person performing labor in the construction of Public Improvements, Stormwater Management Improvements or Community Improvements on the Project Site shall be paid not less than the highest prevailing rate of wages under Section 6.22(E) of the Administrative Code, shall be subject to the same hours and working conditions, and shall receive the same benefits as in each

case are provided for similar work performed in San Francisco, California. Developer shall include in any contract for construction a requirement that all persons performing labor under such contract shall be paid not less than the highest prevailing rate of wages for the labor so performed. Developer shall require any contractor to provide, and shall deliver to City upon request, certified payroll reports with respect to all persons performing labor in the construction of Public Improvements or Community Improvements.

6.13 Contracting for Public Improvements. In connection with all of the Public Improvements, Developer shall engage a contractor that is duly licensed in California and qualified to complete the work (the "**Contractor**"). The Contractor shall contract directly with Developer pursuant to an agreement to be entered into by Developer and Contractor (the "**Construction Contract**"), which shall: (i) be a guaranteed maximum price contract; (ii) require the Contractor or Developer to obtain and maintain bonds for one-hundred percent (100%) of the cost of construction for performance and fifty percent (50%) of payment for labor and materials (and include the City and Developer as dual obliges under the bonds), or provide a letter of credit or other security satisfactory to the City, in accordance with the requirements of the Subdivision Code; (iii) require the Contractor to obtain and maintain customary insurance, including workers compensation in statutory amounts, Employer's liability, general liability, and builders all-risk; (iv) release the City from any and all claims relating to the construction, including but not limited to mechanics liens and stop notices; (v) subject to the rights of any Mortgagee that forecloses on the property, include the City as a third party beneficiary, with all rights to rely on the work, receive the benefit of all warranties, and prospectively assume Developer's obligations and enforce the terms and conditions of the Construction Contract as if the City were an original party thereto; and (vi) require that the City be included as a third party beneficiary, with all rights to rely on the work product, receive the benefit of all warranties and covenants, and prospectively assume Contractor's rights in the event of any termination of the Construction Contract, relative to all work performed by the Project's architect and engineer.

7. OBLIGATIONS OF CITY

7.1 No Action to Impede Basic Approvals. Subject to City's express rights under this Agreement (including under Section 2.5 and Section 6.2), City shall take no action under this Agreement nor impose any condition on the Project that would conflict with this Agreement or the Basic Approvals. An action taken or condition imposed shall be deemed to be "in conflict with" this Agreement or the Basic Approvals if such actions or conditions result in the occurrence of one or more of the circumstances identified in Section 2.2.2 of this Agreement.

7.2 Processing During Third Party Litigation. The filing of any third-party lawsuit(s) against the City or Developer relating to this Agreement, the Basic Approvals, the Implementing Approvals, or other development issues affecting the Project or the Project Site, shall not delay or stop the development, processing or construction of the Project or the issuance of Implementing Approvals unless the third-party obtains a court order preventing the activity.

7.3 Criteria for Approving Implementing Approvals. The City may approve an application for an Implementing Approval subject to any conditions necessary to bring the Implementing Approval into compliance with this Agreement, the Basic Approvals, any Implementing Approvals that have been previously granted, the Existing Standards, or Future

Changes to Existing Standards (except to the extent such Future Changes to Existing Standards are in conflict with this Agreement or the terms and conditions of the Basic Approvals). If the City denies any application for an Implementing Approval that implements the Project as contemplated by the Basic Approvals (as opposed to requests for Implementing Approvals that effect a Material Change to the Basic Approvals), the City must specify in writing the reasons for such denial and may suggest modifications. Any such specified modifications shall be consistent with this Agreement (including the consistency with the Uniform Codes or the Agency Design Guidelines, as provided in Section 2.4), the Basic Approvals, the Implementing Approvals that have been previously granted, and the Existing Standards or Future Changes to Existing Standards and City staff shall approve the application if it is subsequently resubmitted for City review and corrects or mitigates, to the City's satisfaction, the stated reasons for the earlier denial in a manner that is consistent and compliant with this Agreement, the Basic Approvals, any Implementing Approvals that have been granted, the Existing Standards, Future Changes to Existing Standards (if any) and applicable law.

7.4 Coordination of Offsite Improvements. The City shall use reasonable efforts to assist Developer in coordinating construction of offsite improvements specified in a Development Phase Approval in a timely manner; provided, however, the City shall not be required to incur any costs in connection therewith, other than incidental administrative costs, such as staff time.

8. MUTUAL OBLIGATIONS

8.1 Notice of Completion or Revocation. Upon the Parties' completion of performance or revocation of this Agreement, a written statement acknowledging such completion or revocation, signed by the appropriate agents of City and Developer, shall be recorded in the Official Records.

8.2 Estoppel Certificate. Developer may, at any time, and from time to time, deliver written notice to the Planning Director requesting that the Planning Director certify in writing that to the best of his or her knowledge: (i) this Agreement is in full force and effect and a binding obligation of the Parties; (ii) this Agreement has not been amended or modified either orally or in writing, and if so amended or modified, identifying the amendments or modifications and stating their date and nature; (iii) Developer is not in default in the performance of its obligations under this Agreement, or if in default, describing therein the nature and amount of any such defaults; and (iv) the findings of the City with respect to the most recent annual review performed pursuant to Section 9.2 below. The Planning Director shall execute and return such certificate within thirty (30) days following receipt of the request. Each Party acknowledges that any mortgagee with a mortgage on all or part of the Project Site, acting in good faith, may rely upon such a certificate. A certificate provided by the City establishing the status of this Agreement with respect to any lot or parcel shall be in recordable form and may be recorded with respect to the affected lot or parcel at the expense of the recording party.

8.3 Cooperation in the Event of Third-Party Challenge.

8.3.1 In the event any legal action or proceeding is instituted challenging the validity of any provision of this Agreement, the Project, the Basic Approvals or

Implementing Approvals, the adoption or certification of the FEIR, other actions taken pursuant to CEQA, or other approvals under state or City codes, statutes, codes, regulations, or requirements, and any combination thereof relating to the Project or any portion thereof (each, a "**Third-Party Challenge**"), the Parties shall cooperate in defending against such challenge. The City shall promptly notify Developer of any Third-Party Challenge instituted against the City.

8.3.2 Developer shall assist and cooperate with the City at its own expense in connection with any Third-Party Challenge. The City Attorney's Office may use its own legal staff or outside counsel in connection with defense of the Third-Party Challenge, at the City Attorney's sole discretion. Developer shall reimburse the City for its actual costs in defense of the action or proceeding, including but not limited to the time and expenses of the City Attorney's Office and any consultants; provided, however, (i) Developer shall have the right to receive monthly invoices for all such costs, and (ii) Developer may elect to terminate this Agreement, and upon any such termination, Developer's and City's obligations to defend the Third-Party Challenge shall cease and Developer shall have no responsibility to reimburse any City defense costs incurred after such termination date. Developer shall Indemnify the City from any other liability incurred by the City, its officers, and its employees as the result of any Third-Party Challenge, including any award to opposing counsel of attorneys' fees or costs, except where such award is the result of the willful misconduct of the City or its officers or employees. This section shall survive any judgment invalidating all or any part of this Agreement.

8.4 Good Faith and Fair Dealing. The Parties shall cooperate with each other and act in good faith in complying with the provisions of this Agreement and implementing the Basic Approvals and any Implementing Approvals. In their course of performance under this Agreement, the Parties shall cooperate and shall undertake such actions as may be reasonably necessary to implement the Project as contemplated by this Agreement.

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

9. PERIODIC REVIEW OF DEVELOPER'S COMPLIANCE

9.1 Annual Review. Pursuant to Section 65865.1 of the Development Agreement Statute and Section 56.17 of the Administrative Code as of the Effective Date ("**Section 56.17**"), attached hereto as Exhibit N, at the beginning of the second week of each January following final adoption of this Agreement and for so long as the Agreement is in effect (the "**Annual Review Date**"), the Planning Director shall commence a review to ascertain whether Developer has, in good faith, complied with the Agreement. The failure to commence such review in January shall not waive the Planning Director's right to do so later in the calendar year; provided, however, that such review shall be deferred to the following January if not commenced before June. The

Planning Director may elect to forego an annual review if no significant construction work occurred on the Project Site during that year, or if such review is otherwise not deemed necessary.

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

9.2.1 Required Information from Developer. Not more than sixty (60) days and not less than forty-five (45) days before the Annual Review Date, Developer shall provide a letter to the Planning Director containing evidence to show compliance with this Agreement, including, but not limited to, compliance with the requirements regarding the following: the Community Improvements, Public Improvements and Stormwater Management Improvements constructed or under construction by Developer as required by the Phasing Plan, the timing of construction and quality of the Replacement Units constructed for Existing Tenants, and the manner in which the BMR Requirements have been met. The burden of proof, by substantial evidence, of compliance is upon Developer.

9.2.2 City Report. Within forty (40) days after Developer submits such letter, the Planning Director shall review the information submitted by Developer and all other available evidence regarding Developer's compliance with this Agreement. All such available evidence including final staff reports shall, upon receipt by the City, be made available as soon as possible to Developer. The Planning Director shall notify Developer in writing whether Developer has complied with the terms of this Agreement. If the Planning Director finds Developer in compliance, then the Planning Director shall proceed in the manner provided in Section 56.17. If the Planning Director finds Developer is not in compliance with this Agreement, the Planning Director shall issue a Certificate of Non-Compliance as procedures set forth in Section 56.17. The City's failure to timely complete the annual review is not deemed to be a waiver of the right to do so at a later date. All costs incurred by the City under this Section shall be included in the City Costs.

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

9.2.4 Default. The rights and powers of the City under this Section 9 are in addition to, and shall not limit, the rights of the City to terminate or take other action under this Agreement on account of the commission by Developer of an Event of Default.

10. AMENDMENT; TERMINATION; EXTENSION OF TERM

10.1 Amendment or Termination. Except as provided in Section 2.5 (Changes in State and Federal Rules and Regulations) and Section 12.5 (Remedies), this Agreement may only be amended or terminated with the mutual written consent of the Parties. Except as provided in this Agreement to the contrary, the amendment or termination, and any required notice thereof, shall be accomplished in the manner provided in the Development Agreement Statute and Section 56.17.

10.1.1 Amendment Exemptions. No amendment of a Basic Approval or Implementing Approval, or the approval of an Implementing Approval, shall require an amendment to this Agreement. Upon approval, any such matter shall be deemed to be incorporated automatically into the Project and vested under this Agreement (subject to any conditions set forth in the amendment or Implementing Approval). Notwithstanding the foregoing, if there is any conflict between the terms of this Agreement and an Implementing Approval, or between this Agreement and any amendment to a Basic Approval or Implementing Approval, then the Parties shall concurrently amend this Agreement (subject to all necessary approvals in accordance with this Agreement) in order to ensure the terms of this Agreement are consistent with the proposed Implementing Approval or the proposed amendment to a Basic Approval or Implementing Approval. If the Parties fail to amend this Agreement as set forth above, then the terms of this Agreement shall prevail over any Implementing Approval or any amendment to a Basic Approval or Implementing Approval that conflicts with this Agreement.

10.2 Extension Due to Legal Action, Referendum, or Excusable Delay.

10.2.1 If any litigation is filed challenging this Agreement (including but not limited to any CEQA determinations) or the validity of this Agreement or any of its provisions, or if this Agreement is suspended pending the outcome of an electoral vote on a referendum, then the Term shall be extended for the number of days equal to the period starting from the commencement of the litigation or the suspension to the end of such litigation or suspension. The Parties shall document the start and end of this delay in writing within thirty (30) days from the applicable dates.

10.2.2 In the event of changes in state or federal laws or regulations, inclement weather, delays due to strikes, inability to obtain materials, civil commotion, war, acts of terrorism, fire, acts of God, litigation, lack of availability of commercially-reasonable project financing (as a general matter and not specifically tied to Developer), or other circumstances beyond the control of Developer and not proximately caused by the acts or omissions of Developer that substantially interfere with carrying out the Project or any portion thereof or with the ability of Developer to perform its obligations

under this Agreement ("**Excusable Delay**"), the Parties agree to extend the time periods for performance of Developer's obligations impacted by the Excusable Delay. In the event that an Excusable Delay occurs, Developer shall notify the City in writing of such occurrence and the manner in which such occurrence substantially interferes with carrying out the Project or the ability of Developer to perform under this Agreement. In the event of the occurrence of any such Excusable Delay, the time or times for performance of the obligations of Developer will be extended for the period of the Excusable Delay if Developer cannot, through commercially reasonable and diligent efforts, make up for the Excusable Delay within the time period remaining before the applicable completion date; provided, however, within thirty (30) days after the beginning of any such Excusable Delay, Developer shall have first notified City of the cause or causes of such Excusable Delay and claimed an extension for the reasonably estimated period of the Excusable Delay. In the event that Developer stops any work as a result of an Excusable Delay, Developer must take commercially reasonable measures to ensure that the affected real property is returned to a safe condition and remains in a safe condition for the duration of the Excusable Delay.

10.2.3 The foregoing Section 10.2.2 notwithstanding, Developer may not seek to delay the Completion of any Community Improvement or other public benefit required under a Development Phase Approval (including any required implementation trigger contained in the Phasing Plan or in an Implementing Approval) as a result of an Excusable Delay related to the lack of availability of commercially reasonable project financing. Furthermore, Developer may not rely on Excusable Delay to delay the Completion of a Community Improvement or other public benefit while commensurate work (to that which is sought to be delayed) is being performed on market rate development in the Project Site.

11. TRANSFER OR ASSIGNMENT; RELEASE; RIGHTS OF MORTGAGEES; CONSTRUCTIVE NOTICE

11.1.1 Permitted Transfer of this Agreement.

11.1.1 No City Consent. Developer shall have the right to Transfer its rights, interests and obligations under this Agreement, without the City's consent, as follows:

(1) Developer may convey the entirety of its right, title, and interest in and to the Project Site together with a Transfer of all rights, interests and obligations of this Agreement without the City's consent;

(2) From and after the recordation of a final subdivision map for all real property within an Development Phase or Sub-Phase Approval and Developer's Completion of the Community Improvements and Transportation Mitigation Measures in that approved Development Phase or Sub-Phase, Developer shall have the right to Transfer all of its interest, rights or obligations under this Agreement with respect to that Development Phase or Sub-Phase to a Transferee acquiring a fee or long-term ground lease interest in all or a portion of

the real property within that Development Phase or Sub-Phase without the City's consent;

(3) Following the Completion of infrastructure as needed to create developable lots, Developer shall have the right to convey developable lots or parcels within the Project Site for vertical development not requiring the construction of Community Improvements and Transportation Mitigation Measures but requiring the construction of on-site Public Improvements or Stormwater Management Improvements required by the Planning Code or other City code or regulation (including adjoining streetscape improvements required by a street improvement permit), and Transfer all rights, interests and obligations under this Agreement with respect to the conveyed lots or parcels, without the City's consent (subject to the requirements of Section 4.2 with respect to the Completion of BMR Units or payment of an in lieu fee); and

(4) Developer shall have the right to convey a portion of the Project Site, together with a Transfer of its rights, interests and obligations under to this Agreement with respect to the conveyed real property, to Affiliates without the City's consent (but subject to the cross-default provisions between Developer and Affiliates as set forth in Section 12.3 below); and

(5) Developer shall have the right to convey all or a portion of the Project Site, together with a Transfer of all its rights, interests and obligations under this Agreement with respect to the conveyed real property, to a Mortgagee as set forth in Section 11.9 below without the City's consent. Following any foreclosure, deed in lieu or other transfer to a Mortgagee, such Mortgagee shall have the right to transfer its interest in the Project Site together with a Transfer of all rights, interests and obligations under this Agreement without the City's consent.

Any Transfer of rights, interests and obligations under this Agreement shall be by an Assignment and Assumption Agreement in substantially the form attached hereto as Exhibit O, and notwithstanding the fact that the City cannot object to Transfers described in this Section 11.1.1 above, the City shall have the right to object to an Assignment and Assumption Agreement if and to the extent such agreement does not meet the requirements of Section 11.3.3. No Transfer under this Section shall terminate or modify the rights or obligations of the Parties under this Agreement including but not limited to the Replacement Unit and BMR Requirements.

11.1.2 City Consent Requirement. Developer shall have the right, at any time, to convey a portion of its right, title and interest in and to the Project Site, as well as Transfer the rights, interests and obligations under this Agreement with respect to such real property (including the obligation to construct Community Improvements and Transportation Mitigation Measures required to be constructed in the applicable Development Phase Approval) subject to the prior written consent of the Planning Director, which consent will not be unreasonably withheld, conditioned or delayed. In determining the reasonableness of any consent or failure to consent, the Planning

Director shall consider whether the proposed Transferee has sufficient development experience and creditworthiness to perform the obligations to be transferred. With regard to any proposed Transfer under this Section 11.1.2, Developer shall provide to the City information to demonstrate the Transferee's development experience, together with any additional information reasonably requested by the City.

11.2 Transferee Obligations. The Parties understand and agree that rights and obligations under this Agreement run with the land, and each Transferee must satisfy the obligations of this Agreement with respect to the land owned by it (including but not limited to completion of any BMR or Replacement Units); provided, however, notwithstanding the foregoing, if an owner of a portion of the Project Site (other than a mortgagee, including any mortgagee who obtains title to the Project Site or any portion thereof as a result of foreclosure proceedings or conveyance or other action in lieu thereof, or other remedial action) does not enter into an Assignment and Assumption Agreement approved by the Planning Director, then it shall have no rights, interests or obligations under this Agreement and the City shall have such remedies as may be available for violation of this Article 11.

11.3 Notice and Approval of Transfers.

11.3.1 With regard to any proposed Transfer under this Article 11, Developer shall provide not less than thirty (30) days written notice to City before any proposed Transfer of its interests, rights and obligations under this Agreement. Developer shall provide, with such notice, a copy of an assignment and assumption agreement, in substantially the form attached hereto as Exhibit O, that Developer proposes to enter into, with a detailed description of what obligations are to be assigned to the Transferee and what obligations will be retained by Developer, and a description of the real property proposed for conveyance to the Transferee (an "**Assignment and Assumption Agreement**"). The City shall execute and return the Assignment and Assumption Agreement, or provide any written objections, within thirty (30) days following receipt of the Assignment and Assumption Agreement from Developer.

11.3.2 Each Assignment and Assumption Agreement shall be in recordable form, substantially the form attached hereto as Exhibit O, and include: (i) an agreement and covenant by the Transferee not to challenge the enforceability of any of the provisions or requirements of this Agreement, including but not limited to the Ellis Act and Costa-Hawkins Act provisions and waivers; (ii) a description of the obligations under this Agreement (including but not limited to obligations to construct Community Improvements and Mitigation Measures) that will be assumed by the assignee and from which assignor will be released; (iii) confirmation of all of the Indemnifications and releases set forth in this Agreement; (iv) a covenant not to sue the City, and an Indemnification to the City, for any and all disputes between the assignee and assignor; (v) a covenant not to sue the City, and an Indemnification to the City, for any failure to complete all or any part of the Project by any party, and for any harm resulting from the City's refusal to issue further permits or approvals to a defaulting party under the terms of this Agreement; (vi) a transfer of any existing bonds or security required under this Agreement, or the Assignee will provide new bonds or security to replace the bonds or security that had been provided by Assignor, and (vii) such other matters as are deemed

appropriate by the assignee and assignor and are approved by the City. Each Assignment and Assumption Agreement shall become effective when it is duly executed by the Parties, the Planning Director has executed the consent, and it is recorded in the Official Records.

11.3.3 With regard to any proposed Transfer under this Article 11 not requiring the City's consent, each Assignment and Assumption Agreement shall be subject to the review and approval of the Planning Director and the Planning Director shall only disapprove the Assignment and Assumption Agreement if such Assignment and Assumption Agreement does not include the items (i) to (vi) of Section 11.3.2 above, or the description of the obligations that will be assigned and assumed are unclear or inconsistent with this Agreement, the Phasing Plan or any applicable Development Phase Approval. With regard to any proposed Transfer under this Article 11 requiring the City's consent, each Assignment and Assumption Agreement shall be subject to the review and approval of the Planning Director, which shall not be unreasonably withheld or delayed. The Planning Director may withhold such approval (a) if the proposed Assignment and Assumption Agreement does not include the items (i) to (vi) of Section 11.3.2 above, or the description of the obligations that will be assigned and assumed are unclear or inconsistent with this Agreement, the Phasing Plan or any applicable Development Phase Approval, (b) the Planning Director reasonably objects to the qualifications of the proposed Transferee, as set forth in Section 11.1.2 above, or (c) the proposed Assignment and Assumption Agreement disproportionally burdens particular parcels or Transferees with obligations and Developer or Transferee does not provide reasonable evidence that such obligations can or will be completed.

11.4 City Review of Proposed Transfers. The City shall use good faith efforts to promptly review and respond to all approval requests under this Article 11. The City shall explain its reasons for any denial, and the parties agree to meet and confer in good faith to resolve any differences or correct any problems in the proposed documentation or transaction. If the City grants its consent, the consent shall include a fully executed, properly acknowledged release of assignor for the prospective obligations that have been assigned, in recordable form, and shall be recorded together with the approved Assignment and Assumption Agreement. Notwithstanding anything to the contrary set forth in this Agreement, the City shall not be required to consider any request for consent to any Transfer while Developer is in uncured breach of any of its obligations under this Agreement. Any sale or conveyance of all or part of the Project Site during the Term without an Assignment and Assumption Agreement as required by this Article 11 assigning the applicable portions of this Agreement, if any, (except for conveyances to Mortgagees and conveyances of completed lots with completed vertical development for which there are no continuing rights or obligations under this Agreement, and for which the Parties have therefore released the encumbrance of this Agreement) shall be an Event of Default. Any Transfer in violation of this Article 11 shall be an Event of Default. If Developer fails to cure such Event of Default by voiding or reversing the unpermitted Transfer within ninety (90) days following the City's delivery of the Notice of Default, the City shall have the rights afforded to it under Article 12.

11.5 Permitted Change; Permitted Contracts. Notwithstanding anything to the contrary set forth above, the following shall not be deemed a Transfer requiring City consent under this

Agreement: (i) any sale, pledge, assignment or other transfer of the entire Project Site to an Affiliate of Developer and (ii) any change in corporate form of Developer or its Affiliates, such as a transfer from a limited liability company to a corporation or partnership, that does not affect or change beneficial ownership of the Project Site (each, a "**Permitted Change**"); provided, however, Developer shall provide to City written notice of any such Permitted Change, together with such backup materials or information reasonably requested by City, within thirty (30) days following the date of such Permitted Change or City's request for backup information, as applicable. In addition, Developer has the right to enter into contracts with third parties, including but not limited to construction and service contracts, to perform work required by Developer under this Agreement. No such contract shall be deemed a Transfer under this Agreement and Developer shall remain responsible to City for the Completion of the work in accordance with this Agreement, subject to Excusable Delay.

11.6 Release of Liability. Upon City's consent to a Transfer (other than to an Affiliate of Developer), Developer shall be released (subject to Section 12.3) from any prospective liability or obligation under this Agreement that has been Transferred to the Transferee as specified in the Assignment and Assumption Agreement, and the Transferee shall be deemed to be the "Developer" under this Agreement with all rights and obligations related thereto with respect to the real property conveyed to such Transferee. As further described in Section 12.3, if a Transferee defaults under this Agreement, such default shall not constitute a default by Developer or its Affiliates (or other Transferees not Affiliated with the defaulting Transferee) and shall not entitle City to Terminate or modify this Agreement with respect to such non-defaulting Parties. The foregoing notwithstanding, the Parties acknowledge and agree that a failure to Complete a Mitigation Measure, Community Improvement, or Public Improvement that must be Completed by a specific Party (as an implementation trigger in the Phasing Plan or applicable Development Phase Approval) may, if not Completed, delay or prevent a different Party's ability to start or Complete a specific building or improvement under this Agreement, and Developer and all Transferees assume this risk. Accordingly, City may withhold Development Phase Approvals, Design Review Approvals, or Implementing Approvals based upon the acts or omissions of a different Party.

11.7 Rights of Developer. The provisions in this Article 11 shall not be deemed to prohibit or otherwise restrict Developer from (i) granting easements or licenses to facilitate development of the Project Site, (ii) encumbering the Project Site or any portion of the improvements thereon by any mortgage, deed of trust, or other device securing financing with respect to the Project Site or Project, (iii) granting a leasehold interest in portions of the Project Site in which persons or entities so granted will reside or will operate, (iv) entering into a joint venture agreement or similar partnership agreement to fulfill its obligations under this Agreement, provided that Developer retains control of such joint venture or partnership and provided none of the foregoing will affect or limit Developer's obligations or liabilities under this Agreement, (v) upon completion of a building, selling a fee interest in a condominium unit (excluding the Replacement Units, which shall all remain under common ownership as set forth above), or (vi) transferring all or a portion of the Project Site pursuant to a foreclosure, conveyance in lieu of foreclosure, or other remedial action in connection with a mortgage; provided, however, with respect to items (i) through (iii) above, Developer shall not grant any such easements or licenses, allow encumbrances, or grant leasehold interests over real property intended for conveyance to the City in accordance with the Parkmerced Plan Documents without

the City's prior written consent unless such interests or encumbrances can be and in fact are terminated by Developer before conveyance to the City. None of the terms, covenants, conditions, or restrictions of this Agreement or the Basic Approvals or Implementing Approvals shall be deemed waived by City by reason of the rights given to Developer pursuant to this Section 11.7.

11.8 Developer's Responsibility for Performance. It is the intent of the Parties that as the Project is developed all applicable requirements of this Agreement and the Basic Approvals and Implementing Approvals shall be met. If Developer Transfers all or any portion of this Agreement, Developer shall continue to be responsible for performing the obligations under this Agreement until such time as there is delivered to the City a legally binding Assignment and Assumption Agreement that has been approved by the City in accordance with this Article 11. The City is entitled to enforce each and every such obligation assumed by each Transferee directly against the Transferee as if the Transferee were an original signatory to this Agreement with respect to such obligation. Accordingly, in any action by the City against a Transferee to enforce an obligation assumed by the Transferee, the Transferee shall not assert as a defense against the City's enforcement of performance of such obligation that such obligation (i) is attributable to Developer's breach of any duty or obligation to the Transferee arising out of the transfer or assignment, the Assignment and Assumption Agreement, the purchase and sale agreement, or any other agreement or transaction between Developer and the Transferee, or (ii) relates to the period before the Transfer. Developer shall Indemnify the City from and against all Losses arising out of or connected with contracts or agreements entered into by Developer in connection with its performance under this Agreement, including any Assignment and Assumption Agreement and any dispute between parties relating to which such party is responsible for performing certain obligations under this Agreement.

11.9 Rights of Mortgagees; Not Obligated to Construct; Right to Cure Default.

11.9.1 Notwithstanding anything to the contrary contained in this Agreement (including without limitation those provisions that are or are intended to be covenants running with the land), a mortgagee, including any mortgagee who obtains title to the Project Site or any portion thereof as a result of foreclosure proceedings or conveyance or other action in lieu thereof, or other remedial action ("**Mortgagee**"), shall not be obligated under this Agreement to construct or complete improvements required by the Basic Approvals, Implementing Approvals or this Agreement or to guarantee their construction or completion solely because the Mortgagee holds a mortgage or other interest in the Project Site or this Agreement. The foregoing provisions shall not be applicable to any other party who, after such foreclosure, conveyance or other action in lieu thereof, or other remedial action, obtains title to the Project Site or a portion thereof from or through the Mortgagee, or any other purchaser at a foreclosure sale other than the Mortgagee itself. A breach of any obligation secured by any mortgage or other lien against the mortgaged interest or a foreclosure under any mortgage or other lien shall not by itself defeat, diminish, render invalid or unenforceable, or otherwise impair the obligations or rights of Developer under this Agreement.

11.9.2 Subject to the provisions of the first sentence of Section 11.9.1, any person, including a Mortgagee, who acquires title to all or any portion of the Project Site

by foreclosure, trustee's sale, deed in lieu of foreclosure, or other remedial action shall succeed to all of the rights and obligations of Developer under this Agreement and shall take title subject to all of the terms and conditions of this Agreement. Nothing in this Agreement shall be deemed or construed to permit or authorize any such holder to devote any portion of the Project Site to any uses, or to construct any improvements, other than the uses and improvements provided for or authorized by the Basic Approvals, Implementing Approvals and this Agreement.

11.9.3 If the City receives a written notice from a Mortgagee or from Developer requesting a copy of any Notice of Default delivered to Developer and specifying the address for service thereof, then the City shall deliver to such Mortgagee at such Mortgagee's cost (or Developer's cost), concurrently with service thereon to Developer, any Notice of Default delivered to Developer under this Agreement. In accordance with Section 2924 of the California Civil Code, the City hereby requests that a copy of any notice of default and a copy of any notice of sale under any mortgage or deed of trust be mailed to the City at the address shown on the first page of this Agreement for recording.

11.9.4 A Mortgagee shall have the right, at its option, to cure any default or breach by Developer under this Agreement within the same time period as Developer has to remedy or cause to be remedied any default or breach, plus an additional period of (i) ninety (90) calendar days to cure a default or breach arising from Developer failure to pay any sum of money required to be paid hereunder and (ii) one hundred and eighty (180) days to cure or commence to cure a non-monetary default or breach and thereafter to pursue such cure diligently to completion, or such additional time as necessary for the Mortgagee to obtain physical possession of the Project Site or the part thereof to which the lien of such Mortgagee relates through judicial foreclosure or other means. Nothing in this Agreement shall prevent a Mortgagee from adding the cost of such cure to the indebtedness or other obligation evidenced by its mortgage, provided that if the breach or default is with respect to the construction of the improvements on the Project Site, nothing contained in this Section 11.9 or elsewhere in this Agreement shall be deemed to permit or authorize such Mortgagee, either before or after foreclosure or action in lieu thereof or other remedial measure, to undertake or continue the construction or completion of the improvements (beyond the extent necessary to conserve or protect improvements or construction already made) without first having expressly assumed the obligation, by written agreement reasonably satisfactory to the City, to complete in the manner provided in this Agreement the improvements on the Project Site or the part thereof to which the lien or title of such Mortgagee relates.

11.10 Constructive Notice. Every person or entity who now or hereafter owns or acquires any right, title or interest in or to any portion of the Project or the Project Site is, and shall be, constructively deemed to have consented to every provision contained herein, whether or not any reference to this Agreement is contained in the instrument by which such person acquired an interest in the Project or the Project Site. Every person or entity who now or hereafter owns or acquires any right, title or interest in or to any portion of the Project or the Project Site and either (i) undertakes any development activities at the Project Site, or (ii) owns the Replacement Units, BMR Units or other development permitted under this Agreement, is,

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

12. ENFORCEMENT OF AGREEMENT; REMEDIES FOR DEFAULT; DISPUTE RESOLUTION

12.1 Enforcement. The only Parties to this Agreement are the City and Developer (including any Transferee). This Agreement is not intended, and shall not be construed, to benefit or be enforceable by any other person or entity whatsoever, except for (i) a Mortgagee as set forth in Section 11.9 and another other provision that is for the express benefit of Mortgagees, and (ii) tenants at the Project Site, as set forth in Article 4 and Section 12.2.

12.2 Private Right of Action. In addition to the options available to the City to enforce this Agreement, all tenants occupying Existing Units or Replacement Units shall have, immediately on the Effective Date and thereafter, a private right of action against the Developer and any successor owner, but not against the City, to enforce the Replacement Unit requirements set forth in Article 4 of this Agreement, including but not limited to rent control provisions required under the Rent Ordinance thereunder, with attorneys' fees and costs awarded to the prevailing party in any enforcement action. The Parties recognize and agree that such tenants shall be express third party beneficiaries of the requirements set forth in Article 4, with the right to enforce to the greatest extent under law and equity, and confirm the validity and enforceability of, the requirements in Article 4 at any time from and after adoption of the Enacting Ordinance.

12.3 Default. For purposes of this Agreement, the following shall constitute an event of default (an "**Event of Default**") under this Agreement: (i) the failure to make any payment within ninety (90) calendar days of when due; and (ii) the failure to perform or fulfill any other material term, provision, obligation, or covenant hereunder and the continuation of such failure for a period of thirty (30) calendar days following a written notice of default and demand for compliance (a "**Notice of Default**"); provided, however, if a cure cannot reasonably be completed within thirty (30) days, then it shall not be considered a default if a cure is commenced within said 30-day period and diligently prosecuted to completion thereafter. An Event of Default by Developer or an Affiliate of Developer shall be, at the City's option, an Event of Default by Developer and its Affiliates with all available remedies under Section 12.5; provided, however, (a) no Event of Default by Developer or an Affiliate of Developer in its capacity as a developer of vertical improvements (defined as improvements that are not Community Improvements, Public Improvements, Stormwater Management Improvements, or any other horizontal development) (each, a "**Vertical Obligation**", and the Affiliate, an "**Affiliated Vertical Developer**") shall be an Event of Default by other Affiliated Vertical Developers, (b) no Event of Default by Developer or an Affiliate of Developer with respect to the obligations of this Agreement regarding the construction, maintenance, or operation of Community Improvements, Public Improvements, Transportation Mitigation Measures, Stormwater Management Improvements, or any other horizontal development (each, a "**Horizontal Obligation**") shall be deemed to be an Event of Default by an Affiliated Vertical Developer, and (c) notwithstanding anything to the contrary in clause (a) above, an Event of Default by an Affiliated Vertical Developer with respect to the Replacement Unit or the BMR

Unit requirements shall, at the City's option, be deemed an Event of Default by Developer and all of its Affiliates for all purposes under this Agreement (including all Vertical Obligations or Horizontal Obligations). Notwithstanding the inability to cross-default certain obligations as set forth in (a) through (c) above, Developer and each Transferee assume the risk that another Party's failure to Complete a Mitigation Measure, Community Improvement or Public Improvement may delay or interfere with its development rights as set forth in Section 11.6.

12.4 Notice of Default. Prior to the initiation of any action for relief specified in Section 12.5 below, the Party claiming default shall deliver to the other Party a Notice of Default. The Notice of Default shall specify the reasons for the allegation of default with reasonable specificity. If the alleged defaulting Party disputes the allegations in the Notice of Default, then that Party, within twenty-one (21) calendar days of receipt of the Notice of Default, shall deliver to the other Party a notice of non-default which sets forth with specificity the reasons that an default has not occurred. The Parties shall meet to discuss resolution of the alleged default. If, after good faith negotiation, the Parties fail to resolve the alleged default within thirty (30) calendar days, then the Party alleging a default may (i) institute legal proceedings pursuant to Section 12.5 to enforce the terms of this Agreement or (ii) send a written notice to terminate this Agreement pursuant to Section 12.5. The Parties may mutually agree in writing to extend the time periods set forth in this Section.

12.5 Remedies.

12.5.1 Specific Performance; Termination. In the event of an Event of Default under this Agreement, the remedies available to a Party shall include specific performance of the Agreement in addition to any other remedy available at law or in equity (subject to the limitation on damages set forth in Section 12.5.2 below). The City's specific performance remedy shall include the right to require that Developer Complete any Public Improvement that Developer has commenced (through exercise of rights under payment and performance bonds or otherwise), and to require dedication of the Public Improvement to the City upon Completion together with the conveyance of real property as contemplated by this Agreement. In addition, in the event of an Event of Default under this Agreement, and following a public hearing at the Board of Supervisors regarding such Event of Default and proposed termination, the non-defaulting Party may terminate this Agreement by sending a notice of termination to the other Party setting forth the basis for the termination. The Party alleging a material breach shall provide a notice of termination to the breaching Party, which notice of termination shall state the material breach. The Agreement will be considered terminated effective upon the date set forth in the notice of termination, which shall in no event be earlier than ninety (90) days following delivery of the notice. The Party receiving the notice of termination may take legal action available at law or in equity if it believes the other Party's decision to terminate was not legally supportable.

12.5.2 Limited Damages. The Parties have determined that, except as set forth in this Section 12.5.2, (i) monetary damages are generally inappropriate and in no event shall the City be liable for any damages whatsoever for any breach of this Agreement, (ii) it would be extremely difficult and impractical to fix or determine the actual damages suffered by a Party as a result of a breach hereunder and (iii) equitable

remedies and remedies at law not including damages but including termination are particularly appropriate remedies for enforcement of this Agreement. Consequently, Developer agrees that the City shall not be liable to Developer for damages under this Agreement, and the City agrees that Developer shall not be liable to the City for damages under this Agreement, and each covenants not to sue the other for or claim any damages under this Agreement and expressly waives its right to recover damages under this Agreement, except as follows: (1) the City shall have the right to recover actual damages only (and not consequential, punitive or special damages, each of which is hereby expressly waived) for (a) Developer's failure to pay sums to the City as and when due under this Agreement, but subject to any express conditions for such payment set forth in this Agreement, and (b) Developer's failure to make payment due under any Indemnity in this Agreement, (2) the City shall have the right to recover any and all damages relating to Developer's failure to construct Public Improvements in accordance with the City approved plans and specifications and in accordance with all applicable laws (but only to the extent that the City first collects against any security, including but not limited to bonds, for such Public Improvements), and (3) either Party shall have the right to recover attorneys' fees and costs as set forth in Section 12.8, when awarded by an arbitrator or a court with jurisdiction. For purposes of the foregoing, "actual damages" shall mean the actual amount of the sum due and owing under this Agreement, with interest as provided by law, together with such judgment collection activities as may be ordered by the judgment, and no additional sums.

12.6 Dispute Resolution. The Parties recognize that disputes may arise from time to time regarding application to the Project and the Project Site of the Existing Standards or Future Changes to the Existing Standards. Accordingly, in addition and not by way of limitation to all other remedies available to the Parties under the terms of this Agreement, including legal action, the Parties agree to follow the dispute resolution procedure in this Section 12.6 that is designed to expedite the resolution of such disputes. If, from time to time, a dispute arises between the Parties relating to application to the Project or the Project Site of Existing Standards or Future Changes to the Existing Standards, the dispute shall initially be presented by Planning Department staff to the Planning Director, by DPW staff to the Director of DPW, or to DBI staff to the Director of DBI, whichever is appropriate, for resolution. If the Planning Director, Director of DPW, or Director of DBI, as applicable, decides the dispute to Developer's satisfaction, such decision shall be deemed to have resolved the matter. Nothing in this section shall limit the rights of the Parties to seek judicial relief in the event that they cannot resolve disputes through the above process.

12.7 Dispute Resolution Related to Changes in State and Federal Rules and Regulations or Failure to Agree on Equal Opportunity and Training Program. The Parties agree to the follow the dispute resolution procedure in this Section 12.7 for disputes regarding the effect of changes to State and federal rules and regulations to the Project pursuant to Section 2.5.2, or if the Parties are not able to reach agreement on an Equal Opportunity and Training Program pursuant to Section 6.11.

12.7.1 Good Faith Meet and Confer Requirement. The Parties shall make a good faith effort to resolve the dispute before non-binding arbitration. Within five (5) business days after a request to confer regarding an identified matter, representatives of

the Parties who are vested with decision-making authority shall meet to resolve the dispute. If the Parties are unable to resolve the dispute at the meeting, the matter shall immediately be submitted to the arbitration process set forth in Section 12.7.2.

12.7.2 Non-Binding Arbitration. The Parties shall mutually agree on the selection of an arbiter at JAMS in San Francisco or other mutually agreed to Arbiter to serve for the purposes of this dispute. The arbiter appointed must meet the Arbiters' Qualifications. The "Arbiters' Qualifications" shall be defined as at least ten (10) years of experience in a real property professional capacity, such as a real estate appraiser, broker, real estate economist, or attorney, in the Bay Area. The disputing Party(ies) shall, within ten (10) business days after submittal of the dispute to non-binding arbitration, submit a brief with all supporting evidence to the arbiter with copies to all Parties. Evidence may include, but is not limited to, expert or consultant opinions, any form of graphic evidence, including photos, maps or graphs and any other evidence the Parties may choose to submit in their discretion to assist the arbiter in resolving the dispute. In either case, any interested Party may submit an additional brief within ten (10) business days after distribution of the initial brief. The arbiter thereafter shall hold a telephonic hearing and issue a decision in the matter promptly, but in any event within five (5) business days after the submittal of the last brief, unless the arbiter determines that further briefing is necessary, in which case the additional brief(s) addressing only those items or issues identified by the arbiter shall be submitted to the arbiter (with copies to all Parties) within five (5) business days after the arbiter's request, and thereafter the arbiter shall hold a telephonic hearing and issue a decision promptly but in any event not sooner than two (2) business days after submission of such additional briefs, and no later than thirty-two (32) business days after initiation of the non-binding arbitration. Each Party will give due consideration to the arbiter's decision before pursuing further legal action, which decision to pursue further legal action shall be made in each Party's sole and absolute discretion.

12.8 Disputes Relating to the Rent Ordinance.

12.8.1 As set forth in Article 4, the Parties would not have entered into this Agreement without rent control under the Rent Ordinance applying to all of the Replacement Units for the life of the Replacement Buildings. Accordingly, notwithstanding anything to the contrary above, the Parties agree to the following rights and remedies relative to the Rent Ordinance and the Replacement Units:

12.8.2 If, notwithstanding the clear intent of the Parties as set forth in this Agreement, Developer or its Affiliates sues or takes other action (against City or any tenant) to challenge the applicability of rent control under the Rent Ordinance to any of the Replacement Units (such Developer and its Affiliates shall be referred to collectively as a "**Reneging Owner**" and such action shall be referred to as a "**Reneging Act**"), then such Reneging Act shall be deemed an Event of Default, which may be cured within thirty (30) days of such Reneging Act if the Reneging Act was made by mistake or inadvertence. Without limiting City's other rights and remedies under this Agreement, each Reneging Owner shall pay the Rent Control Liquidation Amount immediately upon the taking of a Reneging Act, and such amount shall accrue interest at the highest rate

permitted by law from the date of the Reneging Act to the date of payment. If a Reneging Owner fails to cure the Event of Default within 30 days (if applicable, as set forth above), the City shall have the immediate right to terminate this Agreement against the Reneging Owner and to take such additional actions and pursue such additional remedies as may be permitted by law or in equity, including but not limited to specific performance of the rent control requirements and limitations as set forth in Article 4. Affected tenants also have the right to pursue all rights and remedies against a Reneging Owner. Notwithstanding anything in this Agreement to the contrary, upon the Reneging Act (or the Owner's failure to cure the Reneging Act as set forth above), the Planning Director shall send a notice of termination which will become effective and terminate this Agreement as to the Reneging Owner upon delivery. This termination right shall apply to the Reneging Owner only, and not to other Developers that continue to recognize and abide by the terms of this Agreement.

12.8.3 In addition, upon publication of a decision by a court of competent jurisdiction (after the Board adopts the Enacting Ordinance) relating to the application of rent control under a development agreement that, in the reasonable opinion of the City Attorney, directly jeopardizes the enforceability of rent control as applied to the Replacement Units under this Agreement, the City shall have the right to issue a notice of suspension and immediately halt the issuance of demolition permits and tenant relocations, but shall not have the right to halt other development work at the Project Site (except against a Reneging Owner). Upon delivery by City of a notice of suspension, the Parties (not including a Reneging Owner) agree to meet and confer for a period of not less than sixty (60) days, as such period may be extended by mutual agreement or, if the matter has been submitted to a court, until the matter has been finally adjudicated beyond any and all appeal periods (the "**Meet and Confer Period**"). The term of this Agreement shall be extended on day to day basis for each day of the Meet and Confer Period. During the Meet and Confer Period the Parties will use good faith efforts to maintain the benefit of the bargain to both Parties and to protect all tenants. During the Meet and Confer Period, the Parties shall invite each Recognized Resident's Association to meet with the Parties so as to give residents an opportunity to provide input on matters relating to the tenant protections. If the Parties are able to reach agreement on an acceptable approach to maintain the mutual benefit of the bargain and to protect tenants during the Meet and Confer Period, they shall memorialize such agreement in writing. Any such agreement that amends the terms of this Agreement shall be subject to the prior approval of the City's Board of Supervisors, acting by ordinance and in its sole discretion, as an amendment to this Agreement. Any such amendment shall be recorded against the applicable portions of the Project Site. The Parties may also agree to mediation during the Meet and Confer Period to assist with identifying solutions that maintain the benefit of the bargain for both Parties and to protect tenants. Either Party may seek judicial relief to determine their respective rights and obligations under this Agreement if the Parties fail to reach agreement during the Meet and Confer Period.

12.8.4 If the Parties are not able to reach agreement during the Meet and Confer Period or if the Board of Supervisors does not approve the proposed amendment to this Agreement, or if a court with jurisdiction reaches a final, binding, and non-appealable determination (meaning that the appeal period for a decision has expired

without an appeal or the decision can no longer be appealed to a higher court) that rent control under the Rent Ordinance does not apply to the Replacement Units notwithstanding the clear language of this Agreement and the applicable leases (each, a "**Rent Control Rejection**"), then Developer shall still be required to build a Replacement Building before demolishing a To-Be-Replaced Building and to comply with all provisions of Article 4, including the Existing Tenant relocation and payment provisions (but excluding the rent control provisions that have been determined by a court to be unenforceable) for so long as this Agreement remains in effect, and:

(a) If the Rent Control Rejection occurs before commencement of substantial construction of any building, Public Improvement, Stormwater Management Improvement, or Community Improvement on the Project Site, then the City shall terminate this Agreement in its entirety, without cost or liability, by written notice to Developer. Upon delivery of such notice to Developer and subject to a hearing by the Board of Supervisors to validate such termination, this Agreement will terminate and the City shall have the right, acting alone, to record a notice of termination.

(b) If the Rent Control Rejection occurs at any time after commencement of substantial construction of any building, Public Improvement, Stormwater Management Improvement, or Community Improvement on the Project Site, then each Developer (other than a Reneging Owner) may prevent a termination of this Agreement by the City and have the right to proceed with its rights and obligations under this Agreement, including the right to demolish To-Be-Replaced Buildings, by performing all of its obligations under Article 4, including the construction, relocation, and payment provisions but excluding any rent control provisions that have been declared unenforceable, and either paying the Rent Control Liquidation Amount as set forth in subsection (c) below (the "**Rent Control Liquidation Option**") or (ii) voluntarily continue to perform and abide by all of the requirements of Article 4, including the application of rent control under the Rent Ordinance to the Replacement Units (the "**Voluntary Rent Control Option**") and thereby not pay the Rent Control Liquidation Amount for so long as it continues the Voluntary Rent Control Option for all of its Replacement Units; provided under either option Developer shall also be required to pay the Relocation Payments Benefit to any Existing Tenant that vacates its Replacement Unit as a result of a Rent Control Rejection within ninety (90) days following any increase in rent above that which would be permitted under the Rent Ordinance. Following a Rent Control Rejection, each Developer or owner of an existing Replacement Building shall notify the City in writing of its election to proceed under the Voluntary Rent Control Option or the Payment Option. Any election of the Voluntary Rent Control Option shall be (i) made in writing and in recordable form approved by the City and (ii) included in any Assignment and Assumption Agreement for the applicable portion of the Project Site. If a Developer chooses to proceed under the Voluntary Rent Control Option but then subsequently takes a Reneging Act at any time during the remaining life of the Replacement Unit, then that Developer shall be required to immediately pay the Rent Control Liquidation Amount to the City at that time, and such amount shall

accrue interest at the highest rate permitted by law from the date of the Reneging Act to the date of payment.

(c) The Rent Control Liquidation Amount shall be equal to one-hundred and twenty percent (120%) of the net present value of the difference between (i) the amount of rent that the tenant would have paid for his or her Replacement Unit under the Rent Ordinance as required by the terms of this Agreement and (ii) the amount of rent the that tenant would be expected to pay for his or her Rent-Controlled Replacement Unit at the prevailing market rate of rent, using the same methodology (including the number of years used to calculate net present value) as was used by CBRE in its document entitled Parkmerced Pro Forma Review & Public Benefits Analysis dated January 6, 2011. Following a Rent Control Rejection, Developer shall, unless it agrees to the Voluntary Rent Control Option as set forth above, promptly provide to the City a detailed analysis, with backup documentation, of its determination of the Rent Control Liquidation Amount. The Parties will meet and confer for a period of not less than 30 days (as such period may be extended by mutual agreement) to reach agreement on the Rent Control Liquidation Amount. If the Parties are not able to reach agreement on the Rent Control Liquidation Amount, then either Party shall have the right to initiate arbitration to determine the Rent Control Liquidation Amount in accordance with Section 12.9 below. With respect to a Reneging Owner, the Rent Control Liquidation Amount shall be determined by the court that adjudicates the dispute between the City and the Reneging Owner.

(d) By entering into this Agreement, and notwithstanding any subsequent Reneging Act, each Developer agrees that it will accept rent from all tenants in a Replacement Unit at the amounts permitted under the Rent Ordinance, and will not attempt to evict any tenant for failing to pay any higher amount, before payment of the Rent Control Liquidation Amount and, if the matter is being litigated, before the matter is finally adjudicated and upheld beyond any and all appeal periods. In the event of litigation with a Reneging Owner, the City shall have the right to place a lien or lis pendens on the affected property owned by the Reneging Owner to protect tenants and to secure payment of the Rent Control Liquidation Amount.

(e) After negotiation, the Parties have agreed to the Rent Control Liquidation Amount as the damages that the City will suffer in the event that the Rent Ordinance does not apply to the Replacement Units, and such amount will be used by the City as set forth in subsection (f) below. The added twenty percent (20%) is designed to cover City's administrative and other costs in operating the tenant protection programs described in subsection (f) below. Developer further acknowledges and agrees that any collection of the Rent Control Liquidation Amount shall not (i) release or otherwise limit the liability of Developer for default or violation of this Agreement or limit any of City's other rights and remedies in this Agreement, (ii) release or otherwise limit the requirement of Developer to complete each Replacement Building before demolishing a To-Be-Replaced Building, or (iii) release or otherwise limit the requirement of Developer

to relocate each Existing Tenant and/or pay the Relocation Benefits Payments as set forth in Article 4 or in subsection (b) above. BY PLACING THEIR RESPECTIVE INITIALS BELOW, EACH PARTY SPECIFICALLY CONFIRMS THAT IT HAS AGREED TO THE TERMS AND PROVISIONS OF THIS SECTION, INCLUDING THE METHODOLOGY FOR CALCULATING THE RENT CONTROL LIQUIDATION AMOUNT, AND THE FACT THAT EACH PARTY WAS REPRESENTED BY COUNSEL WHO EXPLAINED, AT THE TIME THIS AGREEMENT WAS MADE, THE CONSEQUENCES OF THIS LIQUIDATED PAYMENT PROVISION.

INITIALS: City _____ Developer _____

(f) City shall deposit all payments of the Rent Control Liquidation Amount into a Tenant Protection Fund to be administered by MOH (or any successor City agency). MOH shall use the funds in the Tenant Protection Fund to provide vouchers to tenants in Replacement Units to pay the difference between the rent that is charged for that Replacement Unit following a Reneging Act and the rent that would have been charged under the Rent Ordinance as applied to that Replacement Unit (the "**Rent Assistance**"). After four (4) years or more of Rent Assistance to a tenant, MOH shall have the right, but not the obligation, to discontinue paying Rent Assistance to that tenant if its household income exceeds one-hundred and twenty (120%) of the area median income for San Francisco, as determined by MOH in accordance with its BMR program. MOH shall continue to pay the Rent Assistance from the Tenant Protection Fund for each tenant in a Replacement Unit for so long as that tenant remains in the Replacement Unit, subject to the right (but not obligation) to eliminate payments for tenants above one-hundred and twenty (120%) area median income as set forth above. Upon MOH's determination that funds in the Tenant Protection Fund equal or exceed 200% of the Rent Assistance required to pay tenants as set forth above, MOH shall also have the right to use any funds in the Tenant Protection Fund in excess of that amount to pay for a first time homebuyer program, to pay for additional housing vouchers, or to purchase increased affordability for existing BMR Units at the Project Site. In no event shall the City or Developer be liable for any payments above the amounts available in the Tenant Protection Fund.

(g) Following a Rent Control Rejection, and unless Developer has elected the Voluntary Rent Control Option for the benefit of the Relocating Tenants, City shall have a one-time right of first refusal (the "**ROFR**"), for itself or its designee (including Existing Tenants), to rent each Replacement Unit. Developer shall first offer the Replacement Unit to City at the same rent, and under the same conditions and terms, as Developer is willing to accept from a third party (collectively, the "**Rental Terms**"). The Rental Terms shall be contained in a written notice (the "**First Refusal Notice**") from Developer to City, which notice shall include a copy of the proposed lease. City or its designee shall have the right to lease one or more of the Replacement Units by providing to Developer a notice of acceptance within sixty (60) days following City's receipt

of the First Refusal Notice, together with the leases as signed by the City or its designee. Notwithstanding anything to the contrary in the Rental Terms, Developer shall not have the right to impose or require a new security deposit on an Existing Tenant, and shall instead transfer any existing security deposit to the new lease. If City or its designee does not deliver an acceptance notice for a Replacement Unit with the signed lease within sixty (60) days, then Developer shall have the right to lease that Replacement Unit to a third party on the Rental Terms for a period of up to one-hundred and eighty (180) days. If Developer leases the Replacement Unit on the Rental Terms during this one-hundred and eighty (180) day period, then the City's ROFR for that Replacement Unit shall terminate. If the Replacement Unit is not leased within 180 days, or if Developer is willing to lower the rent or otherwise change the Rental Terms for a Replacement Unit, then City's ROFR shall continue and Developer shall provide to City a new First Refusal Notice specifying the new Rental Terms that that Developer is willing to accept. Once a Replacement Unit has been leased under the terms set forth above (to either City or its designee, or to a third party), then City's ROFR shall terminate and be of no further force or effect.

12.9 Arbitration for Rent Control Liquidation Amount.

12.9.1 Appointment. Each Party shall appoint one (1) appraiser within thirty (30) days after the notice that the arbitration provisions of this Section have been invoked. Upon selecting its appraiser, each Party shall promptly notify the other party in writing of the name of the appraiser selected. Each such appraiser shall be competent, licensed, qualified by training and experience in the City and County of San Francisco, and shall be a member in good standing of the Appraisal Institute and designated as a MAI, or, if the Appraisal Institute no longer exists, shall hold the senior professional designation awarded by the most prominent organization of appraisal professionals then awarding such professional designations. Each such MAI appraiser may have a prior working relationship with either or both of the Parties, provided that such working relationship shall be disclosed to both Parties. Without limiting the foregoing, each appraiser shall have at least ten (10) years' experience valuing multi-family real estate in the City and County of San Francisco. If either Party fails to appoint its appraiser within such thirty (30)-day period, the appraiser appointed by the other party shall individually determine the Rent Control Liquidation Amount in accordance with the provisions hereof.

12.9.2 Instruction and Completion. Each appraiser will make an independent determination of the Rent Control Liquidation Amount. Each appraiser will be provided with a copy of the CBRE analysis entitled Parkmerced Pro Forma Review & Public Benefits Analysis dated January 6, 2011, and shall use the same methodology as contained in such CBRE analysis to determine the Rent Control Liquidation Amount. The appraisers may share and have access to objective information in preparing their appraisals, but they will independently analyze the information in their determination of the Rent Control Liquidation Amount. Neither of the appraisers shall have access to the

appraisal of the other (except for the sharing of objective information contained in such appraisals) until both of the appraisals are submitted in accordance with the provisions of this Section. Neither party shall communicate with the appraiser appointed by the other party regarding the instructions contained in this Section before the appraisers complete their appraisals. If either appraiser has questions regarding the instructions in this Section, such appraiser shall use his or her own professional judgment and shall make clear all assumptions upon which his or her professional conclusions are based, including any supplemental instructions or interpretative guidance received from the party appointing such appraiser. There shall not be any arbitration or adjudication of the instructions to the appraisers contained in this Section. Each appraiser shall complete, sign and submit its written appraisal setting forth the Rent Control Liquidation Amount to the Parties within sixty (60) days after the appointment of the last of such appraisers. If the higher appraised Rent Control Liquidation Amount is not more than one hundred ten percent (110%) of the lower appraised Rent Control Liquidation Amount, then the Rent Control Liquidation Amount shall be the average of such two (2) Rent Control Liquidation Amount figures.

12.9.3 Potential Third Appraiser. If the higher appraised Rent Control Liquidation Amount is more than one hundred ten percent (110%) of the lower appraised Rent Control Liquidation Amount, then the first two appraisers shall agree upon and appoint an independent third appraiser within thirty (30) days after both of the first two (2) appraisals have been submitted to the Parties, in accordance with the following procedure. The third appraiser shall have the minimum qualifications as required of an appraiser set forth above. The two appraisers shall inform the parties of their appointment at or before the end of such thirty (30)-day appointment period. Each Party shall have the opportunity to question the proposed third appraiser, in writing only, as to his or her qualifications, experience, past working relationships with the Parties, and any other matters relevant to the appraisal. Either Party may, by written notice to the other Party and the two appraisers, raise a good faith objection to the selection of the third appraiser based on his or her failure to meet the requirements of this Section. In such event, if the two (2) appraisers determine that the objection was made in good faith, the two (2) appraisers shall promptly select another third appraiser, subject again to the same process for the raising of objections. If neither Party raises a good faith objection to the appointment of the third appraiser within ten (10) days after notice of his or her appointment is given, each such Party shall be deemed to have waived any issues or questions relating to the qualifications or independence of the third appraiser or any other matter relating to the selection of the third appraiser under this Agreement. If for any reason the two appraisers do not appoint such third appraiser within such thirty (30)-day period (or within a reasonable period thereafter), then either Party may apply to the Writs and Receivers Department of the Superior Court of the State of California in and for the County of San Francisco for appointment of a third appraiser meeting the foregoing qualifications. If the Court denies or otherwise refuses to act upon such application within sixty (60) days from the date on which the Party first applies to the Court for appointment of the third appraiser, either Party may apply to the American Arbitration Association, or any similar provider of professional commercial arbitration services, for appointment in accordance with the rules and procedures of such organization of an independent third appraiser meeting the foregoing qualifications.

12.9.4 Baseball Appraisal. Such third appraiser shall consider the appraisals submitted by the first two appraisers as well as any other relevant written evidence which the third appraiser may request of either or both of the first two appraisers. If either of the first two appraisers shall submit any such evidence to such third appraiser, it shall do so only at the request of the third appraiser and shall deliver a complete and accurate copy to the other Party and the appraiser such Party selected, at the same time it submits the same to the third appraiser. Neither Party, nor the appraisers they appoint, shall conduct any ex parte communications with the third appraiser regarding the subject matter of the appraisal. Within thirty (30) days after his or her appointment, the third appraiser shall select the Rent Control Liquidation Amount determined by one or the other of the first two (2) appraisers that is the closer, in the opinion of the third appraiser, to the actual Rent Control Liquidation Amount. The determination of the third appraiser shall be limited solely to the issue of deciding which of the determinations of the two appraisers is closest to the actual Rent Control Liquidation Amount. The third appraiser shall have no right to propose a middle ground or to modify either of the two appraisals, or any provision of this Agreement.

12.9.5 Conclusive Determination. Except as provided in California Code of Civil Procedure Section 1286.2 (as the same may be amended from time to time), the determination of the Rent Control Liquidation Amount by the accepted appraisal shall be conclusive, final and binding on the Parties. Neither of the first two (2) appraisers nor the third appraiser shall have any power to modify any of the provisions of this Agreement and must base their decision on the definitions, standards, assumptions, instructions and other provisions contained in this Agreement. Subject to the provisions of this Section, the Parties will cooperate to provide all appropriate information to the appraisers and the third appraiser. The appraisers and the third appraiser will each produce their determination in writing, supported by the reasons for the determination.

12.9.6 Fees and Costs; Waiver. Each Party shall bear the fees, costs and expenses of the appraiser it selects. The fees, costs and expenses of the third appraiser shall be shared equally by City and Developer. If there is more than one Developer at the time the arbitration process begins, then the Developer with the most seniority under this Agreement (i.e., the Developer that is the first to enter into this Agreement with City) shall have the right to determine the Rent Control Liquidation Amount and to participate in the arbitration as set forth in this Section 12.9, and upon determination the Rent Control Liquidation Amount shall apply to all Developers at that time. The City shall not be required or permitted to charge different Rent Control Liquidation Amounts for different Developers; provided, if a Developer agrees to the Voluntary Rent Control Option but then subsequently takes a Reneging Act (by attempting to impose rents above the amount that would be permitted under the Rent Ordinance) at any time during the remaining life of the Replacement Unit, then that Developer shall be required to immediately pay the Rent Control Liquidation Amount, as determined at that time (and by arbitration at that time, if required).

12.10 Attorneys' Fees. Should legal action be brought by either Party against the other for an Event of Default under this Agreement or to enforce any provision herein, the prevailing party in such action shall be entitled to recover its reasonable attorneys' fees and costs. For

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

12.11 No Waiver. Failure or delay in giving a Notice of Default shall not constitute a waiver of such Event of Default, nor shall it change the time of such Event of Default. Except as otherwise expressly provided in this Agreement, any failure or delay by a Party in asserting any of its rights or remedies as to any Event of Default shall not operate as a waiver of any Event of Default or of any such rights or remedies, nor shall it deprive any such Party of its right to institute and maintain any actions or proceedings that it may deem necessary to protect, assert, or enforce any such rights or remedies.

12.12 Future Changes to Existing Standards. Pursuant to Section 65865.4 of the Development Agreement Statute, unless this Agreement is terminated by mutual agreement of the Parties or terminated for default as set forth in Section 12.5, either Party may enforce this Agreement notwithstanding any change in any applicable general or specific plan, zoning, subdivision, or building regulation adopted by the City or the voters by initiative or referendum (excluding any initiative or referendum that successfully defeats the enforceability or effectiveness of this Agreement itself), including any Future Changes to Existing Standards, subject to the terms of Section 2.5.

12.13 Joint and Several Liability. If Developer consists of more than one person or entity with respect to any real property within the Project Site or any obligation under this Agreement, then the obligations of each such person and/or entity shall be joint and several.

13. MISCELLANEOUS PROVISIONS

13.1 Entire Agreement. This Agreement, including the preamble paragraph, Recitals and Exhibits, constitute the entire understanding and agreement between the Parties with respect to the subject matter contained herein.

13.2 Binding Covenants; Run With the Land. Pursuant to Section 65868 of the Development Agreement Statute, from and after recordation of this Agreement, all of the provisions, agreements, rights, powers, standards, terms, covenants and obligations contained in this Agreement shall be binding upon the Parties and, subject to Article 11 above, their respective heirs, successors (by merger, consolidation, or otherwise) and assigns, and all persons or entities acquiring the Project Site, any lot, parcel or any portion thereof, or any interest

therein, whether by sale, operation of law, or in any manner whatsoever, and shall inure to the benefit of the Parties and their respective heirs, successors (by merger, consolidation or otherwise) and assigns. Subject to the limitations on Transfers set forth in Article 11 above, all provisions of this Agreement shall be enforceable during the Term as equitable servitudes and constitute covenants and benefits running with the land pursuant to applicable law, including but not limited to California Civil Code section 1468.

13.3 Planning Code Section 317. The Parties acknowledge that the Project involves the demolition of dwelling units but that the Project replaces all demolished dwelling units with the Replacement Units and increases the City's overall supply of housing, including the supply of BMR Units. By adopting this Agreement, the City acknowledges that it has thoroughly considered the Project's effects on housing supply and therefore, during the Term of this Agreement, shall not require Developer to obtain conditional use authorization for the demolition of any dwelling units on the Project Site that may be required by Planning Code section 317 or subsequent amendment of the Planning Code, Administrative Code or any other City code or regulation.

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

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

13.6 Project Is a Private Undertaking; No Joint Venture or Partnership.

13.6.1 The development proposed to be undertaken by Developer on the Project Site is a private development and no portion shall be deemed a public work. The City has no interest in, responsibility for, or duty to third persons concerning any of the improvements on the Project Site. Unless and until portions of the Project Site are dedicated to the City, Developer shall exercise full dominion and control over the Project Site, subject only to the limitations and obligations of Developer contained in this Agreement.

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

13.7 Recordation. Pursuant to Section 65868.5 of the Development Agreement Statute and Section 56.16 of the Administrative Code, the clerk of the Board shall cause a copy of this Agreement or any amendment thereto to be recorded in the Official Records within ten (10) business days after the Effective Date of this Agreement or any amendment thereto, as applicable, with costs to be borne by Developer.

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

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

13.10 Time of the Essence. Time is of the essence in the performance of each and every covenant and obligation to be performed by the Parties under this Agreement.

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

To City:

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

with a copy to:

Dennis J. Herrera, Esq.
City Attorney
City Hall, Room 234
1 Dr. Carlton B. Goodlett Place
San Francisco, California 94102

To Developer:

Robert Rosania
Parkmerced Investors, LLC
156 Williams Street, 10th Floor
New York, New York 10038

Seth Mallen
Parkmerced Investors, LLC
3711 Nineteenth Avenue
San Francisco, California 94132

Dean Dakolias
c/o Parkmerced Investors, LLC
Fortress Credit Corp.
1345 Avenue of the Americas
46th Floor
New York, New York 10105

Rick Noble
c/o Parkmerced Investors, LLC
Fortress Credit Corp.
1345 Avenue of the Americas
46th Floor
New York, New York 10105

with a copy to:

Mary G. Murphy, Esq.
Jim M. Abrams, Esq.
Gibson Dunn & Crutcher, LLP
555 Mission Street Suite 3000
San Francisco, California 94105

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

13.13 Severability. If any term, provision, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, or if any such term, provision, covenant, or condition does not become effective until the approval of any Non-City Responsible Agency, the remaining provisions of this Agreement shall continue in full force and effect unless enforcement of the remaining portions of the Agreement would be

unreasonable or grossly inequitable under all the circumstances or would frustrate the purposes of this Agreement.

13.14 MacBride Principles. The City urges companies doing business in Northern Ireland to move toward resolving employment inequities and encourages them to abide by the MacBride Principles as expressed in San Francisco Administrative Code Section 12F.1 et seq. The City also urges San Francisco companies to do business with corporations that abide by the MacBride Principles. Developer acknowledges that it has read and understands the above statement of the City concerning doing business in Northern Ireland.

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

13.16 Sunshine. Developer understands and agrees that under the City's Sunshine Ordinance (Administrative Code, Chapter 67) and the California Public Records Act (California Government Code section 6250 et seq.), this Agreement and any and all records, information, and materials submitted to the City hereunder are public records subject to public disclosure. To the extent that Developer in good faith believes that any financial materials reasonably requested by the City constitutes a trade secret or confidential proprietary information protected from disclosure under the Sunshine Ordinance and other applicable laws, Developer shall mark any such materials as such. When a City official or employee receives a request for information that has been so marked or designated, the City may request further evidence or explanation from Developer. If the City determines that the information does not constitute a trade secret or proprietary information protected from disclosure, the City shall notify Developer of that conclusion and that the information will be released by a specified date in order to provide Developer an opportunity to obtain a court order prohibiting disclosure.

[Remainder of Page Intentionally Blank;

Signature Page Follows

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

CITY

CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation

By:_____
John Rahaim
Director of Planning

Approved on _____
Board of Supervisors Ordinance No. _____

Approved as to form:
Dennis J. Herrera, City Attorney

By:_____
Deputy City Attorney

Approved:

By: _____
Amy Brown, Acting City Administrator

By: _____
Ed Reiskin, Director of Public Works

By: _____
Joanne Hayes-White, SFFD Fire Chief

By: _____
_____, SFFD Fire Marshall

DEVELOPER

PARKMERCED INVESTORS, LLC,
a Delaware limited liability company

By:_____

Its:_____

By:_____

Its:_____

CONSENT TO DEVELOPMENT AGREEMENT
San Francisco Municipal Transportation Agency

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

By executing this SFMTA Consent, the undersigned confirms that the SFMTA Board of Directors, after considering at a duly noticed public hearing the Infrastructure Plan, the Transportation Plan, and the CEQA Findings, including the Statement of Overriding Considerations and the Mitigation Monitoring and Reporting Program contained or referenced therein, consented to the following:

1. The Development Agreement as it relates to matters under SFMTA jurisdiction, including the SFMTA Infrastructure and the transportation-related Mitigation Measures; and

2. Subject to Developer satisfying SFMTA's requirements and the transportation-related Mitigation Measures for design, construction, testing, performance, training, documentation, warranties and guarantees, that are consistent with the applicable City regulations and applicable State and federal law and the plans and specifications approved by the SFMTA under the terms of the Development Agreement, SFMTA's accepting the SFMTA Infrastructure described in the Infrastructure Plan and the Transportation Plan that will be under SFMTA jurisdiction.

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

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

By: _____
NATHANIEL P. FORD Sr.
Executive Director / CEO

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

By: _____
Deputy City Attorney

San Francisco Municipal Transportation Agency
Board of Directors
Resolution No. _____
Adopted: _____
Attest:
_____
Secretary, SFMTA Board of Directors

CONSENT TO DEVELOPMENT AGREEMENT
San Francisco Public Utilities Commission

The Public Utilities Commission of the City and County of San Francisco (the "**SFPUC**") has reviewed the Development Agreement to which this Consent to Development Agreement (this "**SFPUC Consent**") is attached and incorporated. Except as otherwise defined in this SFPUC Consent, initially capitalized terms have the meanings given in the Development Agreement.

By executing this SFPUC Consent, the undersigned confirms that the SFPUC, after considering the Development Agreement, the Parkmerced Plan Documents, and utility-related Mitigation Measures at a duly noticed public hearing, consented to:

1. The Development Agreement as it relates to matters under SFPUC jurisdiction, including the Stormwater Management Improvements and the SFPUC-related Mitigation Measures;

2. Subject to Developer satisfying the SFPUC's requirements for construction, operation, and maintenance that are consistent with the Existing Standards, Future Changes to Existing Standards permitted by Section 2.2 of the Development Agreement, the Uniform Codes, the Agency Design Standards, and applicable State and federal law, and the plans and specifications approved by the SFMTA under the terms of the Development Agreement, and meeting the SFPUC-related Mitigation Measures, the SFPUC's accepting and then, subject to appropriation, operating and maintaining SFPUC-related infrastructure; and

3. Delegating to the SFPUC General Manager or his or her designee any future approvals of the SFPUC under the Development Agreement, including approvals of Development Phase Applications, subject to applicable law including the City's Charter.

By authorizing this SFPUC Consent, the SFPUC does not intend to in any way limit the exclusive authority of the SFPUC as set forth in Article XIIIB of the City's Charter.

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

By: _____
EDWARD HARRINGTON,
General Manager

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

By: _____
Deputy City Attorney

San Francisco Public Utility Commission Resolution No. _____
Approved _____

[Rent Board Consent]

Exhibit S

Transit Pass Subsidy Program

The purpose of the Transit Pass Subsidy Program is to provide a monthly subsidy (the "**Transit Subsidy**") for the purchase of a pass providing an unlimited number of rides on SFMTA vehicles for the duration of one calendar month (a "**Transit Pass**"), on a fare medium approved by the SFMTA, to each new for-sale condominium unit and rental apartment constructed as part of the Project, including the Replacement Units (the "**Qualifying Units**").

1. Implementation of the Transit Pass Subsidy Program. The Parkmerced Transportation Coordinator (the "**Transportation Coordinator**") shall implement and manage the Transit Pass Subsidy Program. The Developer may contract with a transit benefit provider approved by the SFMTA to assist the Transportation Coordinator with implementation or management of the Program, provided, however, that the Developer may not pass on the cost of the transit benefit provider's services to the SFMTA. The Transit Subsidy shall be used solely for the purpose of purchasing Transit Passes. The Developer shall provide a description of the Transit Pass Subsidy Program on the website for the Project Site, together with information describing how to enroll in the Program. The website shall include contact information (by both telephone and email) for the Transportation Coordinator.

2. Resident Qualification. In order to receive the Transit Subsidy, a person must either own or rent a Qualifying Unit and purchase a Transit Pass (a "**Qualifying Resident**"), such that a minor or other occupants who are not an owner or leaseholder shall not be a Qualifying Resident. Only one Transit Subsidy shall be paid per Qualifying Unit. Therefore, if more than one Qualifying Resident resides in a Qualifying Unit, only one of those persons may enroll in the Transit Pass Subsidy Program (an "**Enrolled Resident**").

    a. Multiple Qualifying Residents of the Same Qualifying Unit. If more than one person occupies a Qualifying Unit, the first Qualifying Resident occupying that Qualifying Unit who enrolls in the Transit Pass Subsidy program shall be the Enrolled Resident. If more than one person occupies a Qualifying Unit and two such persons enroll in the Transit Pass Subsidy program on the same date, the person who has resided in the unit longer shall become the Enrolled Resident. Each Enrolled Resident shall have the right to receive a Transit Subsidy until such time as he or she terminates his or her enrollment in the Program, terminates his or her lease to the Qualifying Unit, or sells his or her interest in the Qualifying Unit. Upon the departure of an Enrolled Resident from the Program, another Qualifying Resident of the Qualifying Unit may become the Enrolled Resident in accordance with and subject to the terms set forth above.

3. Enrollment. The Qualifying Resident must notify the Transportation Coordinator, in a manner prescribed by the Transportation Coordinator, of his or her intent to enroll in the Transit Pass Subsidy Program on or before the fifteenth (15^{th}) day of the month prior to the month for which the Transit Subsidy will initially be paid. Upon a Qualifying Resident's enrollment in the Program, the Transportation Coordinator shall arrange for the issuance a Transit Pass, purchased in whole or in part with the Transit Subsidy, to the Enrolled Resident. If the amount of the pass exceeds the subsidy, the Transportation coordinator will be responsible for collecting funds or setting up an electronic mechanism by which the Enrolled Resident may pay the difference. The Transportation Coordinator shall also provide a mechanism whereby an Enrolled Resident may renew the Transit

Pass electronically and automatically each month thereafter subject to the technology provided by contracted transit benefit provider.

~~3.~~4. Recordkeeping. On or before the twentieth (20th) day of each month, the Transportation Coordinator shall update a list of all Qualifying Units on the Project Site's website, subject to applicable privacy laws. Upon request, the Transportation Coordinator shall inform a resident of a Qualifying Unit whether there is an Enrolled Resident from that unit. The Transportation Coordinator shall also provide a list to the SFMTA by the twentieth (20th) day of each month of the names of all Qualifying Residents living in each Qualifying Unit, and the name of the Enrolled Resident, if any, from each Qualifying Unit, subject to applicable privacy laws.

~~4.~~5. CC&Rs. The CC&Rs for the Master HOA and the Homeowner's Association for each individual residential condominium building or buildings shall require every building containing Qualifying Units to collect from each unit as part of such unit's monthly homeowners dues an amount equal to the Transit Subsidy, plus any applicable administration fees. The CC&Rs shall further provide that each Qualifying Unit shall be entitled to a Transit Subsidy for the purchase of a Transit Pass.

~~5.~~6. Reimbursement. On or before the tenth (10th) day of each month, the Master Homeowner's Association (the "**Master HOA**"), or if the Master HOA has not yet been formed, the Developer, shall pay to the Transportation Coordinator the amount of the Transit Subsidy in effect at the time multiplied by the number of Enrolled Residents for that month, and shall pay to the SFMTA the Transit Subsidy Participation Incentive Payment (defined below). The Master HOA shall coordinate independently with the owner of each apartment building and the HOA for each condominium building containing Qualifying Units and Enrolled Residents for reimbursement.

~~6.~~7. Transit Subsidy Participation Incentive Payment.. On or before the 15th of each month, the Transportation Coordinator shall pay to the SFMTA ten percent (10%) of the amount equal to the total number of Qualifying Units less the total number of Enrolled Residents for that month, multiplied by the subsidy in effect at the time (the "**Transit Subsidy Participation Incentive Payment**"). SFMTA shall use the Transit Subsidy Participation Incentive Payment solely for the purpose of marketing and supporting full utilization of the Transit Pass Subsidy Program and for other SFMTA-related transit services provided at the Project Site.

~~7.~~8. Use of Excess Funds Collected Under the Transit Subsidy Agreement. Any funds collected by the Master HOA and/or the Developer that are not used to pay the Transit Subsidies for Enrolled Residents or to make the Transit Subsidy Participation Incentive Payment to the SFMTA as required by paragraph 6, above, shall be paid to the Transportation Coordinator who may use the excess funds solely for the purpose of implementing the Transportation Program and Policies set forth in Section 4.1 of the Parkmerced Transportation Plan within and adjacent to the Project Site.

~~8.~~9. Adjustment to the Transit Subsidy Amount. The amount of the Transit Subsidy shall be $20 on the Effective Date, and shall be adjusted concurrently with changes in the cost of the Transit Pass, based on the percentage increase or decrease in the price of the Transit Pass. For example, if the SFMTA increases the cost of a Transit Pass by five (5) percent, the cost of the Transit Pass would increase by $1, to $21.

Prepared By:

Fehr & Peers
Transportaion Consultants
332 Pine Street, 4th Floor
San Francisco, Ca 94104

For The City Of San Francisco

PARKMERCED PROJECT
CASE NUMBER: 2008.0021E

FINAL
TRANSIT OPERATING PLAN

OCTOBER 2010
SF09-0443

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CHAPTER 1. INTRODUCTION

This report describes the transit service plan for the Parkmerced Project, including elements of the plan and the expected costs associated with operating that service. Further, this report describes the additional cost imparted to the transit system associated with additional congestion created by the Parkmerced Project. This analysis, including the resulting transit service plan and the estimation of new costs associated with traffic congestion is the product of close collaboration between the Project Sponsor, the Planning Department and SFMTA. There has been general consensus regarding the suitability of this plan to maintain adequate service to the southwestern portion of San Francisco while implementing changes to the rail alignment to better serve the new neighborhood. However, SFMTA service planning staff will retain the discretion to implement the most appropriate transit service as conditions in the area warrant. However, this transit service plan represents the currently-anticipated transit service improvements.

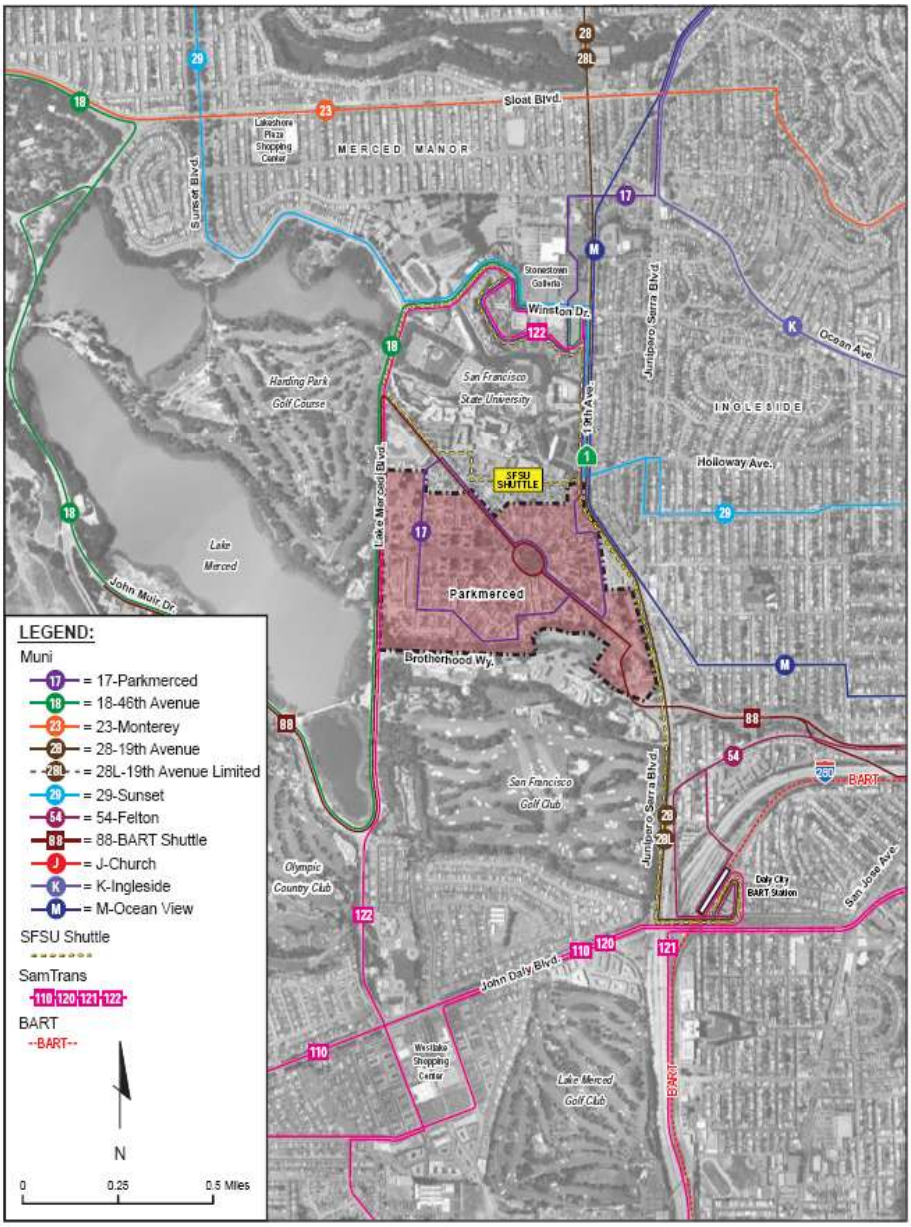
This report is divided into four chapters. This chapter provides a brief introduction to the report and describes its purpose. The second chapter provides a brief summary of the proposed transit plan, and the changes to the system's operating environment associated with the Proposed Project. The third chapter describes the costs associated with operating the proposed service plan at completion of the project, and the fourth chapter describes the anticipated cost of transit operations as traffic congestion increases (and associated costs) relative to project build-out.

CHAPTER 2. PROPOSED TRANSIT PLAN

Transit improvements proposed in the study area include items described in the Parkmerced Transportation Plan and Final Intersection and Roadway Modifications, presented in Appendix B1. Additionally, SFMTA's recently completed Transit Effectiveness Project (TEP) would heavily influence the ultimate transit network configuration. This section will discuss each set of improvements in turn. The existing transit network is presented on **Figure 1**.

1 AECOM; Parkmerced Transportation Plan, Preliminary Draft; April 2, 2009
AECOM; Final Intersection and Roadway Modifications; November 4, 2009

Figure 1 – Existing Transit Network



Parkmerced

EXISTING TRANSIT NETWORK

Sept 2010
SF09-0443\graphics\AI\0443-1

FIGURE 1

FIGURE 1: EXISTING TRANSIT NETWORK

Map above shows general southwest quadrant of San Francisco with Parkmerced neighborhood at center, and exhibiting routes of existing transit lines: for SFMTA, Samtrans and BART.

Main purpose of this map is the illustration of existing transit service in and adjacent to Parkmerced, including SFMTA - Muni service:

- 17 Parkmerced, serving interior of Parkmerced, and linking neighborhood to Stonestown and West Portal.
- 18 46th Avenue, running adjacent to Parkmerced's west edge along Lake Merced Blvd.
- 23 Monterey, a half-mile north of Parkmerced along Sloat.
- 28 19th Avenue and 28 L 19th Avenue, running adjacent to Parkmerced's east edge along 19th Avenue, connecting to Daly City BART.
- 29 Sunset Blvd, running adjacent to Parkmerced's east edge along 19th Avenue and connecting to Balboa Park BART.
- 54 Felton, running nearly adjacent to Parkmerced's southeast edge along Alemany Blvd and connecting to both Daly City and Balboa Park BART.
- 88 BART Shuttle, running adjacent to Parkmerced's southeast edge along Alemany Blvd and connecting to Balboa Park BART.
- M Oceanview, running adjacent to Parkmerced's east edge along 19th Avenue and connecting to Balboa Park BART and West Portal.
- K Ingleside, running a quarter-mile east of Parkmerced and connecting to Balboa Park BART and West Portal.
- SFSU Shuttle: a free shuttle operated by SFSU and connecting to Daly City BART via 19th Avenue, connecting to both Daly City and Balboa Park BART.
- Samtrans 110 and 120, running south of Parkmerced in Daly City connecting Daly City BART to the Westlake area.
- Samtrans 121, running south of Parkmerced in Daly City connecting Daly City BART to the Pacific Gateway area.
- Samtrans 122, running adjacent to Parkmerced along Lake Merced Blvd and connecting Daly City BART to Stonestown.
- Daly City BART Station, located a quarter-mile south of Parkmerced.

2.1 PROPOSED PROJECT TRANSIT IMPROVEMENTS

Recommendations proposed by the Parkmerced Transportation Plan include:

- Rerouting the M Ocean View line through the site, entering from the north at 19th Avenue and Holloway Avenue, continuing southwest towards the intersection of Crespi and Gonzalez Drives, continuing along the eastern edge of the neighborhood core towards Font Boulevard/Gonzalez Drive, turning east on Felix Avenue, and exiting Parkmerced to the east at 19th Avenue/Junipero Serra Boulevard. Tail-tracks would be provided in the site in order to allow every other train to turn-back rather than continuing on to the Balboa Park station. The proposed alignment of the M-Ocean View is an extension of, adding travel time and length to, the TEP recommendation to terminate the M Ocean View at SFSU. The J Church, proposed in the TEP to be extended along the M Ocean View path towards SFSU, would terminate instead in this proposal as currently configured at Balboa Park, and the M Ocean View would extend from the terminal in Parkmerced east across Junipero Serra Boulevard to reconnect with its alignment east of SR 1. Alternative Muni rail alignments to this Project proposal that range in degree of following the current TEP proposal for the J Church and M Ocean View in this area are also analyzed and discussed in the document.

- The Muni Metro would have an exclusive right-of-way through Parkmerced. Design treatments including cobblestones and signage will be installed to prevent vehicles, pedestrians, and bicycles from traveling on the tracks. Intersections, crosswalks, and sidewalks would be designed to reduce pedestrian/transit conflicts.

- One relocated station and two new stations would be constructed within Parkmerced. The first would replace the existing SFSU station in the 19th Avenue median with a station located on the Project site near the 19th Avenue/Holloway Avenue intersection. The second station would be located along the eastern edge of the neighborhood core, near Juan Bautista Circle, south of Diaz Avenue. There would also be a third, terminal station just west of Chumasero Drive along Font Boulevard where every other M Ocean View would layover and turn back.

- A low-emissions vehicle shuttle to Daly City BART station would enter the Project site via Chumasero Drive, circulate through the Project site, then head south nonstop to Daly City BART station. Shuttles would operate every 7 ½ minutes during peak periods, and every 15 minutes during off-peak periods.

- A "shopper shuttle," operating during midday and evenings (off-peak periods only), would travel between the Project site and nearby shopping centers. The shuttle would enter the Project site via Higuera Avenue and run along Lake Merced Boulevard to Stonestown Shopping Center and Westlake Shopping Center in Daly City (stopping at the Project site with each north-south pass).

2.2 PROPOSED TRANSIT EFFECTIVENESS PROJECT (TEP) IMPROVEMENTS

The SFMTA's Transit Effectiveness Project (TEP) proposed several changes to Muni service within the study area.

TEP recommendations include[2]:

28L 19th Avenue Limited The 28L 19th Avenue Limited would extend to Van Ness Avenue/North Point on Lombard Street and to Mission/Geneva via I-280. This route currently terminates at Park Presidio Boulevard and Lake Street at the north end and Daly City BART station at the south end. This route would no longer serve Daly City BART station and would reroute to Balboa Park BART station via 19th Avenue, Brotherhood Way, I-280, and Geneva Avenue. The 28L 19th Avenue Limited would be expanded to an all-day "rapid" service. With the combined 28 19th Avenue and 28L 19th Avenue Limited changes, combined service along 19th Avenue and Park Presidio Boulevard would operate every five minutes.

18 46th Avenue The 18 46th Avenue would reroute away from Lake Merced to provide a more direct link between San Francisco Zoo and Stonestown Shopping Center via Sloat Boulevard, Sunset Boulevard, Lake Merced Boulevard, and Winston Drive. The 18 46th Avenue currently makes a circuitous route to the San Francisco Zoo via Lake Merced Boulevard to John Muir Drive to Skyline Boulevard.

17 Parkmerced The 17 Parkmerced would reroute to serve Daly City BART and the Westlake Shopping Center. The 18 46th Avenue service along John Muir Drive and Lake Merced would be replaced by the 17 Parkmerced. The 17 Parkmerced currently runs through Stonestown Shopping Center and terminates at Parkmerced. The re-routed 17 Parkmerced would extend from Parkmerced to Sloat Avenue/Everglade Drive via Chumasero Drive, Junipero Serra Boulevard, John Daly Boulevard, Lake Merced Boulevard, John Muir Drive, and Skyline Boulevard.

88 BART Shuttle The 88 BART Shuttle would terminate west of Sickles/Alemany and would be replaced by a modified 17 Parkmerced. The 88 BART Shuttle extended past Sickles/Alemany into Parkmerced and continued onto John Muir Drive prior to the TEP improvements. Service on the remaining section of the 88 Mission/BART Shuttle would be increased from a bus every 8-9 minutes to a bus every 7-8 minutes during the weekday AM peak hour and from a bus every 10 minutes to a bus every 7-8 minutes during the weekday PM peak hour. As of December 5, 2009, the segment west of Alemany Boulevard / Sickles Avenue was discontinued.

J Church The J Church would extend to SFSU to improve rail connections to Noe Valley and the Mission District. The J Church currently terminates at the Balboa Park Station. Frequency on the extended J Church would increase from a train every 8-9 minutes to a train every 6-7 minutes during the weekday AM peak hour and from a train every 7-8 minutes to a train every 6 minutes during the weekday PM peak hour.

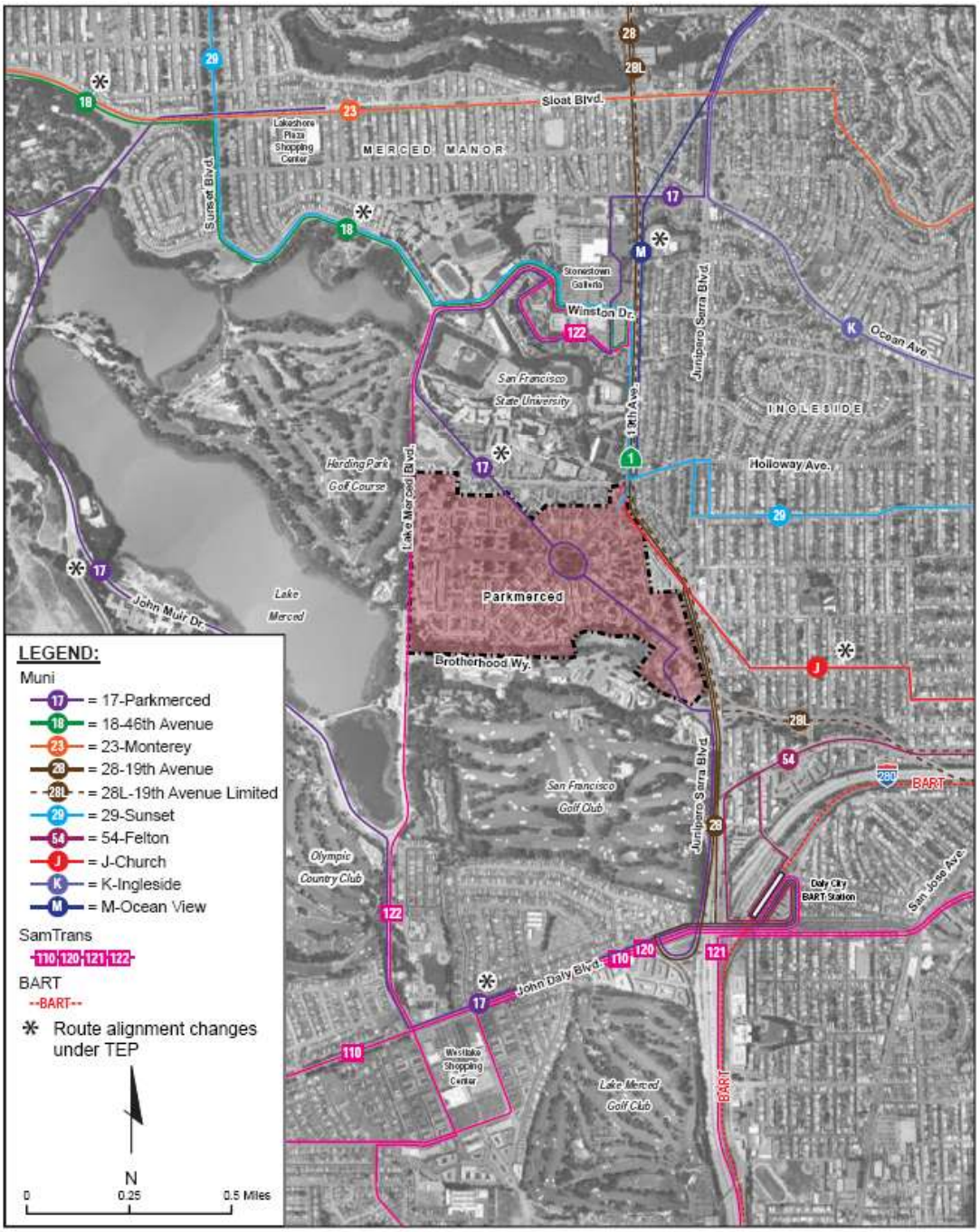
M Ocean View The M Ocean View would terminate at SFSU. The M Ocean View currently routes past Parkmerced and terminates at Balboa Park Station. Frequencies during the weekday AM and PM peak hours would drop from a train every 8-9 minutes to a train every 10 minutes.

See **Figure 2** for proposed transit network under TEP and **Figure 3** for proposed transit network under TEP with Project modifications. **Table 1** presents the variations of Muni rail route characteristics with and without the Project under the existing and TEP service plans.

2.3 PROPOSED PROJECT TRANSIT IMPACTS

As described in Section 2.1, the Parkmerced Project would do little to the transit system configuration beyond the alignment of the Muni rail tracks. However, as the Project is built-out, auto congestion will increase in the Project study area. This will have transit travel time delays for busses, which do not have dedicated right-of-way. As more of the Project is developed, delay due to the Project will increase. These increases will trigger the need for additional vehicles on the various routes to maintain the scheduled headways. The impact of both the track realignment and the delay due to auto congestion is discussed in the subsequent chapters.

Figure 2 – TEP Service Plan



Parkmerced

PROPOSED TRANSIT EFFECTIVENESS PROJECT (TEP) NETWORK

Sept 2010
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FIGURE 2

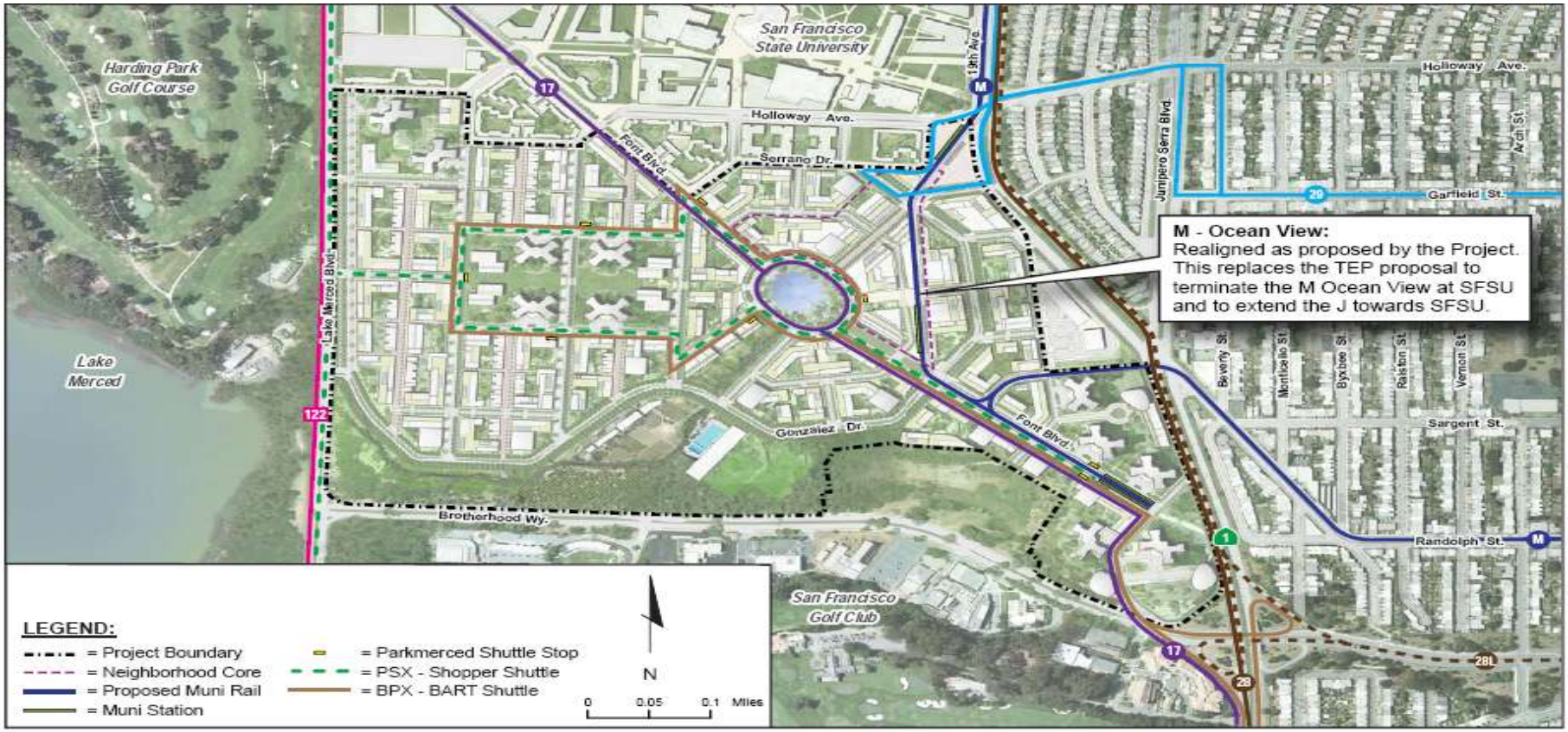
FIGURE 2: TEP SERVICE PLAN

Map above shows general southwest quadrant of San Francisco with Parkmerced neighborhood at center, and exhibiting proposed routes of TEP service plan for SFMTA, also including Samtrans and BART.

Main purpose of this map is the illustration of existing and proposed transit service in and adjacent to Parkmerced, including SFMTA - Muni service proposed TEP service:

- 17 Parkmerced, serving interior of Parkmerced, and linking neighborhood to Stonestown, West Portal and Daly City BART.
- 18 46th Avenue, running north of Parkmerced and serving Stonestown and western San Francisco.
- 23 Monterey, continuing as existing service a half-mile north of Parkmerced along Sloat.
- 28 19th Avenue and 28 L 19th Avenue, running adjacent to Parkmerced's east edge along 19th Avenue, with the 28 connecting to Daly City BART and the 28L connecting to Balboa Park BART.
- 29 Sunset Blvd, as in existing service plan, running adjacent to Parkmerced's east edge along 19th Avenue and connecting to Balboa Park BART.
- 54 Felton, as in existing service plan, running nearly adjacent to Parkmerced's southeast edge along Alemany Blvd and connecting to both Daly City and Balboa Park BART.
- M Oceanview, running adjacent to Parkmerced's east edge along 19th Avenue, connecting to West Portal and terminating at Parkmerced (note this 2010 version of the TEP has been superseded in 2011 to include this as an M "short" line).
- J Church, running adjacent to Parkmerced's east edge along 19th Avenue and connecting West Portal to Balboa Park BART (note this 2010 version of the TEP has been superseded to include this rail segment as an M "long" line).
- K Ingleside, shown as in existing plan running a quarter-mile east of Parkmerced and connecting to Balboa Park BART and West Portal.
- Samtrans 110 and 120, shown as in existing plan running south of Parkmerced in Daly City connecting Daly City BART to the Westlake area.
- Samtrans 121, shown as in existing plan running south of Parkmerced in Daly City connecting Daly City BART to the Pacific Gateway area.
- Samtrans 122, shown as in existing plan running adjacent to Parkmerced along Lake Merced Blvd and connecting Daly City BART to Stonestown.
- Daly City BART Station, shown as in existing plan located a quarter-mile south of Parkmerced.

Figure 3 – TEP plus Project Service Plan



Parkmerced

PROPOSED TRANSIT EFFECTIVENESS PROJECT (TEP) NETWORK WITH PROPOSED PROJECT TRANSIT IMPROVEMENTS

Sept 2010
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FIGURE 3

FIGURE 3: TEP PLUS PROJECT SERVICE PLAN

Map above shows Parkmerced neighborhood, and exhibiting routes of Project-adjusted TEP transit service lines for SFMTA, along with shuttle routes.

The main purpose of this map is the illustration of adjusted transit service from TEP proposal to that reflecting adjustments related to Parkmerced project, including SFMTA - Muni service:

- M Oceanview, running adjacent to Parkmerced's northeast edge along 19th Avenue from West Portal and entering the Parkmerced project area, running west of and parallel to 19th Avenue and splitting into 2 routes: an M "short" line that terminates in Parkmerced, and an M "long" line).
- The Graphic also includes a text box that points to this alignment with the following text, written in 2010:
    - "M – Oceanview: Realigned as proposed by the Project. This replaces the TEP proposal to terminate the M Oceanview at SFSU and to extend the J towards SFSU."
    - However, as of 2011 the TEP proposal as noted above no longer proposes this extension of the J and the TEP's proposal for the M Oceanview now resembles the Project proposal.
    - The graphic also includes the shuttle route to link the interior of the Parkmerced development with two destinations off-site: the Daly City BART Station and the Westlake and Stonestown shopping centers.

TABLE 1 – ROUTE DESCRIPTIONS

Route	(A) Cars per Train	Without Project (B) One-Way Mileage	Without Project I Headway	Without Project (D) Cycle Time[1]	Without Project (E) Trains Per Hour (E=D/C)	Without Project (F) Car Service Miles (F=2AB x 60/C)	With Project (G) One-Way Mileage	With Project (H) Headway	With Project (I) Cycle Time	With Project (J) Trains Per Hour (J=I/H)	With Project (K) Car Service Miles (K=2AG x 60/H)
Existing Service Plan											
J Church	1	6.75	8.6 (7.5)	83 (86)	10 (12)	94.2 (108.0)	6.75	8.6 (7.5)	83 (86)	10 (12)	94.2 (108.0)
M Ocean View Short	2	N/A	N/A	N/A	N/A	N/A	7.63	15.0 (15.0)	84 (91)	12 (14)	122.0 (122.0)
M Ocean View Long	2	8.99	8.6 (10.0)	110 (113)	26 (24)	250.8 (215.8)	9.17	15.0 (15.0)	116 (118)	16 (16)	146.8 (146.8)
				Total	**36 (36)**	**345.0 (323.8)**			**Total**	**38 (42)**	**363.0 (376.8)**
TEP Service Plan											
J Church	1	8.63	7.0 (7.0)	110 (115)	16 (17)	147.9 (147.9)	6.75	8.6 (7.5)	83 (86)	10 (12)	94.2 (108.0)
M Ocean View Short	2	6.84	10.0 (10.0)	70 (78)	14 (16)	82.1 (82.1)	7.63	15.0 (15.0)	84 (91)	12 (14)	122.0 (122.0)
M Ocean View Long	2	N/A	N/A	N/A	N/A	N/A	9.17	15.0 (15.0)	115 (117)	16 (16)	146.8 (146.8)
				Total	**30 (33)**	**230.0 (230.0)**			**Total**	**38 (42)**	**363.0 (376.8)**

Notes: ## (##) = AM (PM)

1 Includes 10% buffer time for lay-over

Source: SFMTA, 2010; Fehr & Peers, 2010.

CHAPTER 3. TRANSIT OPERATING COSTS

Fehr & Peers worked with SFMTA staff to develop cost estimates for operating and maintaining the proposed transit service and for capital costs associated with additional rolling stock. Two scenarios are presented. First, the costs of maintaining the existing transit levels of service with additional project traffic are presented. Next, the costs associating with maintaining transit levels of service proposed by the TEP are analyzed. These include the proposed TEP operating scenario, as well as the Parkmerced transit improvement plan, which assumes Muni tracks are realigned into the project site.

Tables 2 and **3** provide the increase in transit operating costs between existing conditions and project build-out conditions. The increase in costs is based on increases in transit delay attributable to the Parkmerced project. As described in the Parkmerced Transportation Impact Analysis Report, transit delay attributable to the project includes the increase in travel time delay due to additional vehicle trips generated by the project and the increase in delay attributable to additional boardings of project transit riders. **Tables 2** and **3** provide the annual operations and maintenance costs and the capital costs for providing the proposed service on each route. Using the SFMTA's cost estimation model, the impact of the Parkmerced project on transit delay was determined, and the subsequent operations and maintenance costs and capital costs associated with providing proposed transit levels of service to the Parkmerced development were calculated.

3.1 OPERATIONS AND MAINTENANCE COSTS

The annual costs associated with operating the proposed service were determined using SFMTA's cost estimation model, originally developed for the TEP. These costs account for increased revenue to the City associated with farebox recovery (assuming existing fares). Other offsetting revenues, such as sales tax and property tax, are discussed separately in the project's fiscal analysis.

3.2 CAPITAL COSTS

The number of new transit vehicles required to operate the proposed transit plan was also determined using SFMTA's cost estimation model. SFMTA staff developed the projections from this model, and Fehr & Peers has reviewed and concurred with the model. The unit costs for new rolling stock were also provided by SFMTA, and are summarized in **Tables 2** and **3.** These tables also include an estimate of the number of additional vehicles that would be required due to the Project.

As shown, the total additional cost to operate the proposed transit service includes approximately $36.6 million in capital costs for new rolling stock with the existing transit network ($53.1 million with the TEP network) and will require an annual operations and maintenance cost of over $3.8 million with the existing transit network ($3.9 million with the TEP network). To maintain the additional vehicles required to service the transit lines, the existing service plans would require about $10 million in facility capital improvements ($13.5 million with the TEP

network). The TEP service plan extends the J Church to SFSU, but the Project would cause the J Church to terminate at Balboa Park, resulting in operations and maintenance savings.

Delay associated with build-out of the project will not fully occur until the end of the Project development period. Chapter 4 discusses how development phasing of the project impacts the transit investment phasing and the ultimate cost of the transit enhancements over the 20-year development period. This also introduces the cost incurred of replacing those additional vehicles over their lifespan.

TABLE 2 - TRANSIT SERVICE PROPOSAL COSTS DUE TO PROJECT BUILD-OUT – EXISTING SERVICE PLAN
Parkmerced Share[1]

Route	Peak Vehicles Added[2]	Capital Costs per Additional Vehicle Rolling Stock[3]	Capital Costs per Additional Vehicle Facilities[4]	Project-Related Annual O&M Costs[5]	Additional Vehicle Capital Costs[3]	Additional Facility Capital Costs
Existing Service Plan						
17 Parkmerced	1	$900,000	$552,000	$192,000	$900,000	$552,000
18 46th Avenue	2	$900,000	$552,000	$755,000	$1,800,000	$1,104,000
28 19th Avenue	1	$900,000	$552,000	$111,000	$0	$0
28L 19th Avenue Ltd	1	$900,000	$552,000	$191,000	$900,000	$552,000
29 Sunset	0	$900,000	$552,000	$0	$0	$0
J Church	0	$5,500,000	$1,250,000	$0	$0	$0
M Ocean View Short	14	$5,500,000	$1,250,000	$6,620,000	$77,000,000	$17,500,000
M Ocean View Long	(-8)	$5,500,000	$1,250,000	(-$4,050,000)	(-$44,000,000)	(-$10,000,000)
			Total	**$3,819,000**	**$36,600,000**	**$9,708,000**
Existing Service Plan Mitigated						
17 Parkmerced	1	$900,000	$552,000	$192,000	$900,000	$552,000
18 46th Avenue	1	$900,000	$552,000	$563,000	$900,000	$552,000
28 19th Avenue	0	$900,000	$552,000	$0	$0	$0
28L 19th Avenue Ltd	1	$900,000	$552,000	$191,000	$900,000	$552,000
29 Sunset	0	$900,000	$552,000	$0	$0	$0
J Church	0	$5,500,000	$1,250,000	$0	$0	$0
M Ocean View Short	14	$5,500,000	$1,250,000	$6,620,000	$77,000,000	$17,500,000
M Ocean View Long	(-8)	$5,500,000	$1,250,000	(-$4,050,000)	(-$44,000,000)	(-$10,000,000)
			Total	**$3,516,000**	**$35,700,000**	**$9,156,000**

Notes:

1. Represents the costs associated with procuring, operating and maintaining additional transit vehicles required to maintain proposed transit headways with the project.
2. Based on SFMTA Transit Service Planning Division's cost/scheduling model.
3. Does not include the number of replacements required during the lifecycle of a transit vehicle. SFMTA assumes that transit vehicles have the following life cycles: Motorcoach (30') – 10 years; Motorcoach (40') – 12 years; Light Rail Vehicles – 25 years.
4. With each additional vehicle, there is an associated storage cost.
5. Difference between O&M costs with and without the Proposed Project, based on the SFMTA Transit Service Planning Division's cost/scheduling model. Depicts project build-out.

Source: SFMTA, 2010; Fehr & Peers, 2010.

TABLE 3 – TRANSIT SERVICE PROPOSAL COSTS DUE TO PROJECT BUILD-OUT – TEP SERVICE PLAN
Parkmerced Share[1]

Route	Peak Vehicles Added[2]	Capital Costs per Additional Vehicle Rolling Stock[3]	Capital Costs per Additional Vehicle Facilities[4]	Project-Related Annual O&M Costs[5]	Additional Vehicle Capital Costs[3]	Additional Facility Capital Costs
TEP Service Plan						
17 Parkmerced	1	$900,000	$552,000	$452,000	$900,000	$552,000
18 46th Avenue	0	$900,000	$552,000	$112,000	$0	$0
28 19th Avenue	2	$900,000	$552,000	$755,000	$1,800,000	$1,104,000
28L 19th Avenue Ltd	0	$900,000	$552,000	$0	$0	$0
29 Sunset	1	$900,000	$552,000	$192,000	$900,000	$552,000
J Church	(-5)	$5,500,000	$1,250,000	(-$5,889,000)	(-$27,500,000)	(-$6,250,000)
M Ocean View Short	(-2)	$5,500,000	$1,250,000	(-$8,892,000)	(-$11,000,000)	(-$2,500,000)
M Ocean View Long	16	$5,500,000	$1,250,000	$17,177,000	$88,000,000	$20,000,000
			Total	**$3,907,000**	**$53,100,000**	**$13,458,000**
TEP Service Plan Mitigated						
17 Parkmerced	0	$900,000	$552,000	$0	$0	$0
18 46th Avenue	0	$900,000	$552,000	$112,000	$0	$0
28 19th Avenue	2	$900,000	$552,000	$643,000	$1,800,000	$1,104,000
28L 19th Avenue Ltd	0	$900,000	$552,000	(-111,000)	$0	$0
29 Sunset	1	$900,000	$552,000	$192,000	$900,000	$552,000
J Church	(-5)	$5,500,000	$1,250,000	(-$5,889,000)	(-$27,500,000)	(-$6,250,000)
M Ocean View Short	(-2)	$5,500,000	$1,250,000	(-$8,892,000)	(-$11,000,000)	(-$2,500,000)
M Ocean View Long	16	$5,500,000	$1,250,000	$17,177,000	$88,000,000	$20,000,000
			Total	**$3,232,000**	**$52,200,000**	**$12,906,000**

Notes:

1. Represents the costs associated with procuring, operating and maintaining additional transit vehicles required to maintain proposed transit headways with the project.
2. Based on SFMTA Transit Service Planning Division's cost/scheduling model.
3. Does not include the number of replacements required during the lifecycle of a transit vehicle. SFMTA assumes that transit vehicles have the following life cycles: Motorcoach (30') – 10 years; Motorcoach (40') – 12 years; Light Rail Vehicles – 25 years.
4. With each additional vehicle, there is an associated storage cost.
5. Difference between O&M costs with and without the Proposed Project, based on the SFMTA Transit Service Planning Division's cost/scheduling model. Depicts project build-out.

Source: SFMTA, 2010; Fehr & Peers, 2010.

CHAPTER 4. PHASING

The transit mitigation phasing plan has been designed to ensure that the level of transit service proposed by the SFMTA and the Parkmerced project can be maintained, even as transit ridership and travel time increase. This will ensure that the Project maintains its "transit orientation" throughout the development horizon and that SFMTA can be made whole for any service degradation caused by the project.

Vehicle trip generation is the basis from which transit travel time delay is calculated. The SFMTA's cost estimation model uses travel time and delay to estimate the total number of vehicles needed to serve the route and maintain proposed headways. The model accounts for other transit run time elements, including driver layover and rider boarding delay. **Table 4** present the effective vehicle trip generation rates per unit of land use for the Parkmerced Project, based on the travel demand forecasts presented in the project's Transportation Analysis Report[3].

TABLE 4 – EFFECTIVE PM PEAK HOUR VEHICLE TRIP GENERATION RATES – PARKMERCED PROJECT

Land Use	Net New Amount Provided	Unit	Effective PM Peak Hour Trip Generation Rate (Vehicle Trips Per Unit of Development)
Residential	5,679	Dwelling Unit	0.35
Retail	230	KSF	3.24
Commercial	69	KSF	3.76
Recreation	64	KSF	0.84

Notes:

The effective rates are the total number of person trips forecasted to be generated by each use, with the mode split forecasts developed as part of the Parkmerced Transportation Impact Analysis Report. Overall, the site was projected to experience reduction, compared to standard rates from Trip Generation (ITE, 2008) based on the scale of development, the mix of uses, and the bicycle- and pedestrian-oriented design. For purpose of developing this table, the reduction was applied evenly to each use, except for retail which was calculated to have half the reduction consistent with the Parkmerced Transportation Impact Analysis Report. Further, the number of auto trips generated per unit of development is dependent on both the size of development and the mix of the uses proposed. As the project uses change, the vehicle trip generation rates per unit of development may not be constant. Thus, the rates presented in this table should be used cautiously.

Source: Fehr & Peers, 2010

Table 5 presents the anticipated transit mitigation phasing expected to be required to maintain proposed transit levels of service at the site throughout various points of development, and the associated level of development expected to "trigger" those transit line mitigations. Improvements to service on the M Ocean View light rail line are not expected to be phased based on project development; instead, improvements on the M Ocean View will be constructed with the project at a particular time during project development. As shown in the Table, the following bus lines would need additional buses to be able to maintain their service levels associated with the anticipated level of development at Parkmerced:

- 17 Parkmerced
- 18 46th Avenue
- 28 19th Avenue
- 28L 19th Avenue Limited
- 29 Sunset

Preliminary development schedules provided by the project applicant forecast occupancy of the first building by year 2012 and completion of the final development by year 2032. **Table 6** presents the annual capital and operating and maintenance costs expected to accrue based on the projected Project build-out by year. Since the development of Parkmerced would occur over 20 years, delay on certain transit lines would not necessarily warrant additional vehicles until later in the project's development. **Figure 4** reports the annual costs graphically.

Under the Existing Service Plan, the 17 Parkmerced and 18 46th Avenue would need additional vehicles by Year 5 of the project's development; however, additional vehicles on the 28 19th Avenue would not be needed until year 18. A second vehicle on the 18 46th Avenue would be required in the 12th year of development. Considering all operating and maintenance costs, vehicle capital costs, vehicle replacement costs, and facility costs over the 20 year development period, transit costs due to the Project would be $67,342,600. With implementation of roadway mitigations, this could be reduced by $5,128,500 to $62,214,100.

Under the TEP Transit Service Plan, additional vehicles would be needed on the 28 19th Avenue in Year 1, additional vehicles would be needed on the 17 Parkmerced in Year 3, and additional vehicles would be needed on the 29 Sunset in Year 5. If the Project sponsor and City implement roadway mitigations, the 17 Parkmerced would not be delayed and would not need additional vehicles to maintain the proposed headways. Considering all operating and maintenance costs, vehicle capital costs, vehicle replacement costs, and facility costs over the 20 year development period, transit investment cost due to the Project would be $192,847,716. With implementation of roadway mitigations, this could be reduced by $11,660,000 to $181,187,716.

Beyond the development period, operating & maintenance costs would continue to occur every year. Additionally, SFMTA assumes that transit vehicles have the following life cycles: Motorcoach (30') – 10 years; Motorcoach (40') – 12 years; and Light Rail Vehicles – 25 years. This would also need to be taken into consideration.

TABLE 5 – PROJECT-RELATED TRANSIT INVESTMENT PHASING

Transit Line	Existing Service Plan Without Roadway Mitigation Trigger VT[2] [% Developed]	Existing Service Plan Without Roadway Mitigation Year for Vehicle Purchase	Existing Service Plan With Roadway Mitigation[1] Trigger VT[2] [% Developed]	Existing Service Plan With Roadway Mitigation[1] Year for Vehicle Purchase	TEP Service Plan Without Roadway Mitigation Trigger VT[2] [% Developed]	TEP Service Plan Without Roadway Mitigation Year for Vehicle Purchase	TEP Service Plan With Roadway Mitigation[1] Trigger VT[2] [% Developed]	TEP Service Plan With Roadway Mitigation[1] Year for Vehicle Purchase
17 Parkmerced	965 [31%]	5	31% [965]	5	455 [15%]	4	N/A	N/A
18 46th Avenue								
Bus 1	965 [31%]	5	31% [965]	5	N/A	N/A	N/A	N/A
Bus 2	2,270 [73%]	12	N/A	N/A	N/A	N/A	N/A	N/A
28 19th Avenue								
Bus 1	2,950 [95%]	18	N/A	N/A	0 [0%]	1	0 [0%]	1
Bus 2	N/A	N/A	N/A	N/A	2,123 [69%]	12	2,123 [69%]	12
28L 19th Avenue Ltd	2,950 [95%]	18	N/A	N/A	N/A	N/A	N/A	N/A
29 Sunset	N/A	N/A	N/A	N/A	965 [31%]	5	965 [31%]	5
M Ocean View[3]	N/A	10	N/A	10	N/A	10	N/A	10

Notes:
1. Roadway and intersection improvements associated with mitigation measures identified in the Parkmerced Transportation Impact Analysis Report.
2. VT = Vehicle Trips
3. Vehicle trips/Project development does not trigger the need for the investments on the M Ocean View. For purposes of this analysis, it is assumed that the M Ocean View is realigned in the 10th year of development.

Transit Line	Existing Service Plan Without Roadway Mitigation Trigger VT[2] [% Developed]	Existing Service Plan Without Roadway Mitigation Year for Vehicle Purchase	Existing Service Plan With Roadway Mitigation[1] Trigger VT[2] [% Developed]	Existing Service Plan With Roadway Mitigation[1] Year for Vehicle Purchase	TEP Service Plan Without Roadway Mitigation Trigger VT[2] [% Developed]	TEP Service Plan Without Roadway Mitigation Year for Vehicle Purchase	TEP Service Plan With Roadway Mitigation[1] Trigger VT[2] [% Developed]	TEP Service Plan With Roadway Mitigation[1] Year for Vehicle Purchase
Source: SFMTA, 2010; Fehr & Peers, 2010.								

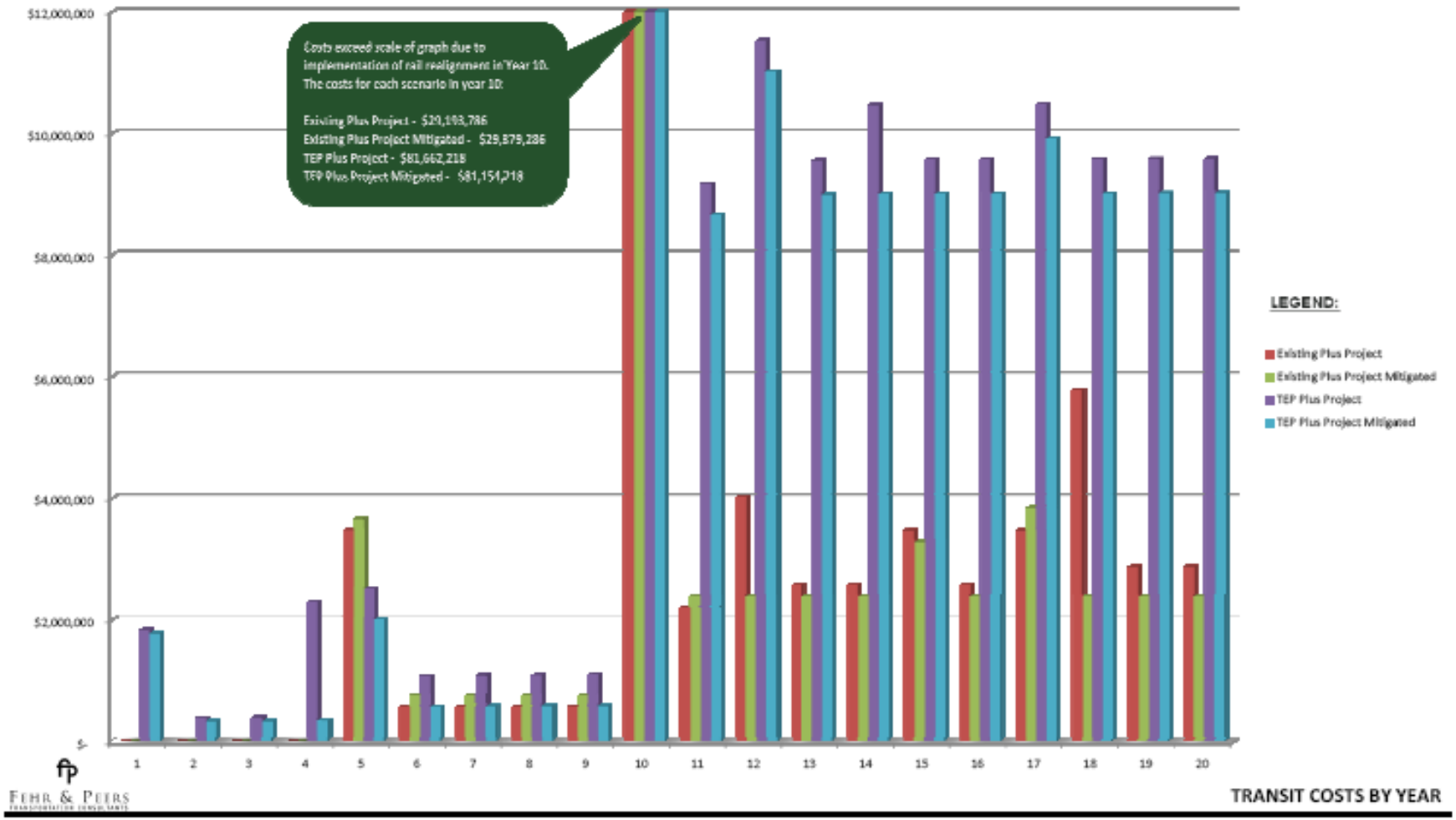
TABLE 6 - TRANSIT COSTS BY YEAR

Annual Costs Based On Existing Service Plan – Investment Increase Due to Project

Route	Annual O&M Cost Increase per Vehicle	New Vehicle Capital Costs	Vehicle Facility Capital Costs	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	Total Add'l Costs at Buildout
17 Parkmerced w/o Mitigation	$192,000	$900,000	$552,000	$ -	$ -	$ -	$ -	$1,644,000	$192,000	$192,000	$192,000	$192,000	$192,000	$192,000	$192,000	$192,000	$192,000	$1,092,000	$192,000	$192,000	$192,000	$192,000	$192,000	$5,424,000
17 Parkmerced w/ Mitigation	$192,000	$900,000	$552,000	$ -	$ -	$ -	$ -	$1,644,000	$192,000	$192,000	$192,000	$192,000	$192,000	$192,000	$192,000	$192,000	$192,000	$1,092,000	$192,000	$192,000	$192,000	$192,000	$192,000	$5,424,000
18 46th Avenue w/o Mitigation	$377,500	$900,000	$552,000	$ -	$ -	$ -	$ -	$1,829,500	$377,500	$377,500	$377,500	$377,500	$377,500	$377,500	$2,207,000	$755,000	$755,000	$755,000	$755,000	$1,655,000	$755,000	$755,000	$755,000	$13,241,500
18 46th Avenue w/ Mitigation	$563,000	$900,000	$552,000	$ -	$ -	$ -	$ -	$2,015,000	$563,000	$563,000	$563,000	$563,000	$563,000	$563,000	$563,000	$563,000	$563,000	$563,000	$563,000	$2,026,000	$563,000	$563,000	$563,000	$11,923,000
28 19th Avenue w/o Mitigation	$111,000	$900,000	$552,000	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$1,563,000	$111,000	$111,000	$1,785,000
28 19th Avenue w/ Mitigation	$ -	$900,000	$552,000	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
28L 19th Ave Ltd w/o Mitigation	$191,000	$900,000	$552,000	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$1,643,000	$191,000	$191,000	$2,025,000
28L 19th Ave Ltd w/ Mitigation	$191,000	$900,000	$552,000	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
29 Sunset w/o Mitigation	$ -	$900,000	$552,000	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
29 Sunset w/ Mitigation	$ -	$900,000	$552,000	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
J Church w/o Mitigation	$ -	$5,500,000	$1,250,000	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
J Church w/ Mitigation	$ -	$5,500,000	$1,250,000	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
M Oceanview Long w/o Mitigation	$506,250	$5,500,000	$1,250,000	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$(58,050,000)	$(4,050,000)	$(4,050,000)	$(4,050,000)	$(4,050,000)	$(4,050,000)	$(4,050,000)	$(4,050,000)	$(4,050,000)	$(4,050,000)	$(4,050,000)	$(98,550,000)
M Oceanview Long w/ Mitigation	$506,250	$5,500,000	$1,250,000	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$(58,050,000)	$(4,050,000)	$(4,050,000)	$(4,050,000)	$(4,050,000)	$(4,050,000)	$(4,050,000)	$(4,050,000)	$(4,050,000)	$(4,050,000)	$(4,050,000)	$(98,550,000)
M Oceanview Short w/o Mitigation	$472,857	$5,500,000	$1,250,000	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$86,674,286	$5,674,286	$5,674,286	$5,674,286	$5,674,286	$5,674,286	$5,674,286	$5,674,286	$5,674,286	$5,674,286	$5,674,286	$143,417,143
M Oceanview Short w/ Mitigation	$472,857	$5,500,000	$1,250,000	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$86,674,286	$5,674,286	$5,674,286	$5,674,286	$5,674,286	$5,674,286	$5,674,286	$5,674,286	$5,674,286	5,674,286	$5,674,286	$143,417,143
Total PM Vehicle Trips from Park Merced Development				123	213	336	455	965	1,507	1,797	1,895	1,957	1,958	2,123	2,267	2,343	2,523	2,634	2,728	2,837	2,952	3,034	3,101	
% of Development Completed				4.0%	6.9%	10.8%	14.7%	31.1%	48.6%	57.9%	61.1%	63.1%	63.1%	68.5%	73.1%	75.6%	81.4%	84.9%	88.0%	91.5%	95.2%	97.8%	100.0%	
Annual Cost - Existing Plus Project Service				$ -	$ -	$ -	$ -	$3,473,500	$569,500	$569,500	$569,500	$569,500	$29,193,786	$2,193,786	$4,023,286	$2,571,286	$2,571,286	$3,471,286	$2,571,286	$3,471,286	$5,777,286	$2,873,286	$2,873,286	$67,342,643
Annual Cost - Existing Plus Mitigated Project Service				$ -	$ -	$ -	$ -	$3,659,000	$755,000	$755,000	$755,000	$755,000	$29,379,286	$2,379,286	$2,379,286	$2,379,286	$2,379,286	$3,279,286	$2,379,286	$3,842,286	$2,379,286	$2,379,286	$2,379,286	$62,214,143
Net Benefit of Mitigation				$ -	$ -	$ -	$ -	$(185,500)	$(185,500)	$(185,500)	$(185,500)	$(185,500)	$ (185,500)	$ (185,500)	$1,644,000	$192,000	$192,000	$192,000	$192,000	$(371,000)	$3,398,000	$494,000	$494,000	$5,128,500

Annual Costs Based On TEP Service Plan – Investment Increase Due to Project

Route	Annual O&M Cost Increase per Vehicle	New Vehicle Capital Costs	Vehicle Facility Capital Costs	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	Total Add'l Costs at Buildout
17 Parkmerced w/o Mitigation	$452,000	$900,000	$552,000	$ -	$ -	$ -	$1,904,000	$452,000	$452,000	$452,000	$452,000	$452,000	$452,000	$452,000	$452,000	$452,000	$1,352,000	$452,000	$452,000	$452,000	$452,000	$452,000	$452,000	$10,036,000
17 Parkmerced w/ Mitigation	$ -	$900,000	$552,000	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
18 46th Avenue w/o Mitigation	$112,000	$900,000	$552,000	$4,442	$7,693	$12,135	$16,433	$34,853	$54,429	$64,903	$68,442	$70,682	$70,718	$76,677	$81,878	$84,623	$91,124	$95,133	$98,528	$102,465	$106,619	$109,580	$112,000	$1,363,359
18 46th Avenue w/ Mitigation	$112,000	$900,000	$552,000	$4,442	$7,693	$12,135	$16,433	$34,853	$54,429	$64,903	$68,442	$70,682	$70,718	$76,677	$81,878	$84,623	$91,124	$95,133	$98,528	$102,465	$106,619	$109,580	$112,000	$1,363,359
28 19th Avenue w/o Mitigation	$377,500	$900,000	$552,000	$1,829,500	$377,500	$377,500	$377,500	$377,500	$377,500	$377,500	$377,500	$377,500	$377,500	$377,500	$3,107,000	$755,000	$755,000	$755,000	$755,000	$755,000	$755,000	$755,000	$755,000	$14,751,500
28 19th Avenue w/ Mitigation	$321,500	$900,000	$552,000	$1,773,500	$321,500	$321,500	$321,500	$321,500	$321,500	$321,500	$321,500	$321,500	$321,500	$321,500	$2,995,000	$643,000	$643,000	$643,000	$643,000	$643,000	$643,000	$643,000	$643,000	$13,127,500
28L 19th Ave Ltd w/o Mitigation	$ -	$900,000	$552,000	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
28L 19th Ave Ltd w/ Mitigation	$ -	$900,000	$552,000	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$-	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
29 Sunset w/o Mitigation	$192,000	$900,000	$552,000	$ -	$ -	$ -	$ -	$1,644,000	$192,000	$192,000	$192,000	$192,000	$192,000	$192,000	$192,000	$192,000	$192,000	$192,000	$192,000	$1,092,000	$192,000	$192,000	$192,000	$5,424,000
29 Sunset w/ Mitigation	$192,000	$900,000	$552,000	$ -	$ -	$ -	$ -	$1,644,000	$192,000	$192,000	$192,000	$192,000	$192,000	$192,000	$192,000	$192,000	$192,000	$192,000	$192,000	$1,092,000	$192,000	$192,000	$192,000	$5,424,000
J Church w/o Mitigation	$1,177,800	$5,500,000	$1,250,000	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$(39,639,000)	$(5,889,000)	$(5,889,000)	$(5,889,000)	$(5,889,000)	$(5,889,000)	$(5,889,000)	$(5,889,000)	$(5,889,000)	$(5,889,000)	$(5,889,000)	$(98,529,000)
J Church w/ Mitigation	$1,177,800	$5,500,000	$1,250,000	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$(39,639,000)	$(5,889,000)	$(5,889,000)	$(5,889,000)	$(5,889,000)	$(5,889,000)	$(5,889,000)	$(5,889,000)	$(5,889,000)	$(5,889,000)	$(5,889,000)	$(98,529,000)
M Oceanview Long w/o Mitigation	$1,073,563	$5,500,000	$1,250,000	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$125,177,000	$17,177,000	$17,177,000	$17,177,000	$17,177,000	$17,177,000	$17,177,000	$17,177,000	$17,177,000	$17,177,000	$17,177,000	$296,947,000
M Oceanview Long w/ Mitigation	$1,073,563	$5,500,000	$1,250,000	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$125,177,000	$17,177,000	$17,177,000	$17,177,000	$17,177,000	$17,177,000	$17,177,000	$17,177,000	$17,177,000	$17,177,000	$17,177,000	$296,947,000
M Oceanview Short w/o Mitigation	$4,446,000	$5,500,000	$1,250,000	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$(22,392,000)	$(8,892,000)	$(8,892,000)	$(8,892,000)	$(8,892,000)	$(8,892,000)	$(8,892,000)	$(8,892,000)	$(8,892,000)	$(8,892,000)	$(8,892,000)	$(111,312,000)
M Oceanview Short w/ Mitigation	$4,446,000	$5,500,000	$1,250,000	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$(22,392,000)	$(8,892,000)	$(8,892,000)	$(8,892,000)	$(8,892,000)	$(8,892,000)	$(8,892,000)	$(8,892,000)	$(8,892,000)	$(8,892,000)	$(8,892,000)	$(111,312,000)
Total PM Vehicle Trips from Park Merced Development				123	213	336	455	965	1,507	1,797	1,895	1,957	1,958	2,123	2,267	2,343	2,523	2,634	2,728	2,837	2,952	3,034	3,101	
% of Development Completed				4.0%	6.9%	10.8%	14.7%	31.1%	48.6%	57.9%	61.1%	63.1%	63.1%	68.5%	73.1%	75.6%	81.4%	84.9%	88.0%	91.5%	95.2%	97.8%	100.0%	
Annual Cost - Existing Plus Project Service				$1,833,942	$385,193	$389,635	$2,297,933	$2,508,353	$1,075,929	$1,086,403	$1,089,942	$1,092,182	$81,662,218	$9,168,463	$11,903,164	$9,553,909	$10,460,410	$9,564,419	$9,567,814	$10,471,751	$9,575,904	$9,578,866	$9,581,286	$192,847,716
Annual Cost - Existing Plus Mitigated Project Service				$1,777,942	$329,193	$333,635	$337,933	$2,000,353	$567,929	$578,403	$581,942	$584,182	$81,154,218	$8,660,463	$11,339,164	$8,989,909	$8,996,410	$9,000,419	$9,003,814	$9,907,751	$9,011,904	$9,014,866	$9,017,286	$181,187,716
Net Benefit of Mitigation				$56,000	$56,000	$56,000	$1,960,000	$508,000	$508,000	$508,000	$508,000	$508,000	$508,000	$508,000	$564,000	$564,000	$1,464,000	$564,000	$564,000	$564,000	$564,000	$564,000	$564,000	$11,660,000



TRANSIT COSTS BY YEAR

FIGURE 4

FIGURE 4 – TRANSIT COST BY YEAR

Figure 4 above compares the Project transit costs by year to four different scenarios over a 20-year span: "Existing Plus Project", "Existing Plus Project Mitigated", "TEP Plus Project", and "TEP Plus Project Mitigated." Since the TEP has changed in 2011, the only meaningful comparisons in this 2010 graph are the "Existing Plus Project" and "Existing Plus Project Mitigated." They are summarized below as increments above existing service costs over the 20-year build-out, reflecting expansions of transit operation and infrastructure aligned with development phases.

Years 1-4:
Existing Plus Project Cost: negligible difference from existing condition
Existing Plus Project Mitigated Cost: negligible difference from existing condition

Year 5:
Existing Plus Project Cost: between $2 and $4 million, closer to $4 million.
Existing Plus Project Mitigated Cost: slightly higher than cost above, but still below $4 million.

Years 6-9:
Existing Plus Project Cost: less than $2 million
Existing Plus Project Mitigated Cost: slightly higher than cost above, but still below $2 million.

Year 10:
Existing Plus Project Cost: about $32 million
Existing Plus Project Mitigated Cost: also about $32 million.

Year 11:
Existing Plus Project Cost: just over $2 million
Existing Plus Project Mitigated Cost: slightly higher than cost above, but still just over $2 million.

Year 12:
Existing Plus Project Cost: just under $4 million
Existing Plus Project Mitigated Cost: slightly higher than $2 million.

Year 13, 14:
Existing Plus Project Cost: just over $2 million
Existing Plus Project Mitigated Cost: slightly lower than cost above, but still just over $2 million.

FIGURE 4 – TRANSIT COST BY YEAR (continued)

Year 15:
Existing Plus Project Cost: just over $3 million
Existing Plus Project Mitigated Cost: slightly higher than cost above, but still just over $3 million.

Year 16:
Existing Plus Project Cost: just over $2 million
Existing Plus Project Mitigated Cost: slightly lower than cost above, but still just over $2 million.

Year 17:
Existing Plus Project Cost: between $3-$4 million
Existing Plus Project Mitigated Cost: slightly higher than cost above, but still just under $4 million.

Year 18:
Existing Plus Project Cost: just under $6 million
Existing Plus Project Mitigated Cost: significantly lower than cost above, and just over $2 million.

Years 19-20:
Existing Plus Project Cost: just over $2 million
Existing Plus Project Mitigated Cost: slightly lower than cost above, but still just over $2 million.

4.1 CONCLUSION

As noted earlier, SFMTA service planning staff will retain the discretion to implement transit service at a time and type based on their best judgment over the course of build-out of the Parkmerced project and other development projects in the southwest portion of San Francisco. However, this analysis represents a reasonable forecast based on the information available at this time.

Parkmerced Fiscal And Economic Impact Analysis Overview

Prepared For:

City of San Francisco
Mayor's Office of Economic Development

May 2011

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May 25, 2011

Michael Yarne
Mayor's Office of Economic Development
City Hall, Room 448
San Francisco, CA 94102

Re: Parkmerced Fiscal and Economic Impact Analysis Overview

Dear Mr. Yarne,

CBRE Consulting is pleased to present this overview fiscal and economic impact analysis of the Parkmerced project in San Francisco. This analysis was prepared upon the request of the San Francisco Mayor's Office of Economic Development. The analysis was conducted to provide an overview analysis of the prospective fiscal and economic impacts of the redevelopment and significant expansion of the Parkmerced residential community in San Francisco.

It has been a pleasure working with you on this interesting project. Please let us know if there are any questions or comments on the analysis included herein.

Sincerely,

Amy L. Herman, AICP
Senior Managing Director

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I. INTRODUCTION AND SUMMARY OF FINDINGS

PURPOSE OF ANALYSIS

CBRE Consulting was retained to perform a fiscal and economic impact analysis of the Parkmerced project (the "Project") to provide input to the City and County of San Francisco's evaluation of the Project as part of its approval process. This Project includes the redevelopment and expansion of the residential units at this existing residential community, as well as the addition of commercial and other non-residential components over an approximate 20-year time horizon. Given the time allotment to conduct the fiscal and economic impact analyses, these analyses are generalized in nature, and are intended to provide an indication of the type and magnitude of the Project's impact rather than specific projections. In addition, the phasing assumptions in the analysis are illustrative; the actual Project phasing and associated fiscal impacts may vary from those presented herein.

The fiscal and economic impact analyses were conducted in concert with CBRE Consulting's pro forma review and community improvement analysis. Many of the Project assumptions were derived from the pro forma shared with CBRE Consulting for the purpose of this review, which is addressed in separate documentation to the Mayor's Office of Economic and Workforce Development. Due to the nature of the development planning process, the pro forma reflects a dynamic modeling process, with changes made as warranted based upon market, financial, cost, and other key components. Accordingly, the assumptions appropriated for the fiscal and economic impact analyses, and included herein, may change over time. This dynamic nature further reinforces the need to consider the findings from the fiscal and economic impact analyses general, rather than detailed indications of the Project's forecasted performance.

In preparing this report, CBRE Consulting assumes the reader has basic familiarity with the Project. Accordingly, detailed Project information is not included herein, aside from the information necessary to provide a basis for the fiscal and economic impact analyses.

PROJECT PHASING

This analysis is based on the 20-year development projections set forth in Parkmerced's Draft EIR. That document contained four "Illustrative Development Phases," which are based on the Developer's best estimates for the likely pace of the build-out of the private and public improvements contemplated in the Development Agreement. Accordingly, each of the "Phases" listed in this analysis corresponds to the last year of each of the Illustrative Development Phases set forth in the Draft EIR. It should be emphasized, however, that the four Illustrative Development Phases are merely reasonable projections of the potential timing and scope of the Project buildout, and are not fixed development phases or schedules. On the

contrary, the draft Parkmerced Development Agreement specifically provides the developer flexibility in the order and timing of the proposed private development, including allowing discretion in what amount of net new development will be included in each Development Phase. The City, in turn, has the right to review and approve each Development Phase Application to ensure that any Community Improvements, including any San Francisco Municipal Transportation Agency (SFMTA) transit improvements, proposed for each Development Phase are provided in proportion to the cumulative amount of private development to occur in each Development Phase, and that the timing and phasing of the Community Improvements are consistent with the operational needs and plans of all affected City agencies, and are phased in such a way as to not interfere with the utility and transportation systems operated and maintained by the City.

GENERAL FUND FISCAL IMPACTS

The results of the General Fund fiscal impact analysis for Parkmerced are presented in Exhibit 1 on the following page. These findings present the estimated revenues and costs accruing to the City and County of San Francisco during a representative year in each Illustrative Development Phase. This representative year is typical the final year in each Illustrative Development Phase. These costs and revenues are anticipated to occur on an ongoing basis even after the Project reaches buildout. There are additional one-time revenues estimated, including transfer taxes attributable to the first time sale of the Project's for sale units, construction-related sales and uses taxes, and payroll taxes for the Project's construction workers.

Annual Impacts

The General Fund fiscal impact analysis estimates that Parkmerced will generate revenues to the City and County of San Francisco General Fund totaling up to $9.6 million annually during Illustrative Development Phase I, increasing to up to $36.8 million annually during Illustrative Development Phase IV.

The General Fund costs over the same time periods are estimated to total up to $5.6 million annually during Phase I and up to $19.2 million annually during Phase IV. The differences, comprising the net annual fiscal revenues, total the following:

- up to $4.0 million annually net revenue during Illustrative Development Phase I;
- up to $9.1 million net revenue during Illustrative Development Phase II;
- up to $14.1 million net revenue during Illustrative Development Phase III; and
- up to $17.5 million net revenue during Illustrative Development Phase IV.

These figures are inclusive of the maximum revenues and costs attributable to each respective phase, since all units built during the phase will be complete in the final year.

While not precise, it is likely that the estimated continued net fiscal impact during Project buildout will be only slightly less than the estimated $17.5 million Phase IV figure, in 2010 dollars. The reason the net impact will be slightly less is attributable to the construction-period sales tax revenues on construction worker taxable retail sales that will no longer accrue to the City and County of San Francisco when construction is complete and the Project moves into stabilization.

These findings, while general in nature, suggest a strong likelihood that the Project will result in a net fiscal impact to the General Fund of the City and County of San Francisco. However, some limitations to the analysis may affect the degree of the Project's estimated net benefit.

Exhibit 1 and 12
Parkmerced Fiscal Impact Analysis
Benchmark Year Analysis (1)
General Fund Fiscal Revenues and Costs by Phase
2010 Dollars

Revenue or Cost Item	Phase I Year 5 2016	Phase II Year 10 2021	Phase III Year 15 2026	Phase IV Year 21 2032	Buildout (2)
Fiscal Revenues					
General Fund Property Tax (3)	$6,529,145	$12,774,935	$19,571,047	$24,145,036	$24,145,036
Property Tax In Lieu of Vehicle License Fees (4)	$1,175,616	$2,285,182	$3,476,159	$4,268,301	$4,268,301
Property Transfer Tax (5)	$0	$503,141	$1,344,503	$2,266,851	$2,266,851
Sales Tax from Resident Spending (6)					
Inclusionary Rental Units	$3,720	$4,932	$6,556	$8,717	$8,717
All Other Net New Units	$269,611	$484,798	$738,444	$926,842	$926,842
Sales Tax from Worker Spending (7)	$8,816	$20,269	$23,632	$25,782	$25,782
Sales Tax from Construction Worker Spending (7)	$152,013	$152,778	$163,387	$143,607	0
Telephone Users Tax (8)	$176,324	$323,612	$485,061	$604,272	$604,272
Access Line Tax (8)	$129,299	$237,306	$355,698	$443,115	$443,115
Water Users Tax (8)	$1,873	$4,947	$6,068	$6,623	$6,623
Gas Electric Steam Users Tax (8)	$30,585	$80,767	$99,057	$108,128	$108,128
Payroll Tax (8)	$409,918	$942,454	$1,098,821	$1,198,789	$1,198,789
Business Tax (8)	$5,529	$14,600	$17,906	$19,545	$19,545
Licenses, Permits, and Franchise Fees (8)	$103,172	$184,778	$281,051	$352,961	$352,961
Fines, Forfeitures, and Penalties (8)	$16,842	$30,163	$45,878	$57,616	$57,616
VLF Realignment to Health and Welfare (9)	$201,900	$361,595	$549,995	$690,717	$690,717
Sales Tax Realignment to Health and Welfare (9)	$434,538	$778,242	$1,183,723	$1,486,591	$1,486,591
Total	$9,648,901	$19,184,499	$29,446,986	36,753,494	$36,609,887
Fiscal Costs					
General Administration and Finance (9)					
Elections	$56,596	$101,361	$154,172	$193,619	$193,619
Assessor/Recorder	$11,180	$20,023	$30,455	$38,248	$38,248
Administrative Services / Other	$25,655	$45,947	$69,887	$87,768	$87,768
Public Safety					
Police (8)	$2,066,377	$3,700,807	$5,629,011	$7,069,251	$7,069,251
Fire (8)	$1,008,464	$1,850,858	$2,774,247	$3,456,056	$3,456,056
911 (9)	$74,138	$132,778	$201,958	$253,631	$253,631
Public Health (9)	$28,992	$52,130	$78,852	$99,219	$99,219
Public Works (8)	$90,405	$165,922	$248,700	$309,822	$309,822
Human Welfare and Neighborhood Development (8)	$374,931	$671,488	$1,021,349	$1,282,671	$1,282,671
Culture and Recreation (8)					
Recreation and Park	$564,900	$1,011,715	$1,538,842	$1,932,570	$1,932,570
Libraries	$375,288	$672,127	$1,022,320	$1,283,891	$1,283,891
Sub-total	$4,676,925	$8,425,156	$12,769,793	$16,006,747	$16,006,747

Revenue or Cost Item	Phase I Year 5 2016	Phase II Year 10 2021	Phase III Year 15 2026	Phase IV Year 21 2032	Buildout (2)
Fiscal Cost Contingency (20%) (9)	$935,385	$1,685,031	$2,553,959	$3,201,349	$3,201,349
Total	$5,612,310	$10,110,187	$15,323,752	$19,208,096	$19,208,096
Net Fiscal Impact - Total	$4,036,591	$9,074,312	$14,123,235	$17,545,398	$17,401,791
One-time Fiscal Revenues					
Property Transfer Tax (10)	$5,869,981	$5,902,562	$6,825,686	$4,403,844	$0
Construction-related Sales and Use Taxes (11)	$1,515,677	$1,751,898	$2,175,026	$2,205,834	$0
Payroll Tax from Construction Workers (12)	$7,068,077	$7,103,642	$7,596,941	$6,677,229	$0
Total	$14,453,735	$14,758,102	$16,597,653	$13,286,906	$0
Source: CBRE Consulting					

Exhibit 1 and 12
Parkmerced Fiscal Impact Analysis
Benchmark Year Analysis (1)
General Fund Fiscal Revenues and Costs by Phase
2010 Dollars

Notes:
(1) This analysis, like the Fehr & Peers' Draft Transit Operating Plan, is based on the 20-year development projections set forth in the Parkmerced project's Draft EIR. That document contained four "Illustrative Development Phases," which are based on the Developer's best estimates for the likely pace of the build-out of the private and public improvements contemplated in the Development Agreement. Accordingly, each of the "Phases" listed in this analysis corresponds to the last year of each of the illustrative Development Phases set forth in the Draft EIR. It should be emphasized, however, that the four Illustrative Development Phases are merely reasonable projections of the potential timing and scope of the Project buildout, and are not fixed development phases or schedules. On the contrary, the draft Parkmerced Development Agreement specifically provides the Developer flexibility in the order and timing of the proposed private development, including allowing discretion in what amount of net new development will be included in each Development Phase. The City, in turn, has the right to review and approve each Development Phase Application to ensure that any Community Improvements, including any SFMTA transit improvements, proposed for each Development Phase are provided in proportion to the cumulative amount of private development to occur in each Development Phase, and that the timing and phasing of the Community Improvements are consistent with the operational needs and plans of all affected City Agencies, and are phased in such a way as to not interfere with the utility and transportation systems operated and maintained by the City.
(2) A representative buildout year is included. The buildout analysis excludes revenues associated with the contruction period, e.g., sales and use tax associated with one-time sales and use tax and construction worker taxable retail sales. These construction period revenues are shown in previous benchmark years.
(3) Derived from the property valuation estimates in Exhibit 7 and the property tax rate assumptions in Exhibit 8.
(4) See calculations in Exhibit 11.
(5) The recurring transfer tax analysis assumes payment associated with the resale of all the for-sale units once every 7 years. This analysis assumes the resale of cumulative projects developed through the current phase. Accordingly, transfer tax payments in years following full buildout of Parkmerced will increase associated with all for-sale project units. An example of the calculation used for this analysis is the amount for Phase III, which is equivalent to the following: (the one-time transfer tax from Phase I + (the one-time transfer tax from Phase II *3/5))* 1/7. The 3/5 adjustment pertains to the length of the phase versus the frequency of assumed home sales (1/7 years).
(6) The sales tax estimates are inclusive of estimated property tax in lieu of sales and use tax.
(7) See worker taxable retail spending assumptions in Exhibit 4.
(8) See Exhibit 9.
(9) A 20% cost contingency factor accommodates additional costs not reflected in the preceding analysis.
(10) See Exhibit 10.
(11) The one-time transfer tax analysis assumes payment associated with the initial sale of the for-sale units based upon their total estimated valuation, including land.
(12) Construction sales and use taxes are based on construction expenditures less select categories such as interest, city development fees, and bonding costs. The share of costs assumed to be taxable matches the assumptions prepared by Economic & Planning Systems, Inc., in its Fiscal and Economic Impact Analysis of the Candlestick Point/Hunters Point Shipyard Redevelopment Project' in May 2010. See Table A-2 in this document, footnote 14, which estimates that 30% of construction costs are materials and 50% of sales are captured in San Francisco.
(13) Assumes payroll tax payment on the average construction worker wage estimated in Exhibit 4.

One-time Fiscal Revenues

The one-time fiscal revenues will comprise a notable revenue source to the City and County of San Francisco during the Project's approximately 20-year build-out. These estimated revenues total:

- $14.5 million during Illustrative Development Phase I;
- $14.8 million during Illustrative Development Phase II;
- $16.6 million during Illustrative Development Phase III: and
- $13.3 million during Illustrative Development Phase IV.

The most tentative component of these revenues is the smallest – the construction-related sales and use taxes. These are revenues that can accrue to the City and County of San Francisco if certain reporting requirements are followed by the construction contractors, and if individual construction contracts are of a certain size to qualify. Even absent these revenues, however, the anticipated one-time revenues are substantial, and total more than $10.0 million for most construction years.

Transportation Fiscal Impacts

The net results of the transit fiscal impact analysis for MTA are presented in Exhibit 13 for the representative years of each Illustrative Development Phase. As noted, the analysis is an Existing Service with Mitigation scenario, including the net addition of some but not a large number of vehicles and associated capital vehicle, capital facility, and operational costs. The net impact varies annually, but the net revenues are positive for three of the four Illustrative Development Phase benchmark years and approximately cost neutral during one of the benchmark years. The net revenues by phase are estimated as follows:

- $1.7 million during Illustrative Development Phase I;
- $0.3 million during Illustrative Development Phase II;
- $2.4 million during Illustrative Development Phase III: and
- $4.0 million during Illustrative Development Phase IV.

These net figures are lumpy, attributable to the timing of capital costs for vehicles and facilities.

Upon completion of Project construction, the net annual estimated fiscal impact for transit will stabilize at $2.8 million in net revenues. Over time, however, this figure may vary depending upon the timing of replacement vehicles placed into service and the rate at which their costs are amortized.

Additional transit-related revenues will likely accrue to MTA associated with the $20 per new unit Fast Pass subsidy provided by the Developer pursuant to the Transit Subsidy Agreement contained in the Development Agreement. Transit subsidy revenues are estimated to increase to almost $1.8 million annually by the time Parkmerced is fully redeveloped.

ECONOMIC IMPACTS

The planned expansion and redevelopment of Parkmerced would provide significant economic benefits to the City and County of San Francisco. Economic impacts measure the effects of economic stimuli or new demand for goods and services in the local economy. New demand in this case is created by the construction activity as well as new permanent business activity. The secondary impacts of supplier expenditures and local spending by construction employees are called multiplier effects. Multiplier effects are a way of representing the larger effects on the local economy of an initial increase in demand.

These positive impacts, all estimated in 2010 dollars, include the following:2

- The Project would generate significant non-recurring construction impacts. Hard and soft construction costs for infrastructure, site development, and residential and other construction are estimated at $6.3 billion, of which $5.1 billion would create local economic impacts. This construction activity, which is anticipated to occur over a 20-year timeframe, would generate an economic impact of $7.1 billion throughout San Francisco, directly and indirectly supporting about 35,000 jobs and $2.6 billion in payroll (see Figure 1).

FIGURE 1
PROJECT SUMMARY

	Total	Phase I	Phase II	Phase III	Phase IV
Construction Costs*					
Infrastructure	$469,118,167	$135,690,902	$148,697,622	$111,232,535	$73,497,108
Hard Costs	$3,856,854,270	$729,299,862	$847,486,035	$1,117,072,495	$1,162,995,878
Soft Costs	$772,984,372	$145,460,393	$171,748,365	$221,712,535	$234,063,079
Economic Impacts of Construction					
Output	$7,146,109,133	$1,522,770,891	$1,678,435,068	$1,996,220,492	$1,948,682,682
Jobs	34,934	8,696	8,721	9,327	8,190
Income	$2,588,542,526	$647,266,566	$645,556,273	$690,840,998	$604,878,689
On-Going Annual Impacts					
Output	$312,939,811	na	na	na	na
Jobs	2,153	na	na	na	na

2 A construction budget dated 9/11/10 was the foundation for this economic impact analysis.

	Total	Phase I	Phase II	Phase III	Phase IV
Income	$118,042,481	na	na	na	na

*Excludes costs such as interest, bonding and city development fees that do not create local economic impacts.

- In addition to the construction impacts, this Project could create an estimated 1,600 new permanent jobs with a combined payroll estimated at $82.0 million. The retail and office businesses within Parkmerced would make local supplier purchases that would support additional economic activity beyond the direct impacts listed above. Also, their employees would spend a portion of their income locally, creating economic impacts at other local businesses. The new demand created by supplier purchases and employee spending would result in an annual economic impact of $309.9 million in the City and County of San Francisco, directly and indirectly supporting about 2,150 total jobs. This jobs impact reflects the approximately 1,600 jobs and an additional 550 indirect and induced jobs.

- Overall, the Project would have a significant positive impact throughout San Francisco. It would create a model for sustainable urban development as well as generating new jobs and supporting local business activity in the community.

II. GENERAL FUND FISCAL IMPACT ANALYSIS OVERVIEW

The fiscal impact analysis of Parkmerced examines the prospective General Fund fiscal revenues and costs of the Project for a representative year in each of the four Illustrative Development Phases of Project development. The analysis in this chapter focuses exclusively on the General Fund of the City and County of San Francisco, and does not include other servicing entities, such as public transportation or special funds. The following chapter discusses the Project's transportation fiscal impacts.

APPROACH TO THE ANALYSIS

CBRE Consulting adopted an approach to the fiscal impact analysis designed to provide a general understanding of the Project's net fiscal impact on the General Fund without requiring extensive, in-depth analysis. As such, the analysis includes general findings that provide an indication of the nature of the Project's fiscal impacts but not a detailed forecast of the Project's performance. Accordingly, a number of simplifying assumptions are included in the analysis, all of which are documented herein.

The analysis is structured to examine the Project's impacts for a representative year in each Illustrative Development Phase, corresponding with the phases of Project construction. Each phase has a 5-year duration, with the exception of the last phase, which is 6 years. The timing for the Illustrative Development Phases extends from 2012 to 2032. The representative year selected for each Illustrative Development Phase comprises the final year in each phase. As such, this year reflects the maximum revenues and costs attributable to each respective phase, since all units built during the phase will be complete in the final year.

In keeping with the simplifying approach to the analysis, the findings are presented in 2010 dollars, despite the long duration. The findings for the final phase, corresponding to years 16-21, can provide a general proxy for the Project results at stabilization. In addition, the phasing assumptions in the analysis are illustrative; the actual Project phasing and associated fiscal impacts may vary from those presented herein.

The overall approach to the analysis is an average cost approach. This is the most expeditious approach for a fiscal impact analysis but is also one that can result in under or over estimation of both project costs and revenues. In this approach, costs are derived by determining an average cost to provide existing services on a per capita basis for the relevant population served, which is then applied to the comparable population base for the project under study. A similar approach is used for revenues. The alternative, which comprises the case study or marginal cost approach, involves obtaining detailed estimates from service department representatives based on project specifics, such the number and cost of fire department personnel and overhead required to provide fire services to the new project. This approach was not pursued for this analysis because it would entail a more lengthy time commitment than was available and access to a number of City of San Francisco department representatives, which also entails a time factor.

The Parkmerced Project that is the subject of this analysis essentially comprises an infill development opportunity, with the overall development envelope remaining the same but with a higher level of density. Projects of this nature, that are already served by existing services and infrastructure, often do not have substantial impacts on a marginal basis, especially relative to costs. Therefore, CBRE Consulting believes it is conservative to conduct the analysis on a marginal cost basis. To reinforce this conservatism, and to compensate for any risks of under estimation with the average cost approach, CBRE Consulting strove throughout the analysis to make conservative assumptions, thus potentially under estimating revenues and over estimating costs.

The analysis was conducted in a series of linked excel-based worksheets. Exhibits generated from these worksheets are included in the Appendix.

STUDY RESOURCES

The fiscal impact analysis relied upon a few key resources. These resources are all identified in the sources and notes to the exhibits used to conduct the analysis and provide the results. These resources are as follows:

- **Materials provided by Parkmerced Investors, LLC.** These materials, provided by the Project developer, include a property tax log, portions of the development pro forma, a construction budget, summary development worksheets, and counts of parking meters planned for the Project. The development pro forma components and construction budgets were vetted by CBRE Consulting, and are the subject of a separate analysis. Thus, many of the assumptions were derived from the development pro forma.

- **The Project's Draft Environmental Impact Report (DEIR)**. Of particular relevance to the fiscal impact analysis was information about the Project definition, population and employment estimates, and anticipated service requirements, especially police services, as detailed in the DEIR.

- **City and County of San Francisco resources**. These include the Mayor's Proposed May Budget 2010-2011 and the City and County's Comprehensive Annual Financial Report, as well as information provided by a range of City departments and on-line resources, such as the Controller's Office and the Office of the Assessor-Recorder.

- **Third party resources**. These sources include the Association of Bay Area Governments, the U.S. Bureau of Labor Statistics, the U.S. Bureau of the Census, County Business Patterns, and the International Council of Shopping Centers.

- **The fiscal and economic impact analysis of the Candlestick Point/Hunters Point Shipyard Redevelopment Project.** This analysis was conducted by Economic & Planning Systems, Inc., (EPS) and completed in May 2010. In order to leverage existing resources, this document was relied upon to identify major cost and revenue categories, to provide a basis for approaching the estimation of select costs and revenues, and as a basis for some specific costs and revenues, adjusted for inflation by CBRE Consulting. The EPS analysis was conducted in fiscal year 2009 dollars. A fiscal cost contingency is factored into the Parkmerced analysis to accommodate some fiscal costs not accounted for the in EPS analysis for the Candlestick Point/Hunters Point Shipyard Redevelopment Project.

- **Transit Operating Plan.** This plan was prepared for the Project by Fehr & Peers, Transportation Consultants. The plan describes the transit service plan for the Project, including elements of the plan and the expected costs associated with operating that service.

- **Public Transportation Agency resources.** The budget for the San Francisco Municipal Transportation Agency (MTA) provided source information for revenue estimates and San Francisco County Transportation Authority documents provided additional information on revenues sources. Additional information was provided directly by MTA staff.

All of these resources are identified as warranted in the series of exhibits that document the fiscal impact analysis.

PROJECT ASSUMPTIONS

The assumptions underlying the fiscal impact analysis are presented in Exhibits 2 through 8, which can be found in the Appendix. A summary of these exhibits and their primary purpose are as follows:

- **Exhibit 2, Summary of Development Program by Phase.** This exhibit summarizes unit count information by type of unit and Illustrative Development Phase, and includes assumptions regarding the distribution of units between inclusionary and market rate for both the rental product and the for-sale product. The pacing of the non-residential development is also included, based upon a development program provided by Parkmerced Investors, LLC. Key assumptions include the development of the replacement rent-controlled units at the same pace as the demolition of the existing garden units.

- **Exhibit 3, Cumulative Analysis of Development Program by Phase.** This exhibit provides a building block for the estimation of fiscal revenues and costs by Illustrative Development Phase. This includes the residential and non-residential development. Assumptions regarding occupied space for the non-residential uses are from a subsequent exhibit.

- **Exhibit 4, Demographic, Employment, Retail Spending, and Employee Wage Assumptions.** The fundamental assumptions included in this exhibit provide the basis for the estimation of residents and jobs associated with the Project and drive many of the fiscal impact analysis revenue estimates. The population density and Project employment estimates are from the Project's DEIR and the average taxable retail spending assumptions for residents and workers and estimated worker wages were developed by CBRE Consulting, with documentation maintained in CBRE Consulting's files but not included herein. Notably, the on-site retail space is assumed to primarily be supported by Project residents and workers. Thus, the analysis conservatively does not impute any taxable sales revenue to this Project component, instead focusing on projected taxable spending by residents and on-site workers.3

- **Exhibit 5, Net New Development Cumulative Population and On-Site Employment and Phased Construction Jobs Estimates.** The purpose of this exhibit is to derive the cumulative population and employment estimates by Illustrative Development Phase needed to support the fiscal revenues and cost analysis and to derive relevant service population estimates. For services provided to both residents and employees, the analysis includes a service population estimate, which comprises all residents plus one-half the employees, on the assumption that employees do not require the same level of service as residents. This is generally perceived to be an industry-standard assumption. The construction job estimates were generated by the economic impact analysis component of this study, and are documented in the next chapter in this report.

- **Exhibit 6, Property Valuation Assumptions.** CBRE Consulting developed estimates of the value for the various components of the Project as a basis for estimating the property tax revenues. Information on existing property values were derived from a property tax log provided by Parkmerced Investors, LLC. Since Parkmerced Investors, LLC currently owns the property and the underlying land, the analysis assumes the land will continue with this ownership except for the for-sale residential units. Thus, a land value was derived pertaining to the demolished garden units, so only incremental improvement costs for the equivalent units could be estimated. The remaining valuations and operational assumptions were derived from the developer's pro forma or estimated by CBRE Consulting in the process of reviewing the pro forma. The analysis assumes no value for the inclusionary rental units, as the development pro forma indicates a negative to zero value for these units. This is a very conservative assumption relative to the property tax estimation since the units will ultimately be assigned a value for tax roll purposes.

3 This assumption is conservative because it is highly likely that some sales achieved by the Project's retail component will be generated external to the Project, such as nearby San Francisco State students and staff.

- **Exhibit 7, Cumulative Net New Property Valuation Estimates**. This exhibit applies the Exhibit 6 valuation assumptions to the Project components and estimates the cumulative value over the development horizon.

- **Exhibit 8, Tax Rate and Other Revenue and Financial Assumptions.** Basic assumptions, such as an estimate of the City's current service population, existing or projected tax rates, and an estimated inflation rate, are documented on this exhibit. The inflation rate is applied to service costs derived from the EPS analysis for Candlestick Point/Hunters Point Shipyard, which was conducted in fiscal year 2009 dollars, as well as other assumptions provided in 2009 dollars.

AVERAGE COST AND REVENUE ESTIMATES

For this study, there were two primary sources for deriving the average cost and revenue estimates – the City budget and the EPS analysis for Candlestick Point/Hunters Point. The categories included in the analysis are those most germane to the General Fund, and also parallel the categories included in the aforementioned EPS study. In this regard, the EPS study, which was reviewed by representatives of the City and County of San Francisco prior to the approval of the EIR for the Candlestick Point/Hunters Point project, was a guide to the relevant categories. The exhibits pertaining to these estimates, and other relevant cost and revenue estimates, are as follows:

- **Exhibit 9, General Fund Annual Average Revenue and Cost Calculations.** This exhibit includes General Fund costs or revenues for fiscal year 2010/2011 and shows the derivation of average cost or revenue figures for the analysis. The relevant population basis to which to apply the cost or revenue is identified. The total utility user's tax figures tie to the budget amount, but the distribution is based upon figures in the EPS study as CBRE Consulting did not identify individual line item revenues. The Police service costs pertain to the 36 police officers estimated to meet the Project's needs in the DEIR. An average cost per police officer was then derived from the budget. The Human Welfare and Neighborhood Development costs are adjusted downward using a variable versus fixed cost approach because many of the costs in this category were deemed by CBRE Consulting not to be relevant to the Parkmerced population. EPS used a similar variable vs. fixed cost approach in its analysis, except they used a higher percentage applied to a much lower expenditure. CBRE Consulting could not identify the source for the cited expenditure in the EPS study and thus an alternative approach was developed along similar lines.

- **Exhibit 10, General Fund Revenue and Cost Calculations Derived from Economic & Planning Systems Analysis for Candlestick Point/Hunters Point Shipyard Redevelopment Project.** This exhibit shows the average cost and revenue figures derived from the EPS study. These are cost and revenue figures that were derived by EPS in some other method besides a straight average cost methodology, including some factors estimated specifically for the Candlestick Point/Hunters Point project by EPS or City department representatives. In these cases, CBRE Consulting either replicated the methodology or calculated average cost factors that were then updated by inflation. The resulting average cost and revenue figures are included in this exhibit, but the detailed calculations are maintained in CBRE Consulting's project files.

- **Exhibit 11, Motor Vehicle In Lieu Fee Estimate.** This revenue component is derived from the Project's anticipated contribution to increased property valuation throughout the City and County of San Francisco. A fundamental assumption in the analysis pertains to the existing like revenues received by San Francisco for fiscal year 2010/2011.

- **Exhibit 13, Transportation Fiscal Impact Analysis.** This exhibit includes revenue and costs estimates relevant to the transportation aspects of the Project. These estimates are embedded in the analysis and fully explained in the footnotes. These include revenues attributable to residential units, transit boardings, number of vehicles placed in service to serve the Project, etc. It further includes costs amortized over the anticipated lifecycle of the respective vehicles placed into service.

NET GENERAL FUND FISCAL IMPACT FINDINGS

The results of the General Fund fiscal impact analysis for Parkmerced are presented in Exhibit 12 (which is a duplicate of the earlier referenced Exhibit 1). These findings present the estimated revenues and costs accruing to the City and County of San Francisco General Fund for the representative years in each Illustrative Development Phase. The Illustrative Development Phase IV estimates reflect costs and revenues anticipated to occur on an ongoing basis even after the Project reaches stabilization. In addition, Exhibit 12 includes some revenues anticipated to occur on a one-time basis. These revenues include transfer taxes attributable to the first time sale of the Project's for sale units (versus recurring revenues anticipated upon unit resale, which are included in the ongoing revenue estimates), construction-related sales and uses taxes, and payroll taxes for the Project's construction workers. The assumption regarding construction-related sales and use taxes parallels a similar assumption developed by EPS in its fiscal impact analysis for the Candlestick Point/Hunters Point Shipyard redevelopment project.

Net General Fund Fiscal Impact Attributable to Ongoing Revenues and Costs

The General Fund fiscal impact analysis estimates that the Parkmerced Project will generate revenues to the City and County of San Francisco General Fund totaling up to $9.6 million annually during Illustrative Development Phase I, increasing to up to $36.8 million annually during Illustrative Development Phase IV.

The General Fund costs over the same time periods are estimated to total up to $5.6 million annually during Phase I and up to $19.2 million annually during Phase IV. The differences, comprising the net annual fiscal revenues, total the following:

- up to $4.0 million net revenue annually during Illustrative Development Phase I;
- up to $9.1 million net revenue during Illustrative Development Phase II;
- up to $14.1 million net revenue during Illustrative Development Phase III; and
- up to $17.5 million net revenue during Illustrative Development Phase IV.

These figures are inclusive of the maximum revenues and costs attributable to each respective phase, since all units built during the phase will be complete in the final year.

While not precise, it is likely that the estimated continued net fiscal impact during Project stabilization will be only slightly less than the estimated $17.5 million Phase IV figure, in 2010 dollars. The reason the net impact will be slightly less is attributable to the construction-period sales tax revenues on construction worker taxable retail sales that will no longer accrue to the City and County of San Francisco when construction is complete and the Project moves into stabilization.

As referenced earlier, this analysis is intended to give a general sense of the net fiscal impact of the Project. The figures are not precise estimates, and changes could occur if many of the cost and revenue factors are developed with more precision. Nonetheless, the findings suggest a strong likelihood that the Project will result in a net fiscal impact to the General Fund of the City and County of San Francisco. However, some limitations to the analysis, discussed below, may affect the degree of the Project's estimated net benefit.

One-time Fiscal Revenues

The one-time fiscal revenues will comprise a notable revenue source to the City and County of San Francisco during the Project's approximately 20-year build-out. These estimated revenues total the following:

- $14.5 million during Illustrative Development Phase I;
- $14.8 million during Illustrative Development Phase II;
- $16.6 million during Illustrative Development Phase III: and
- $13.3 million during Illustrative Development Phase IV.

The most tentative component of these revenues is the smallest – the construction-related sales and use taxes. These are revenues that can accrue to the City and County of San Francisco if certain reporting requirements are followed by the construction contractors, and if individual construction contracts are of a certain size to qualify. Even absent these revenues, however, the anticipated one-time revenues are substantial, and total more than $10.0 million for most years of the construction effort.

FISCAL IMPACT LIMITATIONS

As cited earlier, the fiscal impact analysis was conducted as a generalized analysis complete with simplifying assumptions. There are a wide range of additional revenue and cost considerations that could be taken into account that may change the net fiscal impact balance. Some of these considerations would result in higher revenues while others would result in higher costs. A summary of some of these considerations is as follows:

Revenue Factors

- The property tax analysis includes transfer tax on only the for-sale residential units. If some portion of other land development components are ultimately sold, transfer tax revenues would then accrue to the City and County of San Francisco.

- The analysis does not include any increase in valuation, such that would occur with the maximum 2.0 percent allowable increase pursuant to Proposition 13 or that would occur based upon increased valuation upon sale.

- Some of the value of the Project's residential units are assumed to have $0 value for purpose of the property tax estimation. For tax roll purposes some value will likely be assigned to these uses, and thus the property tax revenues are underestimated.

- The motor vehicle in lieu fee estimate is based upon an existing revenue figure for fiscal year 2009/2010. Adjusting the analysis with a fiscal year 2010/2011 figure could increase or decrease the amount estimated.

Cost Factors

- The analysis does not take into account long-term service cost inflation, which may or may not be greater than the estimated rate of inflation.

- The Project's DEIR indicates the need for a police substation to serve the Project and possibly a fire substation. There are provisions within the Project to provide for these capital facilities. The fiscal impact analysis may or may not include sufficient costs to cover the operational costs for these facilities.

- The Project will entail service costs that are not covered through the General Fund. These were beyond the scope of the analysis to estimate, but could be substantial.

III. TRANSPORTATION FISCAL IMPACTS

The Transportation fiscal impact analysis of Parkmerced examines the prospective San Francisco Municipal Transportation Agency (SFMTA) fiscal revenues and costs of the Project for a representative year in each of the Project's four Illustrative Development Phases and at stabilization. The analysis in this chapter focuses exclusively on the revenues and costs attributable to transportation, documented in Exhibit 13.

The analysis concludes that the Project will provide a net positive fiscal impact for SFMTA at buildout as well as during most of the Project's interim development.

TRANSIT REVENUES

Ongoing Transit Revenues

There are numerous ongoing revenue sources for SFMTA associated with the Parkmerced Project. All of the ongoing revenue sources are identified and documented in Exhibit 13. The revenues are derived from multiple sources, including fare box recovery, advertising on SFMTA vehicles, sales tax, metered parking, estimated fines, and an allocation of unrestricted City and County of San Francisco General Fund revenues. The basis for each revenue source varies, and includes the following:

- the number of residential units;
- estimated annual boardings associated with the Project;
- the number of net new buses and light rail vehicles anticipated to serve the Project;
- the number of net new parking meters located within Parkmerced;
- taxable sales generated by project residents and on-site employees;
- the project's service population; and
- the estimated General Fund revenues generated by the Project.

Information on the number of annual boardings, number of vehicles anticipated to serve the Project, and the number of net new parking meters was obtained from other documents prepared for the Project (annual boardings and number of buses and light rail vehicles) or the Project developer (parking meter count). The basis for all other revenue sources is internal to the fiscal impact analysis presented earlier.

The results of the SFMTA transit revenue estimates are presented in Exhibit 13. The analysis is based on a scenario pertaining to the Existing Service Plan with Mitigations.

The results indicate estimated annual ongoing revenues of about $2.2 million during year 5 of the Illustrative Development Phase I, increasing to $7.7 million in the final year of the Illustrative Development Phase IV. At buildout, the ongoing revenues estimate is projected to drop modestly, but remain at about $7.6 million. The decline in revenues is due to a reduction in sales tax revenues attributable to the cessation of sales tax revenues associated with construction period taxable retail spending by Project construction workers.

One-time Transit Revenues

There will also be one-time revenues associated with the one-time sales and use taxes generated during the construction period. These revenues are based upon a share of sales and use taxes associated with spending on construction materials, and will cease when construction is complete. These revenues, presented in Exhibit 13, total $0.5 million in year 5 of the Illustrative Development Phase I, and increase to $0.7 million in the final year of construction at the end of Illustrative Development Phase IV. These revenues will not recur subsequent to Project buildout.

In addition to the revenues generated by the Project shown to support transit capital facilities (including rolling stock), Mitigation Measure TR-21A (as included in the Development Agreement's Phasing Plan) requires that the Developer purchase one Light Rail Vehicle (LRV) for SFMTA use prior to the completion of the M-Oceanview right-of-way realignment into the Project Site.

TRANSIT COSTS

This study includes analysis of transit costs associated with the net new buses and light rail vehicles by transit line anticipated to serve the Project. The number of vehicles and associated costs were developed by Fehr & Peers, transportation consultants to the Project. Fehr & Peers estimated costs for a scenario based on the Existing Service Plan with mitigation. The fiscal cost estimates are based upon this service scenario. The analysis incorporates the acquisition of a total of 4 buses and 12 LRVs.4 Of these totals, 2 buses and 4 LRVs are net new, needed to provide the new services to the Project. The balance of the vehicles, 2 buses and 8 LRVs, are replacement vehicles, added at the end of the useful life of the existing and new buses and LRVS.

The costs estimated by Fehr & Peers include operations and maintenance, new vehicle capital costs, and new vehicle facility costs. All of the assumptions used for this analysis are tied to the Fehr & Peers Draft Transit Operating Plan, September 2010. To estimate costs, CBRE included all annual operations and maintenance costs estimated by Fehr & Peers, updated to 2010 dollars (original figures were presented in fiscal year 2006/2007 dollars). Capital costs were then included based on an amortization schedule by transit line, which varied by type of capital cost. The first year of the amortized cost per transit line reflects the first year of service for the associated vehicle. The amortization schedules are documented in Exhibit 13. All of the cited new and replacement vehicles are included in the amortized costs with the exception of the one LRV referenced above that will be separately funded by the Developer pursuant to Mitigation Measure TR-21A included in the Development Agreement's Phasing Plan.

4 See note in following paragraph about the acquisition cost for one LRV.

Inclusion of all the cited capital costs is highly conservative, as all of the costs identified may not be exclusive to Parkmerced. Another contributor to the underlying conservatism in the analysis is the aforementioned replacement costs for buses after the end of about 12 years, which is the forecasted lifecycle of a bus.

A representative sampling of the estimated transit costs is included in Exhibit 13. These costs are representative because the estimated costs vary year to year, based upon the number of vehicles in service, associated capital costs, and amortization schedule. The costs total $2.7 during year 5 of Illustrative Development Phase I and increase to $8.4 million in the final year of construction at the end of Illustrative Development Phase IV. There is a slightly lower $7.6 million annual expenditure estimate at Project build out.

NET TRANSIT FISCAL IMPACT ANALYSIS

The net results of the transit fiscal impact analysis for MTA, inclusive of the capital facility and vehicle costs, are presented in Exhibit 13 for the representative years of each Illustrative Development Phase. As noted, the analysis is an Existing Service with Mitigation scenario, including the net addition of some but not a large number of vehicles and associated capital vehicle, capital facility, and operational costs. The net impact varies annually, but the net revenues are positive for three of the four Illustrative Development Phase benchmark years and approximately cost neutral during one of the benchmark years. The net revenues by phase are estimated as follows:

- $1.7 million during Illustrative Development Phase I;
- $0.3 million during Illustrative Development Phase II;
- $2.4 million during Illustrative Development Phase III: and
- $4.0 million during Illustrative Development Phase IV.

These net figures are lumpy, attributable to the timing of capital costs for vehicles and facilities.

Upon completion of Project construction, the net annual estimated fiscal impact for transit will stabilize at $2.8 million in net revenues. Over time, however, this figure may vary depending upon the timing of replacement vehicles placed into service and the rate at which their costs are amortized.

Additional transit-related revenues will likely accrue to MTA associated with the $20 per new unit Fast Pass subsidy provided by the Developer pursuant to the Transit Subsidy Agreement contained in the Development Agreement. Transit subsidy revenues are estimated to increase to almost $1.8 million annually by the time Parkmerced is fully redeveloped.

IV. ECONOMIC IMPACT ANALYSIS OVERVIEW

The economic benefits resulting from Parkmerced include one-time construction impacts and on-going impacts related to new nonresidential development and jobs. These impacts are quantified in terms of direct and indirect jobs, personal income, and economic activity or output that would be generated by the Project. Economic impacts measure the effects of economic stimuli or expenditures in the local economy. Indirect impacts are the result of the multiplier effect and capture supported supplier and consumer businesses and their employees in San Francisco that benefit from this economic stimuli. All of the economic impact findings are presented in 2010 dollars. As the construction budget prepared by Parkmerced Investors, LLC includes estimated inflation, the economic impact analysis adjusted the construction figures downward to control for the effects of inflation. The following analysis is based upon construction budget information as of September 11, 2010.

CONSTRUCTION IMPACTS

The total economic impact of the construction of Parkmerced on the City and County of San Francisco is estimated at $7.1 billion over the next 20 years**.** The construction impacts are estimated for each of the four phases of construction. The Project would include a series of infrastructure and transportation improvements and site work, followed by the residential construction as well as amenities, open space, and some office, retail, and other mixed use development.

Total jobs and personal income or payroll from construction, and the total increase in economic activity from new construction expenditures are shown in Figure 2. The Project would result in total development costs of about $6.3 billion, of which about $5.1 billion would create local economic impacts. There were a few cost items excluded from this analysis, such as interest ($791.3 million), City development fees ($390.0 million) and bonding costs ($5.0 million), since they do not directly support new jobs or income. Of the City development fees, representative costs include $26.5 million paid in school impact fees, $7.5 million paid in jobs/housing linkage fees, and $32.2 million paid as a water capacity charge.

As a result of the aforementioned exclusions, the economic impacts are based on total construction costs of $5.1 billion (in estimated 2010 dollars).

FIGURE 2
CONSTRUCTION IMPACT OF PARKMERCED
ON THE CITY OF SAN FRANCISCO

Phase	Direct Construction Expenditures	Direct Jobs	Direct Personal Income	Indirect and Induced Output	Indirect and Induced Jobs	Indirect and Induced Personal Income	Total Output	Total Jobs	Total Personal Income
Phase I	$1,010,451,157	5,623	$454,075,711	$512,319,734	3,073	$193,190,856	$1,522,770,891	8,696	$647,266,566
Phase II	$1,167,932,022	5,651	$453,655,853	$510,503,046	3,070	$191,900,421	$1,678,435,068	8,721	$645,556,273
Phase III	$1,450,017,565	6,044	$485,446,129	$546,202,927	3,283	$205,394,869	$1,996,220,492	9,327	$690,840,998
Phase IV	$1,470,556,065	5,312	$425,402,500	$478,126,617	2,878	$179,476,189	$1,948,682,682	8,190	$604,878,689
Total	$5,098,956,809	22,630	$1,818,580,192	$2,047,152,324	12,304	$769,962,334	$7,146,109,133	34,934	$2,588,542,526

Most of the construction activity would occur at the site; however, some of the direct expenditures for professional services, supplies, and various support services would occur in other parts of San Francisco. The multiplier effect of this construction spending on the City and County of San Francisco could result in a total increase in economic activity of about $7.1 billion over the four phases. The approximately 35,000 direct and indirect jobs created by this construction Project would result in over $2.6 billion in personal income generated in the City and County of San Francisco during the construction period. These construction impacts include local supplier purchases and consumer purchases made by employees throughout San Francisco. Although many of the construction employees may not actually live in San Francisco, the Project would result in significant potential for additional consumer spending in the city and in the larger region.

The multipliers used in this analysis are from IMPLAN, a nationally recognized vendor of economic impact software, and are specific to the City and County of San Francisco. Hence, they only capture the impacts that are projected to occur in San Francisco, not the surrounding region. Industry specific multipliers were used for each category of construction costs, including both hard costs as well as soft costs like architecture, engineering, and project management. Although the impacts are proportional to the total construction costs for each phase, they also vary depending on the mix of costs by type that are included in each phase.

On average, the output multiplier for the construction impacts is 1.4. This means that for every $1.0 million of construction expenditures, an additional $400,000 in economic activity is generated in San Francisco's economy. Similarly, for every direct construction job created, an additional 1.5 jobs are supported at other businesses in San Francisco.

ON-GOING IMPACTS

In addition to the construction impacts, there would be on-going economic impacts resulting from the permanent jobs created by Parkmerced. These include the jobs in retail, professional services, education, maintenance, fitness services, transit, and property management associated with the residential development included in Exhibit 4. The estimated incomes for these jobs are the same as assumed for the fiscal impact analysis, as presented in Exhibit 4. The total economic impacts of the permanent jobs created by this Project are estimated at $309.9 million per year once the Project is complete.

The economic impact results are grouped into direct impacts and total impacts. Direct impacts include employment, payroll, and sales at the businesses in Parkmerced. These businesses make some supplier purchases in the local area, and their employees make local purchases that are captured in the total impact estimates. The total impact includes both the direct impacts and the secondary or indirect impacts created by other local businesses and their employees.

The secondary impacts of supplier expenditures and employee spending are called multiplier effects. Multiplier effects are a way of representing the larger economic effects on the local economy. The multipliers effects translate an increase in output (loosely defined for service industries as sales, less profits) into a corresponding increase in jobs and personal income. In essence, the multiplier effect represents the recycling of local spending. This recycling process creates new business opportunities.

The new permanent jobs generated by Parkmerced could create direct and indirect annual impacts of $309.9 million in San Francisco once the Project is complete (see Figure 3). On-going impacts will increase throughout the construction period as each phase is completed. The development will directly generate about 1,600 jobs and $82.0 million in payroll, based on the assumptions in this analysis. Through the multiplier effect created by local supplier and employee spending, these businesses would indirectly support an additional 550 jobs and $35.2 million in annual payroll throughout San Francisco.

FIGURE 3
ECONOMIC IMPACTS OF PERMANENT JOBS CREATED BY PARKMERCED ON THE CITY OF SAN FRANCISCO

Phase	Direct Construction Expenditures	Direct Jobs	Direct Personal Income	Indirect and Induced Output	Indirect and Induced Jobs	Indirect and Induced Personal Income	Total Output	Total Jobs	Total Personal Income
Residential (Mgmt)	$60,713,703	140	$9,674,000	$18,190,198	98	$6,319,568	$78,904,621	238	$15,993,568
Retail	$50,242,621	660	$22,044,000	$26,994,506	150	$9,533,387	$77,237,126	810	$31,577,387
Office	$59,993,803	290	$31,175,000	$35,744,368	202	$12,798,058	$95,738,171	492	$43,973,058
Educational	$1,893,154	35	$749,000	$968,752	5	$365,447	$2,861,906	40	$1,114,447
Maintenance	$33,428,931	370	$16,132,000	$14,555,659	83	$5,224,541	$47,984,590	453	$21,356,541
Fitness	$3,209,560	85	$1,683,000	$2,145,026	11	$738,452	$5,354,585	96	$2,421,452
Misc. Transit	$1,246,525	15	$508,500	$528,616	3	$197,563	$1,775,142	18	$706,063
Total	$210,728,297	1,595	$81,965,500	$99,127,845	554	$35,177,016	$309,856,142	2,149	$117,142,516

SUMMARY

The Parkmerced Project would create significant economic benefits, not only in the Parkmerced neighborhood, but also throughout the City and County of San Francisco. The construction activity, which would occur over a 15- to 20-year period, would create a total economic impact of $7.1 billion and support close to 35,000 jobs. In addition, the Project would directly support close to 1,600 permanent office, retail, and other jobs, creating an annual impact of $309.9 million that would contribute to the economic vitality of the local community.

ASSUMPTIONS AND GENERAL LIMITING CONDITIONS

CBRE Consulting, Inc. has made extensive efforts to confirm the accuracy and timeliness of the information contained in this study. Such information was compiled from a variety of sources, including interviews with government officials, review of City and County documents, and other third parties deemed to be reliable. Although CBRE Consulting, Inc. believes all information in this study is correct, it does not warrant the accuracy of such information and assumes no responsibility for inaccuracies in the information by third parties. We have no responsibility to update this report for events and circumstances occurring after the date of this report. Further, no guarantee is made as to the possible effect on development of present or future federal, state or local legislation, including any regarding environmental or ecological matters.

The accompanying projections and analyses are based on estimates and assumptions developed in connection with the study. In turn, these assumptions, and their relation to the projections, were developed using currently available economic data and other relevant information. It is the nature of forecasting, however, that some assumptions may not materialize, and unanticipated events and circumstances may occur. Therefore, actual results achieved during the projection period will likely vary from the projections, and some of the variations may be material to the conclusions of the analysis.

Contractual obligations do not include access to or ownership transfer of any electronic data processing files, programs or models completed directly for or as by-products of this research effort, unless explicitly so agreed as part of the contract.

APPENDIX: EXHIBITS

Exhibit 1 and 12
Parkmerced Fiscal Impact Analysis
Benchmark Year Analysis (1)
General Fund Fiscal Revenues and Costs by Phase
2010 Dollars

Revenue or Cost Item	Phase I Year 5 2016	Phase II Year 10 2021	Phase III Year 15 2026	Phase IV Year 21 2032	Buildout (2)
Fiscal Revenues					
General Fund Property Tax (3)	$6,529,145	$12,774,935	$19,571,047	$24,145,036	$24,145,036
Property Tax In Lieu of Vehicle License Fees (4)	$1,175,616	$2,285,182	$3,476,159	$4,268,301	$4,268,301
Property Transfer Tax (5)	$0	$503,141	$1,344,503	$2,266,851	$2,266,851
Sales Tax from Resident Spending (6)					
Inclusionary Rental Units	$3,720	$4,932	$6,556	$8,717	$8,717
All Other Net New Units	$269,611	$484,798	$738,444	$926,842	$926,842
Sales Tax from Worker Spending (7)	$8,816	$20,269	$23,632	$25,782	$25,782
Sales Tax from Construction Worker Spending (7)	$152,013	$152,778	$163,387	$143,607	0
Telephone Users Tax (8)	$176,324	$323,612	$485,061	$604,272	$604,272
Access Line Tax (8)	$129,299	$237,306	$355,698	$443,115	$443,115
Water Users Tax (8)	$1,873	$4,947	$6,068	$6,623	$6,623
Gas Electric Steam Users Tax (8)	$30,585	$80,767	$99,057	$108,128	$108,128
Payroll Tax (8)	$409,918	$942,454	$1,098,821	$1,198,789	$1,198,789
Business Tax (8)	$5,529	$14,600	$17,906	$19,545	$19,545
Licenses, Permits, and Franchise Fees (8)	$103,172	$184,778	$281,051	$352,961	$352,961
Fines, Forfeitures, and Penalties (8)	$16,842	$30,163	$45,878	$57,616	$57,616
VLF Realignment to Health and Welfare (9)	$201,900	$361,595	$549,995	$690,717	$690,717
Sales Tax Realignment to Health and Welfare (9)	$434,538	$778,242	$1,183,723	$1,486,591	$1,486,591
Total	$9,648,901	$19,184,499	$29,446,986	36,753,494	$36,609,887
Fiscal Costs					
General Administration and Finance (9)					
Elections	$56,596	$101,361	$154,172	$193,619	$193,619
Assessor/Recorder	$11,180	$20,023	$30,455	$38,248	$38,248
Administrative Services / Other	$25,655	$45,947	$69,887	$87,768	$87,768
Public Safety					
Police (8)	$2,066,377	$3,700,807	$5,629,011	$7,069,251	$7,069,251
Fire (8)	$1,008,464	$1,850,858	$2,774,247	$3,456,056	$3,456,056
911 (9)	$74,138	$132,778	$201,958	$253,631	$253,631
Public Health (9)	$28,992	$52,130	$78,852	$99,219	$99,219
Public Works (8)	$90,405	$165,922	$248,700	$309,822	$309,822
Human Welfare and Neighborhood Development (8)	$374,931	$671,488	$1,021,349	$1,282,671	$1,282,671
Culture and Recreation (8)					
Recreation and Park	$564,900	$1,011,715	$1,538,842	$1,932,570	$1,932,570
Libraries	$375,288	$672,127	$1,022,320	$1,283,891	$1,283,891
Sub-total	$4,676,925	$8,425,156	$12,769,793	$16,006,747	$16,006,747
Fiscal Cost Contingency (20%) (9)	$935,385	$1,685,031	$2,553,959	$3,201,349	$3,201,349
Total	$5,612,310	$10,110,187	$15,323,752	$19,208,096	$19,208,096
Net Fiscal Impact - Total	$4,036,591	$9,074,312	$14,123,235	$17,545,398	$17,401,791

Revenue or Cost Item	Phase I Year 5 2016	Phase II Year 10 2021	Phase III Year 15 2026	Phase IV Year 21 2032	Buildout (2)
One-time Fiscal Revenues					
Property Transfer Tax (10)	$5,869,981	$5,902,562	$6,825,686	$4,403,844	$0
Construction-related Sales and Use Taxes (11)	$1,515,677	$1,751,898	$2,175,026	$2,205,834	$0
Payroll Tax from Construction Workers (12)	$7,068,077	$7,103,642	$7,596,941	$6,677,229	$0
Total	$14,453,735	$14,758,102	$16,597,653	$13,286,906	$0
Source: CBRE Consulting					

Exhibit 1 and 12
Parkmerced Fiscal Impact Analysis
Benchmark Year Analysis (1)
General Fund Fiscal Revenues and Costs by Phase
2010 Dollars

Notes:
(1) This analysis, like the Fehr & Peers' Draft Transit Operating Plan, is based on the 20-year development projections set forth in the Parkmerced project's Draft EIR. That document contained four "Illustrative Development Phases," which are based on the Developer's best estimates for the likely pace of the build-out of the private and public improvements contemplated in the Development Agreement. Accordingly, each of the "Phases" listed in this analysis corresponds to the last year of each of the illustrative Development Phases set forth in the Draft EIR. It should be emphasized, however, that the four Illustrative Development Phases are merely reasonable projections of the potential timing and scope of the Project buildout, and are not fixed development phases or schedules. On the contrary, the draft Parkmerced Development Agreement specifically provides the Developer flexibility in the order and timing of the proposed private development, including allowing discretion in what amount of net new development will be included in each Development Phase. The City, in turn, has the right to review and approve eachDevelopment Phase Application to ensure that any Community Improvements, including any SFMTA transit improvements, proposed for each Development Phase are provided in proportion to the cumulative amount of private development to occur in each Development Phase, and that the timing and phasing of the Community Improvements are consistent with the operational needs and plans of all affected City Agencies, and are phased in such a way as to not interfere with the utility and transportation systems operated and maintained by the City.
(2) A representative buildout year is included. The buildout analysis excludes revenues associated with the contruction period, e.g., sales and use tax associated with one-time sales and use tax and construction worker taxable retail sales. These construction period revenues are shown in previous benchmark years.
(3) Derived from the property valuation estimates in Exhibit 7 and the property tax rate assumptions in Exhibit 8.
(4) See calculations in Exhibit 11.
(5) The recurring transfer tax analysis assumes payment associated with the resale of all the for-sale units once every 7 years. This analysis assumes the resale of cumulative projects developed through the current phase. Accordingly, transfer tax payments in years following full buildout of Parkmerced will increase associated with all for-sale project units. An example of the calculation used for this analysis is the amount for Phase III, which is equivalent to the following:
(the one-time transfer tax from Phase I + (the one-time transfer tax from Phase II *3/5))* 1/7. The 3/5 adjustment pertains to the length of the phase versus the frequency of assumed home sales (1/7 years).
(6) The sales tax estimates are inclusive of estimated property tax in lieu of sales and use tax.
(7) See worker taxable retail spending assumptions in Exhibit 4.
(8) See Exhibit 9.
(9) A 20% cost contingency factor accomodates additional costs not reflected in the preceding analysis.
(10) See Exhibit 10.
(11) The one-time transfer tax analysis assumes payment associated with the initial sale of the for-sale units based upon their total estimated valuation, including land.
(12) Construction sales and use taxes are based on construction expenditures less select categories such as interest, city development fees, and bonding costs. The share of costs assumed to be taxable matches the assumptions prepared by Economic & Planning Systems, Inc., in its Fiscal and Economic Impact Analysis of the Candlestick Point/Hunters Point Shipyard Redevelopment Project' in May 2010. See Table A-2 in this document, footnote 14, which estimates that 30% of construction costs are materials and 50% of sales are captured in San Francisco.
(13) Assumes payroll tax payment on the average construction worker wage estimated in Exhibit 4.

Exhibit 2
Parkmerced Fiscal Impact Analysis
Summary of Development Program by Phase

Development Component	Phase I Years 1-5 2012-2016	Phase II Years 6-10 2017-2021	Phase III Years 11-15 2022-2026	Phase IV Years 16-21 2027-20232	Total
Unit Demolition					
Garden Units	327	434	429	348	1,538
Rental Units Excluding Existing (1)					
Replacement Rent-Controlled (same as demolition)	327	434	429	348	1,538
Inclusionary (4.8% total less replacement units)	25	8	11	15	59
Market Rate (the balance)	500	163	219	290	1,172
Total	852	605	659	653	2,769
For-Sale Units (2)					
Inclusionary (4.8% total)	54	55	62	41	212
Market Rate (the balance)	1,081	1,087	1,257	811	4,236
Total	1,135	1,142	1,319	852	4,448
Existing Tower Units Undergoing Improvement	306	459	612	306	1,683
Commercial Space (square feet)					
Retail	55,120	141,624	17,641	14,702	229,087
Office	40,918	44,703	0	0	85,621
Educational	0	25,000	0	0	25,000
Fitness Facility	0	0	64,000	0	64,000
Sources: Parkmerced Investors,LLC; and CBRE Consulting.					

Notes:
(1) The rent-controlled units are assumed to be developed at the same pace as the existing garden units are demolished. The inclusionary units are assumed to comprise 5% of the total unit count less the replacement units. The market rate units comprise the balance of all rental units by phase.
(2) The inclusionary units are assumed to comprise 4.8% of the total unit count, with the market rate units comprising the balance.

Exhibit 3
Parkmerced Fiscal Impact Analysis
Cumulative Analysis of Development Program by Phase

Development Component	Phase I Year 1-5 2012-2016	Phase II Year 6-10 2017-2021	Phase III Year 11-15 2022-2026	Phase IV Year 16-21 2027-20232	Total
Residential Development					
Garden Units Demolished					
Net Units Demolished	327	434	429	348	1,538
Cumulative Units Demolished	327	761	1,190	1,538	1,538
Replacement Rent Controlled Units (tie to demolition schedule, take out of total rental units)					
Net Units Built	327	434	429	348	1,538
Cumulative Units Built	327	761	1,190	1,538	1,538
Net New Inclusionary Rental Units (4.8% of market-rate rental units less the rent controlled units)					
Net Units Built	25	8	11	15	59
Cumulative Units Built	25	33	44	59	59
Net New Market-Rate Rental Units					
Net Units Built	500	163	219	290	1,172
Cumulative Units Built	500	663	882	1,172	1,172
Net New Inclusionary For-Sale Units (4.8% of total for-sale units)					
Net Units Built	54	55	62	41	212
Cumulative Units Built	54	109	171	212	212
Net New Market-Rate For-Sale Units					
Net Units Built	1,081	1,087	1,257	811	4,236
Cumulative Units Built	1,081	2,168	3,425	4,236	4,236
Net New Inclusionary Unit Development					
Net Units Built	79	63	73	56	271
Cumulative Units Built	79	142	215	271	271
Existing Tower Units					
Units Undergoing Improvement	306	459	612	306	1,683
Cumulative Units Undergoing Improvement	306	765	1,377	1,683	1,683
Non-Residential Development (Square Feet)					
Retail Development					
Net Square Feet Built	55,120	141,624	17,641	14,702	229,087
Cumulative Square Feet Built	55,120	196,744	214,385	229,087	229,087
Cumulative Square Feet Occupied (1)	50,986	181,988	198,306	211,905	211,905
Cumulative Occupied Proportion Built	0.24	0.86	0.94	1.00	1.00
Office Development					
Net Square Feet Built	40,918	44,703	0	0	85,621
Cumulative Square Feet Built	40,918	85,621	85,621	85,621	85,621
Cumulative Square Feet Occupied (1)	37,849	79,199	79,199	79,199	79,199
Cumulative Occupied Proportion Built	0.48	1.00	1.00	1.00	1.00
Educational Space Development					
Net Square Feet Built	0	25,000	0	0	25000
Cumulative Square Feet Built	0	25,000	25,000	25,000	25,000

Development Component	Phase I Year 1-5 2012-2016	Phase II Year 6-10 2017-2021	Phase III Year 11-15 2022-2026	Phase IV Year 16-21 2027-20232	Total
Cumulative Proportion Built	0.00	1.00	1.00	1.00	1.00
Fitness Facility					
Net Square Feet Built	0	0	64,000	0	64,000
Cumulative Square Feet Built	0	0	64,000	64,000	64,000
Cumulative Proportion Built	0.00	0.00	1.00	1.00	1.00
Sources: Parkmerced Investors, LLC; and CBRE Consulting.					

Notes:
(1) See Exhibit 6 for vacancy assumptions.

Exhibit 4
Parkmerced Fiscal Impact Analysis
Demographic, Employment Retail Spending, and Employee Wage Assumptions
2010 Dollars

Assumption	Value
Population Density	
People per Housing Unit	2.28
Source: Park Merced May 12, 2010 Draft EIR, page V.C.9.	

Project Employment

Development Component	Net New Units/ Sq. Ft.	Net New Employees	Sq. Ft. Per Employee
Residential (1)	5,679	140	NA
Retail	230,000	660	348
Office	80,000	290	276
Educational	25,000	35	NA
Maintenance (2)	100,000	370	NA
Fitness Facility	64,000	85	NA
Miscellaneous, Transit (2)	N.A.	15	NA
Total		1,595	
Source: Park Merced May 12, 2010 Draft EIR, page V.C. 10.			

Average Taxable Retail Spending in San Francisco (3)	*Total Spending* Estimate	*Local Capture Rate*	*Captured SF Taxable Sales*
Inclusionary Rental Units	$22,200	70%	$15,540
Inclusionary For-Sale Units and Market-Rate Rental Units And For-Sale Units	$24,800	70%	$17,360
Source: CBRE Consulting Retail Demand, Sales Leakage, and Spending Attraction Model			

On-site Worker Wages and Annual Taxable Spending

Development Component	Wages (4)	Annual Taxable Spending in SF (5)
Residential	$69,100	$2,229
Retail	$33,400	$1,077
Office	$107,500	$3,468
Educational	$21,400	$690
Maintenance	$43,600	$1,407
Fitness Facility	$19,800	$639
Misc.	$33,900	$1,094
Construction Workers	$83,800	$2,703

Sources: County Business Patterns for San Francisco, 2008, U.S. Bureau of the Census, adjusted for inflation by CBRE Consulting; Bureau of Labor Statistics, Consumer Price Index; International Council of Shopping Centers (ICSC), 'Office Worker Retail Spending Patterns,' 2004; and CBRE Consulting.

Notes:
(1) The analysis conservatively does not incorporate sales and sales tax revenue associated with the on-site retail component. It is assumed that much of the resident and on-site worker taxable retail spending will occur at the on-site retail, and thus double-counting would occur if both on-site taxable retail sales and resident and worker taxable retail sales were analyzed.
(2) There are no separate development components associated with these uses. The jobs associated with these uses are assumed to accrue at the same pace as all on-site residential development.
(3) The average household incomes are assumed to be between $50,000 and $70,000 annually for the inclusionary units and over $70,000 annually for all other net new units. Rent-controlled units do not comprise net new units, and thus retail spending estimates are not relevant. These retail spending estimates are based upon CBRE Consulting's retail spending model calculations and other consumer expenditure survey-based adjustments, and are rounded to the nearest $100. The capture rate assumption was developed by CBRE Consulting, assuming that most, but not all local retail spending will occur in San Francisco. This capture rate recognizes Parkmerced's proximity to Stonestown and the provision of a shuttle to facilitate resident shopping at Stonestown. In addition, the analysis is conservative as no additional sales and sales tax generated by the Parkmerced retail is included in the analysis, i.e., all sales are assumed to be generated by Parkmerced residents and employees. For other analyses in San Francisco CBRE Consulting often uses an 80% retail sales capture rate versus this study's 70% capture rate. This 80% capture rate was adjusted downward to 70% due to the Project's proxmity to the San Mateo County line and retail opportunities located in northern San Mateo County.
(4) Wages are estimated by CBRE Consulting based upon a range of NAICS industry codes matched to each category of job.
(5) The office worker spending figure was derived from the source ICSC document for suburban work locations. The spending figures for all other workers are benchmarked to the office figure, proportional to the estimated wages.

Exhibit 5
Parkmerced Fiscal Impact Analysis
Net New Development Cumulative Population and On-site Employment, and Phased Construction Jobs Estimates

Development Component	Phase I Year 1-5 2012-2016	Phase II Year 6-10 2017-2021	Phase III Year 11-15 2022-2026	Phase IV Year 16-21 2027-2032
Net New Inclusionary Rental Units (5% of market-rate rental units less the rent controlled units)				
Total Units	25	33	44	59
Occupied Units (1)	24	32	42	56
Occupied Unit Population	55	72	96	128
Net New Market-Rate Rental Units				
Total Units	500	663	882	1,172
Occupied Units (1)	475	629	838	1,113
Occupied Unit Population	1,083	1,435	1,910	2,538
Net New Inclusionary For-Sale Units (5% of total for-sale units)				
Total Units	54	109	171	212
Occupied Units (1)	51	104	162	201
Occupied Unit Population	117	236	370	459
Net New Market-Rate For-Sale Units				
Total Units	1,081	2,168	3,425	4,236
Occupied Units (1)	1,027	2,060	3,254	4,024
Occupied Unit Population	2,341	4,696	7,419	9,175
Net New Inclusionary and Affordable Unit Development				
Total Units	79	142	215	271
Occupied Units (1)	75	135	205	257
Occupied Unit Population	172	308	467	587
Total Housing Unit Development				
Total Units	1,660	2,973	4,522	5,679
Occupied Units (1)	1,577	2,824	4,296	5,395
Occupied Unit Population	3,596	6,440	9,795	12,301
On-site Employment Generation				
Residential (2)	41	73	111	140
Retail (3)	146	522	569	608
Office (3)	137	287	287	287
Educational	0	35	35	35
Maintenance (2)	108	194	295	370
Fitness Facility	0	0	85	85
Misc. (2)	4	8	12	15
Total	396	1,046	1,283	1,400
Project Service Population (4)				
Estimate by Phase	3,794	6,962	10,436	13,001
Construction Jobs (5)				
Direct Construction Jobs Generated	5,623	5,651	6,044	5,312

Sources: CBRE Consulting, including Parkmerced Economic Impact Analysis in association with Applied Economics.

Notes:
(1) The residential units are conservatively assumed to operate at 5.0 % vacancy. See Exhibit 6.
(2) The residential, maintenance, and miscellaneous jobs are assumed to occur at the same rate as the total of all on-site housing unit development.
(3) The retail and office uses are assumed to operate at 7.5% vacancy. See Exhibit 6.
(4) The service population comprises the resident population plus one-half the project employment.
(5) Construction jobs were derived in the separate Economic Impact Analysis prepared for Parkmerced by CBRE Consulting in association with Applied Economics.

Exhibit 6
Parkmerced Fiscal Impact Analysis
Property Valuation Assumptions

Assumption	Value
Property Valuation **Fiscal Year 7/1/09 - 6/30/10 Park Merced Valuation**	
Land	$530,293,824
Improvement	$202,722,520
Total	$733,016,344
Estimated Fiscal Year 2010/2011 Valuation (@2% maximum annual increase in valuation)	
Land	$540,899,700
Improvement	$206,776,970
Total	$747,676,671
Source: Parkmerced Investors, LLC, Property Tax Log, September 2010.	
Calculated Values	
Improvement Value per Garden Unit, Fiscal Year 7/1/09 - 6/30/10	$69,179
Adjusted for Fisal Year 2010-2011 Garden Unit Improvement Value	$70,563
FY 10/11 Land Value Per Total Planned Unit (8,900 units) (1)	$60,775
Source: CBRE Consulting.	

Estimated Net New Residential Valuation, Average	Total Value	Value Less Land
Replacement Rent Controlled Units	$84,000	$23,225
Net New Inclusionary Rental Units (assume no net value)	$0	$0
Net New Market-Rate Rental Units	$347,500	$286,725
Net New Inclusionary For-Sale Units	$268,600	$207,825
Net New Market-Rate For-Sale Units	$798,550	$737,775
Average Improvement Value of Existing Units (2)	NA	$48,192
Sources: Parkmerced development pro forma, September 2010; Parkmerced Investors, LLC; The Concord Group; and CBRE Consulting		

Commercial Property Valuations, Average	
Retail	$410 per sq. ft.
Office	$423 per sq. ft.
Educational (private school)	$384
Maintenance	NA
Fitness Facility	$192
Misc.	NA
Sources: Parkmerced development pro forma, September 2010; Parkmerced Investors, LLC; and CBRE Consulting.	

Operational Assumptions	
Residential Vacancy Rate	5.0%
Retail and Office Vacancy Rate	7.5%
Sources: Parkmerced development pro forma, September 2010; Parkmerced Investors, LLC; and CBRE Consulting.	

Notes:
(1) The calculated value of land is apportioned across the 8,900 total planned units at Parkmerced.
(2) Existing units are assumed to increase in value in accordance with the construction budget per sq. ft. improvement: $48
Existing tower units average square footage is as follows: 1,004

Exhibit 7
Parkmerced Fiscal Impact Analysis
Cumulative Net New Property Valuation Estimate
2010 Dollars

Development Component	Phase I Years 1-5 2012- 2016	Phase II Years 6-10 2017 - 2021	Phase III Years 11-15 2022-2026	Phase IV Years 16-21 2027 - 2032
Residential Property Valuation Change				
Demolition of Garden Units	-$23,074,081	-$53,698,397	-$83,969,898	-$108,525,801
Replacement Rent Controlled Units	$7,594,494	$17,674,037	$27,637,456	$35,719,670
Net New Inclusionary Rental Units	$0	$0	$0	$0
Improvements to Existing Tower Units	$14,746,752	$36,866,880	$66,360,384	$81,107,136
Net New Market-Rate Rental Units	$143,305,031	$189,981,527	$252,774,248	$336,027,647
Net New Inclusionary For-Sale Units	$11,222,537	$22,652,898	$35,538,033	$44,058,848
Net New Market-Rate For-Sale Units	$797,534,508	$1,599,495,664	$2,526,878,528	$3,125,213,853
Total	$951,329,241	$1,812,972,609	$2,825,218,751	$3,513,601,352
Non-Residential Property Valuation				
Retail	$22,599,200	$80,665,040	$87,897,850	$93,925,670
Office	$17,308,314	$36,217,683	$36,217,683	$36,217,683
Educational	$0	$9,600,000	$9,600,000	$9,600,000
Maintenance (1)	NA	NA	NA	NA
Fitness Facility	$0	$0	$12,288,000	$12,288,000
Misc. (1)	NA	NA	NA	NA
Total	$39,907,514	$126,482,723	$146,003,533	$152,031,353
Net Property Valuation Change	**$991,236,755**	**$1,939,455,332**	**$2,971,222,284**	**$3,665,632,705**
Source: CBRE Consulting.				

Notes:
(1) There are no separate development components associated with these uses. Their values are rolled up into the value of the entire development.

Exhibit 8
Parkmerced Fiscal Impact Analysis
Tax Rate and Other Revenue and Financial Assumptions

Tax and Other Revenue Component	**Value**
Existing 2010 San Francisco Service Population Calculation (1)	
Resident Population	810,000
Employment Base	568,730
Service Population	1,094,365
Sources: Association of Bay Area Governments, 'Projections and Priorities 2009: Building Momentum, August 2009; and CBRE Consulting.	
Tax Assumptions FY 2010/2011	
Payroll Tax	1.50%
San Francisco Property Tax Rate (2)	1.16%
City/County General Fund Property Apportionment Factor	56.59%
Sales Tax Rate	1.00%
Transfer Tax Rate per $1,000 value (3)	$6.80
Sources: Office of Economic Analysis, Controller's Office, City and County of San Francisco; Office of the Assessor-Recorder, City and County of San Franciscio.	
Inflation Rate, 2009 – 2010	
Applied to FY 09/10 City and County Service Costs	1.65%
Source: Bureau of Labor Statistics, Consumer Price Index - All Urban Consumers in the 'San Fancisco-Oakland-San Jose MSA,'mid-year 2009 to mid-year 2010.	

Notes:
(1) The service population is conservatively assumed to include all San Francisco residents plus one half the San Francisco employment base.
(2) The proposed property tax rate for the City and County of San Francisco for FY 2010/2011.
(3) The rate is $6.80 per $1,000 value for properties valued between $250,000 and $1,000,000.

Exhibit 9
Parkmerced Fiscal Impact Analysis
General Fund Annual Average Revenue and Cost Calculations

General Fund Line Item	Amount FY 2010/2011	Percent Variable (1)	Average Factor	Average Basis (2)
General Fund Revenues				
Utility Users Tax (3)				
Telephone Users Tax	$50,865,621		$46.48	per service population
Water Users Tax	$2,690,354		$4.73	per employee
Gas Electric Steam Users Tax	$43,920,025		$77.22	per employee
Total (3)	$97,476,000			
Other Taxes				
Access Line Tax	$37,300,000		$34.08	per service population
Business Registration License Tax	$7,939,000		$13.96	per employee
Other Revenues				
Licenses, Permits, and Franchise Fees	$23,242,394		$28.69	per capita
Fines, Forfeitures, and Penalties	$3,794,036		$4.68	per capita
General Fund Expenditures				
Public Safety				
Police (4)	$446,541,021		$196,368.08	per officer
Fire	$290,919,514		$265.83	per service population
Public Works (5)	$26,079,793		$23.83	per service population
Human Welfare and Neighborhood Development (6)	$844,636,855	10%	$104.28	per capita
Culture and Recreation (7)				
Recreation and Park (8)	$127,259,413		$157.11	per capita
Libraries (9)	$84,544,033		$104.38	per capita

Sources: City and County of San Francisco, California, 'Mayor's Proposed May Budget 2010-2011;' 'Fiscal and Economic Impact Analysis of the Candlestick Point/Hunters Point Shipyard Redevelopment Project,' Economic & Planning Systems, Inc., May 2010; and CBRE Consulting.

Exhibit 9
Parkmerced Fiscal Impact Analysis
General Fund Annual Average Revenue and Cost Calculations

Notes:
(1) This analysis conservatively does not attribute any costs to variable costs except for the Human Welfare and and Neighborhood Development category, which replicates the referenced EPS analysis. However, the EPS analysis cites a lower budget amount with a higher percentage variable estimate, for a per capita cost of $75.93. The CBRE Consulting estimate includes the entire cost category but with an expectation that a lower percentage will be variable, especially relative to the population anticipated at Parkmerced and its low likelihood of impacting costs in this category.
(2) See Exhibit 8 for the relevant population figures.
(3) The total figure is from the City and County of San Francisco budget. Because detail line item allocation is not presented in the budget, the allocation is based upon the share of total costs per line item pursuant to the sourced EPS analysis in Table A-14 for Candlestick Point/Hunters Point Shipyard.
(4) The Parkmerced EIR identified a need for 36 police officers to serve the project. This per officer cost was derived assuming no change to the existing number of 2,374 uniformed officers as per the EIR (Volume 1), on page V.L.2.
(5) The Parkmerced project will entail a net reduction in linear roadway. Thus, public works costs for the roads internal to the development will be less. However, the analysis conservatively assumes that other City public works service costs will increase due to the project's increased population and employment base. In addition to funds from the General Fund, the Public Works Department also receives funding from other sources. For the purpose of this analysis, only revenue sources that are related to the City and County of San Francisco have been included. These include 'Licenses & Fines', 'Use of Money or Property', 'Fund Balance' and General Fund Support'.
(6) CBRE Consulting's analysis assumes a 10% variable cost factor relevant to the anticipated Parkmerced population.
(7) The EPS analysis for Candlestick Point/Hunters Point Shipyard deviated from an average cost approach, and resulted in lower cost estimates. Because it is difficult to replicate the EPS approach for Parkmerced, this analysis conservatively includes an average cost approach.
(8) The Parkmerced project includes open space and parks that will be serviced privately. CBRE Consulting anticpates that demands on the public recreation system from Parkmerced residents will be less than the citywide average as a result. However, the analysis conservatively assumes costs for this service category in keeping with a citywide average.
(9) The EPS analysis for Candlestick Point/Hunters Point Shipyard had project-specific library cost estimates. Since these are not available for Parkmerced, the analysis conservatively includes an average cost approach per resident.

Exhibit 10
Parkmerced Fiscal Impact Analysis
General Fund Revenue and Cost Calculations Derived from the Economic & Planning Systems Analysis for Candlestick Point/Hunters Point Shipyard Redevelopment Project (1)

General Fund Line Item	Average Estimate Derived from EPS HP/CP Analysis (1)	Average Basis (2)	Adjusted to FY 2010/2011 (3)
General Fund Revenues			
VLF Realignment to Health and Welfare (4)	$55.24	per resident	$56.15
Sales Tax Realignment to Health and Welfare (4)	$118.89	per resident	$120.85
General Fund Expenditures			
General Administration and Finance			
Elections (5)	$15.48	per resident	$15.74
Assessor/Recorder (6)	$3.06	per service population	$3.11
Administrative Services (6)	$7.02	per service population	$7.14
Public Safety			
911 (7)	$20.28	per resident	$20.62
Public Health (8)	$166.26	per net new affordable and inclusionary unit resident	$169.00
Sources: City and County of San Francisco, California, 'Mayor's Proposed May Budget 2010-2011,'; Fiscal and Economic Impact Analysis of the Candlestick Point/Hunters Point Shipyard Redevelopment Project,' Economic & Planning Systems, Inc., May 2010; and CBRE Consulting.			

Notes:
(1) For these cost items CBRE Consulting consulted the referenced Economic & Planning Systems (EPS) report and recreated the EPS methodology based upon Parkmerced characteristics or calculated service costs on the elevant basis, matching the approach in EPS' study.
(2) See Exhibit 8 for the relevant population figures.
(3) Assumes service costs escalate at the rate of inflation. See inflation rate adjustment in Exhibit 8.
(4) See Table 1 in the cited EPS report. The per capita figure was derived by CBRE Consulting pursuant to the EPS analysis.
(5) See Table A-13 in the cited EPS report.
(6) See Table A-14 in the cited EPS report.
(7) See Table A-11 in the cited EPS report.
(8) See Table A-12 in the cited EPS report.

Exhibit 11
Parkmerced Fiscal Impact Analysis
Motor Vehicle In Lieu Fee Estimate
2010 Dollars

Item	Phase I Years 1-5 2012- 2016	Phase II Years 6-10 2017 - 2021	Phase III Years 11-15 2022-2026	Phase IV Years 16-21 2027 - 2032
Current Assessed Valuation				
City and County of San Francisco Total Assessed Valuation, FY 09/10	$140,382,171,000	$140,382,171,000	$140,382,171,000	$140,382,171,000
Estimated Total Assessed Valuation, FY 10/11 (@ 2% maximum annual increase)	$143,189,814,420	$143,189,814,420	$143,189,814,420	$143,189,814,420
Calculation for Increase in Property Tax In Lieu of VLF Revenues				
Estimated Project Net Assessed Value Increase	$991,236,755	$1,939,455,332	$2,971,222,284	$3,665,632,705
Total City and County of San Francisco Assessed Value Including Parkmerced	$144,181,051,175	$145,129,269,752	$146,161,036,704	$146,855,447,125
Percent Increase in Assessed Value due to Project	0.69%	1.34%	2.03%	2.50%
Property Tax In Lieu of VLF Payment FY 2010/2011	$171,000,000	$171,000,000	$171,000,000	$171,000,000
Parkmerced net new development related Property Tax in Lieu of VLF Revenues (1)	$1,175,616	$2,285,182	$3,476,159	$4,268,301
Sources: City and County of San Francisco, Comprehensive Annual Financial Report Year ended June 30, 2009, page 192; Budget and analysis Division, Controller's Office, City and County of San Francisco; and CBRE Consulting.				

Notes:
(1) This incremental revenue is calculated by multiplying the 'Percent Increase in Assessed Value due to the Project' by the 'Current Property Tax In Lieu of VLF Payment.'

Exhibit 1 and 12
Parkmerced Fiscal Impact Analysis
Benchmark Year Analysis (1)
General Fund Fiscal Revenues and Costs by Phase
2010 Dollars

Revenue or Cost Item	Phase I Year 5 2016	Phase II Year 10 2021	Phase III Year 15 2026	Phase IV Year 21 2032	Buildout (2)
Fiscal Revenues					
General Fund Property Tax (3)	$6,529,145	$12,774,935	$19,571,047	$24,145,036	$24,145,036
Property Tax In Lieu of Vehicle License Fees (4)	$1,175,616	$2,285,182	$3,476,159	$4,268,301	$4,268,301
Property Transfer Tax (5)	$0	$503,141	$1,344,503	$2,266,851	$2,266,851
Sales Tax from Resident Spending (6)					
Inclusionary Rental Units	$3,720	$4,932	$6,556	$8,717	$8,717
All Other Net New Units	$269,611	$484,798	$738,444	$926,842	$926,842
Sales Tax from Worker Spending (7)	$8,816	$20,269	$23,632	$25,782	$25,782
Sales Tax from Construction Worker Spending (7)	$152,013	$152,778	$163,387	$143,607	0
Telephone Users Tax (8)	$176,324	$323,612	$485,061	$604,272	$604,272
Access Line Tax (8)	$129,299	$237,306	$355,698	$443,115	$443,115
Water Users Tax (8)	$1,873	$4,947	$6,068	$6,623	$6,623
Gas Electric Steam Users Tax (8)	$30,585	$80,767	$99,057	$108,128	$108,128
Payroll Tax (8)	$409,918	$942,454	$1,098,821	$1,198,789	$1,198,789
Business Tax (8)	$5,529	$14,600	$17,906	$19,545	$19,545
Licenses, Permits, and Franchise Fees (8)	$103,172	$184,778	$281,051	$352,961	$352,961
Fines, Forfeitures, and Penalties (8)	$16,842	$30,163	$45,878	$57,616	$57,616
VLF Realignment to Health and Welfare (9)	$201,900	$361,595	$549,995	$690,717	$690,717
Sales Tax Realignment to Health and Welfare (9)	$434,538	$778,242	$1,183,723	$1,486,591	$1,486,591
Total	$9,648,901	$19,184,499	$29,446,986	36,753,494	$36,609,887
Fiscal Costs					
General Administration and Finance (9)					
Elections	$56,596	$101,361	$154,172	$193,619	$193,619
Assessor/Recorder	$11,180	$20,023	$30,455	$38,248	$38,248
Administrative Services / Other	$25,655	$45,947	$69,887	$87,768	$87,768
Public Safety					
Police (8)	$2,066,377	$3,700,807	$5,629,011	$7,069,251	$7,069,251
Fire (8)	$1,008,464	$1,850,858	$2,774,247	$3,456,056	$3,456,056
911 (9)	$74,138	$132,778	$201,958	$253,631	$253,631
Public Health (9)	$28,992	$52,130	$78,852	$99,219	$99,219
Public Works (8)	$90,405	$165,922	$248,700	$309,822	$309,822
Human Welfare and Neighborhood Development (8)	$374,931	$671,488	$1,021,349	$1,282,671	$1,282,671
Culture and Recreation (8)					
Recreation and Park	$564,900	$1,011,715	$1,538,842	$1,932,570	$1,932,570
Libraries	$375,288	$672,127	$1,022,320	$1,283,891	$1,283,891
Sub-total	$4,676,925	$8,425,156	$12,769,793	$16,006,747	$16,006,747
Fiscal Cost Contingency (20%) (9)	$935,385	$1,685,031	$2,553,959	$3,201,349	$3,201,349
Total	$5,612,310	$10,110,187	$15,323,752	$19,208,096	$19,208,096
Net Fiscal Impact - Total	$4,036,591	$9,074,312	$14,123,235	$17,545,398	$17,401,791

Revenue or Cost Item	Phase I Year 5 2016	Phase II Year 10 2021	Phase III Year 15 2026	Phase IV Year 21 2032	Buildout (2)
One-time Fiscal Revenues					
Property Transfer Tax (10)	$5,869,981	$5,902,562	$6,825,686	$4,403,844	$0
Construction-related Sales and Use Taxes (11)	$1,515,677	$1,751,898	$2,175,026	$2,205,834	$0
Payroll Tax from Construction Workers (12)	$7,068,077	$7,103,642	$7,596,941	$6,677,229	$0
Total	$14,453,735	$14,758,102	$16,597,653	$13,286,906	$0
Source: CBRE Consulting					

Exhibit 1 and 12
Parkmerced Fiscal Impact Analysis
Benchmark Year Analysis (1)
General Fund Fiscal Revenues and Costs by Phase
2010 Dollars

Notes:
(1) This analysis, like the Fehr & Peers' Draft Transit Operating Plan, is based on the 20-year development projections set forth in the Parkmerced project's Draft EIR. That document contained four "Illustrative Development Phases," which are based on the Developer's best estimates for the likely pace of the build-out of the private and public improvements contemplated in the Development Agreement. Accordingly, each of the "Phases" listed in this analysis corresponds to the last year of each of the illustrative Development Phases set forth in the Draft EIR. It should be emphasized, however, that the four Illustrative Development Phases are merely reasonable projections of the potential timing and scope of the Project buildout, and are not fixed development phases or schedules. On the contrary, the draft Parkmerced Development Agreement specifically provides the Developer flexibility in the order and timing of the proposed private development, including allowing discretion in what amount of net new development will be included in each Development Phase. The City, in turn, has the right to review and approve eachDevelopment Phase Application to ensure that any Community Improvements, including any SFMTA transit improvements, proposed for each Development Phase are provided in proportion to the cumulative amount of private development to occur in each Development Phase, and that the timing and phasing of the Community Improvements are consistent with the operational needs and plans of all affected City Agencies, and are phased in such a way as to not interfere with the utility and transportation systems operated and maintained by the City.
(2) A representative buildout year is included. The buildout analysis excludes revenues associated with the contruction period, e.g., sales and use tax associated with one-time sales and use tax and construction worker taxable retail sales. These construction period revenues are shown in previous benchmark years.
(3) Derived from the property valuation estimates in Exhibit 7 and the property tax rate assumptions in Exhibit 8.
(4) See calculations in Exhibit 11.
(5) The recurring transfer tax analysis assumes payment associated with the resale of all the for-sale units once every 7 years. This analysis assumes the resale of cumulative projects developed through the current phase. Accordingly, transfer tax payments in years following full buildout of Parkmerced will increase associated with all for-sale project units. An example of the calculation used for this analysis is the amount for Phase III, which is equivalent to the following: (the one-time transfer tax from Phase I + (the one-time transfer tax from Phase II *3/5))* 1/7. The 3/5 adjustment pertains to the length of the phase versus the frequency of assumed home sales (1/7 years).
(6) The sales tax estimates are inclusive of estimated property tax in lieu of sales and use tax.
(7) See worker taxable retail spending assumptions in Exhibit 4.
(8) See Exhibit 9.
(9) A 20% cost contingency factor accomodates additional costs not reflected in the preceding analysis.
(10) See Exhibit 10.
(11) The one-time transfer tax analysis assumes payment associated with the initial sale of the for-sale units based upon their total estimated valuation, including land.
(12) Construction sales and use taxes are based on construction expenditures less select categories such as interest, city development fees, and bonding costs. The share of costs assumed to be taxable matches the assumptions prepared by Economic & Planning Systems, Inc., in its Fiscal and Economic Impact Analysis of the Candlestick Point/Hunters Point Shipyard Redevelopment Project' in May 2010. See Table A-2 in this document, footnote 14, which estimates that 30% of construction costs are materials and 50% of sales are captured in San Francisco.
(13) Assumes payroll tax payment on the average construction worker wage estimated in Exhibit 4.

Exhibit 13
Parkmerced Fiscal Impact Analysis
Transportation Fiscal Impacts Based on Existing Service with Mitigation
Benchmark Year Analysis (1)
2010 Dollars

Revenue or Cost Item	Phase I Year 5 2016	Phase II Year 10 2021	Phase III Year 15 2026	Phase IV Year 21 2032	Buildout (2) Year 2033 Onward
Transit Operating Revenues and Expenditures					
Revenues					
Ongoing Revenues					
Farebox Recovery (3)	$161,514	$289,265	$439,979	$552,552	$552,552
Advertising (4)	$7,000	$21,000	$21,000	$21,000	$21,000
On-Street Metered Parking (5)	$696,149	$1,246,778	$1,896,377	$2,381,584	$2,381,584
Parking Tax (6)	NA	NA	NA	NA	NA
Parking Fees and Fines (7)	$329,315	$604,399	$905,932	$1,128,578	$1,128,578
State Sales Tax, AB 1107 (8)	$27,135	$41,424	$58,251	$69,059	$60,084
TDA Sales Tax (9)	$108,540	$165,694	$233,005	$276,237	$240,336
Other (10)	$35,011	$64,257	$96,315	$119,986	$119,986
General Fund (11)	$820,157	$1,630,682	$2,502,994	$3,124,047	$3,111,840
Subtotal	$2,184,821	$4,063,499	$6,153,853	$7,673,043	$7,615,960
One-time Revenues (12)					
State Sales Tax, AB 1107 (8)	$94,730	$109,494	$135,939	$137,865	$0
TDA Sales Tax (9)	$378,919	$437,975	$543,757	$551,459	$0
Subtotal	$473,649	$547,468	$679,696	$689,323	$0
Total Operating Revenues	$2,658,469	$4,610,967	$6,833,549	$8,362,367	$7,615,960
Expenditures (13)					
Parking/Coin Collection Enforcement Overhead (14)					
Enforcement Costs	-$114,679	-$205,387	-$312,398	-$392,328	-$392,328
Coin Collection Costs	-$60,659	-$108,637	-$165,240	-$207,518	-$207,518
Operations and Maintenance	-$838,046	-$2,640,995	-$2,640,995	-$2,640,995	-$2,640,995
Operating Revenue Contribution to Capital (15)	-$1,645,085	-$1,655,948	-$3,714,916	-$5,121,525	-$4,375,118
Subtotal	-$2,658,469	-$4,610,967	-$6,833,549	-$8,362,367	-$7,615,960
Net Operating Income	$0	$0	$0	$0	$0
Transit Capital Revenues and Expenses					
Revenues					
Prop K Sales Tax (16)	$79,886	$121,951	$171,492	$203,311	$176,887
One-time Prop K Sales Tax (16)	$278,885	$322,349	$400,205	$405,873	$0
Operating Revenue Contribution to Capital	$1,645,085	$1,655,948	$3,714,916	$5,121,525	$4,375,118
Subtotal	$2,003,855	$2,100,248	$4,286,612	$5,730,709	$4,552,005
Expenditures (13)					
Amortized Capital Facility Costs	-$71,817	-$397,074	-$397,074	-$397,074	-$397,074
Amortized Capital Vehicle Costs	-$203,086	-$1,373,801	-$1,475,344	-$1,373,801	-$1,373,801
	-$274,903	-$1,770,875	-$1,872,418	-$1,770,875	-$1,770,875
Net Annual Capital Transportation Impact (17)	**$1,728,953**	**$329,373**	**$2,414,194**	**$3,959,834**	**$2,781,130**
Additional Prospective Revenue Source					

Revenue or Cost Item	Phase I Year 5 2016	Phase II Year 10 2021	Phase III Year 15 2026	Phase IV Year 21 2032	Buildout (2) Year 2033 Onward
Transit Pass Contribution (18)	$455,462	$891,150	$1,402,446	$1,760,841	$1,760,841

Exhibit 13
Parkmerced Fiscal Impact Analysis
Transportation Fiscal Impacts
Benchmark Year Analysis (1)
2010 Dollars
Sources and Footnotes

Sources: Fehr & Peers, e-mail communication; 'Parkmerced Project Transit Cost Estimates,' DRAFT August 17, 2010; 'Fiscal and Economic Impact Analysis of the Candlestick Point/Hunters Point Shipyard Redevelopment Project,' Economic & Planning Systems, Inc., May 2010; 'Proposed Operating Budget for Budget Years 2010-2011 and 2011-2012,' San Francisco Municipal Transportation Agency (SFMTA), April 2010; 'Prop K Expenditure Plan,' San Francisco County Transportation Authority, approved 2003; 'Transit Operating Plan,' Parkmerced Project, Draft September 2010, Fehr & Peers; AECOM Memorandum, April 12, 2010, 'Parkmerced Conceptual Transportation Plan Cost Estimates;' Parkmerced Investors, LLC; SFMTA Staff, data provided during a November 15, 2010 project meeting; e-mail communication from Steven Lee, December 3, 2010; data conveyed by Jason Lee of SFMTA in an April 26, 2011 e-mail communication to Gail Stein of SFMTA; and CBRE Consulting.

Notes:
(1) This analysis, like the Fehr & Peers' Draft Transit Operating Plan, is based on the 20-year development projections set forth in the Parkmerced project's Draft EIR. That document contained four "Illustrative Development Phases," which are based on the Developer's best estimates for the likely pace of the build-out of the private and public improvements contemplated in the Development Agreement. Accordingly, each of the "Phases" listed in this analysis corresponds to the last year of each of the Illustrative Development Phases set forth in the Draft EIR. It should be emphasized, however, that the four Illustrative Development Phases are merely reasonable projections of the potential timing and scope of the Project buildout, and are not fixed development phases or schedules. On the contrary, the draft Parkmerced Development Agreement specifically provides the Developer flexibility in the order and timing of the proposed private development, including allowing discretion in what amount of net new development will be included in each Development Phase. The City, in turn, has the right to review and approve each Development Phase Application to ensure that any Community Improvements, including any SFMTA transit improvements, proposed for each Development Phase are provided in proportion to the cumulative amount of private development to occur in each Development Phase, and that the timing and phasing of the Community Improvements are consistent with the operational needs and plans of all affected City Agencies, and are phased in such a way as to not interfere with the utility and transportation systems operated and maintained by the City.
(2) A representative buildout year is included. The buildout analysis excludes revenues associated with the contruction period, e.g., sales and use tax associated with one-time sales and use tax and construction worker taxable retail sales. These construction period revenues are shown in previous benchmark years.
(3) This analysis assumes 717,600 annual boardings associated with the project at buildout, an average farebox of $0.77, and phasing of boardings proportional with the rate of new unit development. The boardings and fare rate are pursuant to City of San Francisco estimates, documented in 'Parkmerced Project Transit Cost Estimates,' DRAFT August 17, 2010.
(4) Advertising based on Muni's Fiscal Year 2010-2011 budget, with advertising revenue from vehicles totaling $4.2 million, spread across an estimated 1,200 vehicles. The analysis results in per vehicle advertising revenues of $3,500. The revenue is allocated based upon the rate at which net new vehicles are anticipated to be introduced, rounded down to the nearest whole number. These figures are 2, 6, 6, and 6 for the Existing Service Plan benchmark years. The MTA budget includes $14.3 million in advertising revenue, of which MTA indicated during an 11/15/10 project meeting that $4.2 million is generated by vehicle revenue.
(5) Parkmerced has 1,440 meters planned for the development upon buildout. The analysis assumes these meters will be phased in concurrent with the anticipated rate of project development. The applicable per meter

rate was provided by SF MTA for the "All Other Areas" zone of San Francisco for FY 29009-2010. This is one of seven discrete zones analyzed by SFMTA. The rate provided by SFMTA was $1,637, which CBRE Consulting then adjusted by inflation for 2010 dollars. The resulting per meter figure is $1,653.88. The analysis assumes that all unstriped parking within the Project is incrementally converted to SFpark metered parking.
(6) Any parking spaces with non-metered parking revenues will generate parking tax revenues to the extent a parking fee is established. The analysis does not include any estimates because this component of the development program has not been fully developed, with potential parking rates not fully established.
(7) Traffic fines based on FY 2010/2011 MTA revised budget of $95.0 million, spread across the City and County of San Francisco's service population, resulting in an $86.81 revenue estimate per service population. This revised budget figure was provided to CBRE Consulting on November 15, 2010 during a meeting with SFMTA staff. This per service population figure diverges slightly from the EPS approach, which spread the cost across all residents and employees. The revenue is allocated proportional with the rate of new unit development. The revised budget figure reflects a trend in lower citation revenue concurrent with a trend towards increased numbers of metered parking spaces (i.e., meter revenue increases while citation revenue declines).
(8) Based on one-half cent sales tax, allocated 25% to transit, of which one-half goes to MTA, i.e., equivalent to 6.25% of 1.0%. As noted in Exhibit 4, this assumes San Francisco sales capture of 70% of resident retail spending. For other analyses in San Francisco CBRE Consulting often uses an 80% retail sales capture rate versus this study's 70% capture rate. This 80% capture rate was adjusted downward to 70% due to the Project's proximity to the San Mateo County line and retail opportunities located in northern San Mateo County.
(9) Transportation Development Act (TDA) sales tax based on one-quarter of one cent.
(10) Allocated per service population, includes boot fines, court fees, abandoned vehicles, etc. Based on MTA budget amount of $10.1 million for fiscal year 2010/2011, spread across the City and County of San Francisco's service population, resulting in a $9.23 revenue estimate per service population. This diverges slightly from the EPS approach, which spread the cost across all residents and employees. The revenue is allocated proportional with the rate of new unit development.
(11) MTA receives an allocation of the unrestricted City and County General Fund revenues. This has been estimated by MTA at 8.0 to 9.0 percent, which is assumed at the rate of 8.5 percent for the purpose of this analysis. This is applied to the General Fund revenue estimate included in Exhibits 1 and 12. (12) One-time revenues are associated with the construction period effort. These revenues pertain to the additional sales taxes pertinent to the one-time sales and use taxes generated by construction materials purchasing and construction worker retail sales. These revenues will not recur during project buildout.
(13) Transit expenditures are based upon costs estimated by Fehr & Peers. See Table 6 in the cited Fehr & Peers document. This analysis incorporates the Fehr & Peers analysis for the Existing Service Plan, with Mitigation. This plan includes the placement of two new buses into service in illustrative year 5. The plan also includes replacement for these buses in year 15 and year 17. Thus, the analysis includes capital costs for 4 buses, 2 of which are net new. In addition, the Existing Service Plan with mitigation includes the addition and acquisition of 12 LRV's in year 10 of the illustrative development program, of which 4 are net new (i.e., 8 will be taken out of service at this time). In total there will be 6 net new vehicles. The Fehr & Peers operations and maintenance costs were adjusted to 2010 dollars as the initial estimates were provided in fiscal year 2006 dollars. The capital costs for facilities and vehicles were amortized, with the amortization period starting in the year a vehicle or capital facility was put into service. The amortization schedule included 30 years for facilities, 12 years for included in the amortized costs with the exception of one LRV. Mitigation Measure TR-21A (as included in the Development Agreement's Phasing Plan) provides for the purchase by the Developer of one LRV vehicle prior to the completion of the M-Oceanview right-of-way realignment. Thus, the analysis conservatively excludes the amortized acquisition cost for this vehicle since it will be separately funded by the Developer.
(14) These expense projections are based on the assumption that all unstriped parking within the Project will be incrementally converted to SFpark metered parking. The estimated annual overhead expenditures are approximately $272.45 per year for enforcement costs per sparking space and $144.11 per year for coin collection.
(15) Project revenues are generally expected to exceed SFMTA costs of ongoing transit operations and

maintenance as well as parking enforcement and coin collection overhead. Any excess revenues above these operational costs would be transferred to cover SFMTA capital expenditures, including net new transit vehicles and facilities required to accommodate them. This analysis does not include the one-time procurement of a LRV for mitigation measure tR-99; instead it takes a more conservative approach.

(16) Based upon a projected one-half cent sales tax, with 36.8% allocated to transit system maintenance and renovation, applied to the estimated taxable sales generated by the project. This is equivalent to the (sales tax revenues estimated in Exhibits 1

(17) The net transit impact figures are representative for the benchmark years cited. The net impact varies from year to year. The lumpiness in the net figure is attributable to the timing of capital costs for vehicles and facilities. This is especially the case starting year 10, when the light rail capital expenditures are assumed to begin. The final year of the illustrative last phase is a proxy for buildout. As noted in footnote (1), the cited years are reflective of "Illustrative Development Phases," and

(18) This includes a $20 per month reduced-fee transit pass per unit for all units, including existing units, with 80% allocated to Muni and 20% allocated to BART, as provided by Fehr & Peers. The analysis assumes every unit participates in this program.