

BOARD of SUPERVISORS



City Hall  
1 Dr. Carlton B. Goodlett Place, Room 244  
San Francisco 94102-4689  
Tel. No. 554-5184  
Fax No. 554-5163  
TDD/TTY No. 554-5227

## MEMORANDUM

### RULES COMMITTEE

#### SAN FRANCISCO BOARD OF SUPERVISORS

TO: Supervisor Norman Yee, Chair  
Rules Committee

FROM: Linda Wong, Committee Clerk

DATE: July 23, 2013

SUBJECT: **COMMITTEE REPORT, BOARD MEETING**  
Tuesday, July 23, 2013

The following files should be presented as **COMMITTEE REPORT** at the Board meeting today, July 23, 2013. These items were acted upon at a Committee Meeting on Thursday, July 18, 2013 at 1:30 p.m., by the votes indicated.

**Item No. 51      File No. 130336**

**[Settlement of Lawsuit - Rosemary Bosque - \$49,505.70]**

Ordinance authorizing settlement of the lawsuit filed by Rosemary Bosque against the City and County of San Francisco for \$49,505.70; the lawsuit was filed on May 14, 2010 in San Francisco Superior Court, Case No. CGC-10-499909, entitled Bosque v. City and County of San Francisco.

#### **RECOMMENDED AS COMMITTEE REPORT**

Vote: Yee – Excused  
Breed – Aye  
Cohen – Aye

*(Pursuant to Rules of Order, Section 3.2, President David Chiu served as a committee member to vote on File No. 130449 due to lack of quorum.)*

**Item No. 52            File No. 130449**

**[Settlement of Lawsuit - Jesse J. Byrd - \$75,000]**

Ordinance authorizing settlement of the lawsuit filed by Jesse J. Byrd, Malik Britt, and Rashad Conley against the City and County of San Francisco for \$75,000; the lawsuit was filed on April 8, 2011, in U.S. District Court, Northern District of California, Case No. C11-1742-DMR; entitled Jesse J. Byrd, et al., v. City and County of San Francisco, et al.

**RECOMMENDED AS COMMITTEE REPORT**

Vote: Yee – Aye  
Breed – Excused  
Cohen – Excused  
Chiu – Aye

**Item No. 53            File No. 130507**

**[Settlement of Lawsuit - Local Search Association - \$85,000]**

Ordinance authorizing settlement of the lawsuit filed by Local Search Association against the City and County of San Francisco for \$85,000; the lawsuit was filed on June 7, 2011, in the U.S. District Court for the Northern District of California, Case No. CV-11-2776 SBA; entitled Local Search Association v. City and County of San Francisco, et al.; other material terms of said settlement are that the parties shall stipulate to entry of a consent judgment against the City and County of San Francisco.

**RECOMMENDED AS COMMITTEE REPORT**

Vote: Yee – Aye  
Breed – Aye  
Cohen – Aye

**Item No. 54            File No. 130529**

**[Settlement of Lawsuit - Paulette Adams-Irving - \$350,000]**

Ordinance authorizing settlement of the lawsuit filed by Paulette Adams-Irving against the City and County of San Francisco for \$350,000.00; the lawsuit was filed on March 15, 2011, in San Francisco Superior Court, Case No. CGC 11-509216; entitled Paulette Adams-Irving v. City and County of San Francisco, et al.

**RECOMMENDED AS COMMITTEE REPORT**

Vote: Yee – Aye  
Breed – Aye  
Cohen – Aye

**Item No. 55            File No. 130530**

**[Settlement of Lawsuit - Maria Camacho - \$50,000]**

Ordinance authorizing settlement of the lawsuit filed by Maria Camacho against the City and County of San Francisco for \$50,000; the lawsuit was filed on March 7, 2012, in San Francisco Superior Court, Case No. CGC 12-517261; entitled Maria Camacho, et al., v. City and County of San Francisco, et al.

**RECOMMENDED AS COMMITTEE REPORT**

Vote: Yee – Aye  
      Breed – Aye  
      Cohen – Aye

**Item No. 56            File No. 130643**

**[Settlement of Lawsuit - Maria D'Agostino - \$135,000]**

Ordinance authorizing settlement of the lawsuit filed by Maria D'Agostino against the City and County of San Francisco for \$135,000; the lawsuit was filed on June 15, 2012, in San Francisco Superior Court, Case No. CGC-12-521615; entitled Maria D'Agostino, et al., v. City and County of San Francisco, et al.

**RECOMMENDED AS COMMITTEE REPORT**

Vote: Yee – Aye  
      Breed – Aye  
      Cohen – Aye

**Item No. 57            File No. 130644**

**[Settlement of Lawsuit - Wei Vivian Cui - \$30,000]**

Ordinance authorizing settlement of the lawsuit filed by Wei Vivian Cui against the City and County of San Francisco for \$30,000; the lawsuit was filed on November 3, 2011, in San Francisco County Superior Court, Case No. CGC-11-515654; entitled Wei Vivian Cui v. City and County of San Francisco, et al.

**RECOMMENDED AS COMMITTEE REPORT**

Vote: Yee – Aye  
      Breed – Aye  
      Cohen – Aye

**Item No. 58**

**File No. 130531**

**[Settlement of Claim - Travelers Insurance Company and Connie Curran - \$42,876.54]**

Resolution approving the proposed settlement of claim filed by Travelers Insurance Company and Connie Curran against the City and County of San Francisco for \$42,876.54; claim was filed on November 15, 2011, bearing Claim No. 12-01124.

**RECOMMENDED AS COMMITTEE REPORT**

Vote: Yee – Aye  
Breed – Aye  
Cohen – Aye

**Item No. 59**

**File No. 130567**

**[Settlement of Unlitigated Claims - 300 Spear Realty Venture LLC]**

Resolution approving the settlement of the unlitigated claim in favor of 300 Spear Realty Venture LLC against the City and County of San Francisco; and the unlitigated claim in favor of the City and County of San Francisco against 300 Spear Realty Venture LLC.

**RECOMMENDED AS COMMITTEE REPORT**

Vote: Yee – Aye  
Breed – Aye  
Cohen – Aye

**Item No. 60**

**File No. 130634**

**[Settlement of Administrative Enforcement Action - \$51,000]**

Resolution approving the settlement of the unlitigated administrative enforcement action filed by the San Francisco Bay Regional Water Quality Control Board against San Francisco imposing a penalty of \$51,000.

**RECOMMENDED AS COMMITTEE REPORT**

Vote: Yee – Aye  
Breed – Aye  
Cohen – Aye

**Item No. 61**

**File No. 130705**

**[Settlement of Unlitigated Claims - Donald Wiggam - \$125,000]**

Resolution approving the settlement of the unlitigated claims filed by Donald Wiggam against the City and County of San Francisco for \$125,000; claims were filed on October 22, 2011, August 9, 2012, and March 26, 2013.

**RECOMMENDED AS COMMITTEE REPORT**

Vote: Yee – Aye  
Breed – Aye  
Cohen – Aye

**Item No. 62**

**File No. 130622**

**[Initiative Ordinance - Administrative Code - San Francisco Family Friendly Workplace Ordinance]**

Motion ordering submitted to the voters an ordinance amending the Administrative Code to: allow San Francisco-based employees to request flexible or predictable working arrangements to assist with caregiving responsibilities; subject to the employer's right to deny a request based on business reasons; prohibit adverse employment actions based on caregiver status; prohibit interference with rights or retaliation against employees for exercising rights under the Ordinance; require employers to post a notice informing employees of their rights under the Ordinance; require employers to maintain records regarding compliance with the Ordinance; authorize enforcement by the Office of Labor Standards Enforcement, including the imposition of remedies and penalties for a violation, and an appeal process for an employer to an independent hearing officer; authorize waiver of the provisions of the Ordinance in a collective bargaining agreement; and making environmental findings, to the voters of the City and County of San Francisco at an election to be held on November 5, 2013.

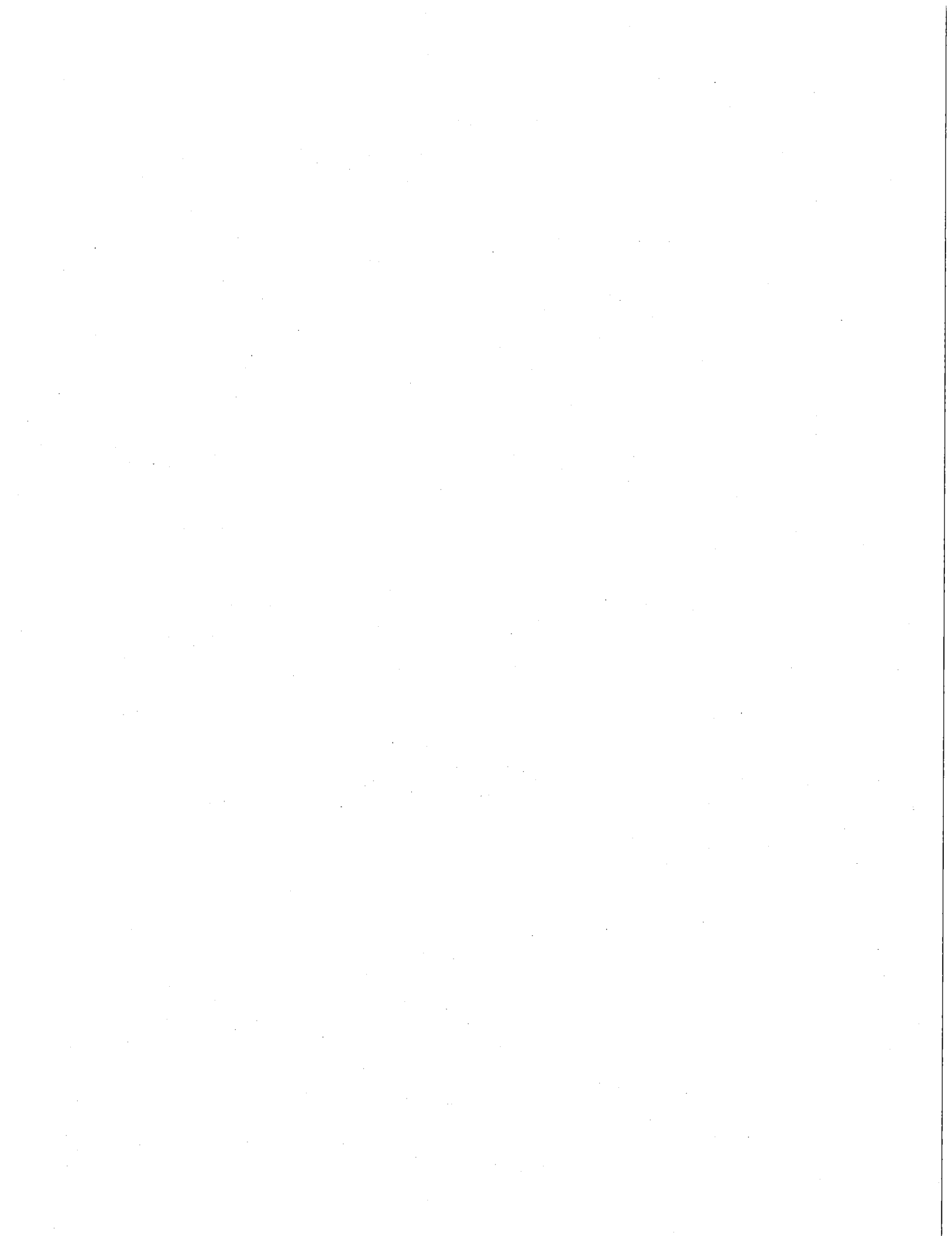
**AMENDED, AN AMENDMENT OF THE WHOLE BEARING NEW TITLE**

Vote: Yee – Aye  
Breed – Aye  
Cohen – Aye

**CONTINUED AS AMENDED to July 23, 2013.**

Vote: Yee – Aye  
Breed – Aye  
Cohen – Aye

c: Board of Supervisors  
Angela Calvillo, Clerk of the Board  
Jon Givner, Deputy City Attorney  
Rick Caldeira, Legislative Deputy Director



File No. 130567

Committee Item No. 10

Board Item No. 59

### COMMITTEE/BOARD OF SUPERVISORS

#### AGENDA PACKET CONTENTS LIST

Committee: Rules

Date 7/18/13

Board of Supervisors Meeting

Date 7/23/13

#### Cmte Board

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|-------------------------------------|-------------------------------------|--|
| <input type="checkbox"/>            | <input type="checkbox"/>            | Motion                                       |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Resolution                                   |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Ordinance                                    |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Legislative Digest                           |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Budget Analyst Report                        |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Legislative Analyst Report                   |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Youth Commission Report                      |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Introduction Form (for hearings)             |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Department/Agency Cover Letter and/or Report |
| <input type="checkbox"/>            | <input type="checkbox"/>            | MOU  |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Grant Information Form                       |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Grant Budget                                 |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Subcontract Budget                           |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Contract/Agreement                           |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Award Letter                                 |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Application                                  |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Public Correspondence                        |

#### OTHER

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Completed by: Linda Wong

Date 7/15/13

Completed by: L.W.

Date 7/23/13

An asterisked item represents the cover sheet to a document that exceeds 25 pages. The complete document is in the file.

1 [Settlement of Unlitigated Claims - 300 Spear Realty Venture LLC]  
2

3 **Resolution approving the settlement of the unlitigated claim in favor of 300 Spear**  
4 **Realty Venture LLC against the City and County of San Francisco; and the unlitigated**  
5 **claim in favor of the City and County of San Francisco against 300 Spear Realty**  
6 **Venture LLC.**  
7

8 WHEREAS, During the construction of the building located at 300 Spear Street, San  
9 Francisco, California (commonly known as the Infinity), the developer 300 Spear Realty  
10 Venture LLC ("300 Spear Realty Venture") installed certain streetlights that are not of the style  
11 and type that can be accepted by the San Francisco Public Utilities Commission ("SFPUC")  
12 for maintenance and repair; and

13 WHEREAS, A dispute has arisen between 300 Spear Realty Venture and the SFPUC  
14 in which each party claims that the other party should be responsible for the cost of removing  
15 the existing streetlights so that they can be replaced with new streetlights that are acceptable  
16 to the SFPUC; and

17 WHEREAS, In order to resolve their disputes without the cost of litigation, the SFPUC  
18 and 300 Spear Realty Venture have agreed to a settlement in which the parties would share  
19 the cost of removing and replacing the existing streetlights; and

20 WHEREAS, Under the terms of the proposed settlement, 300 Spear Realty Venture  
21 would pay the City \$133,000, which would cover the \$130,000 cost of purchasing new  
22 streetlights and the \$3,000 cost the SFPUC incurred for the electricity that has been used  
23 while the streetlights were under the control of 300 Spear Realty Venture; and  
24



1           WHEREAS, Under the terms of the proposed settlement, the SFPUC would be  
2 responsible for the \$72,000 cost of removing and replacing the existing streetlights with the  
3 new streetlights; and

4           WHEREAS, The terms and conditions of the settlement are set forth in the Release  
5 and Settlement of Claims Agreement, a copy of which is on file with the Clerk of the Board of  
6 Supervisors in File No. 130567 and is hereby declared to be a part of this resolution as if set  
7 forth fully herein; now, therefore, be it

8           RESOLVED, That, pursuant to Section 10.22 of the San Francisco Administrative  
9 Code, the Board of Supervisors hereby approves the settlement of the unlitigated claim in  
10 favor of 300 Spear Realty Venture LLC and against the City and County of San Francisco;  
11 and, be it

12           FURTHER RESOLVED, That, pursuant to Section 10.24(b) of the San Francisco  
13 Administrative Code, the Board of Supervisors hereby approves the settlement of the  
14 unlitigated claim in favor of City and County of San Francisco and against 300 Spear Realty  
15 Venture LLC; and, be it

16           FURTHER RESOLVED, That the Board of Supervisors authorizes the San Francisco  
17 Public Utilities Commission General Manager to execute the Release and Settlement of  
18 Claims Agreement with 300 Spear Realty Venture LLC.

19 APPROVED:

RECOMMENDED:

20  
21 DENNIS J. HERRERA  
City Attorney

SAN FRANCISCO PUBLIC UTILITIES  
COMMISSION

22  
23 See File for Signature  
WILLIAM K. SANDERS  
24 Deputy City Attorney

See File for Signature  
HARLAN L. KELLY, JR.  
General Manager

**MUTUAL RELEASE AND SETTLEMENT OF CLAIMS AGREEMENT**

This Mutual Release and Settlement of Claims Agreement (the "Agreement") is entered as of May 24, 2013 (the "Execution Date"), by and between 300 SPEAR REALTY VENTURE LLC, a Delaware limited liability company ("300 Spear"), and the City and County of San Francisco ("City"), a municipal corporation, acting by and through the San Francisco Public Utilities Commission, a City department. 300 Spear and City are sometimes each referred to in this Agreement as a "Party" and collectively as the "Parties."

**RECITALS**

This Agreement is executed with reference to the following facts:

A. 300 Spear was the developer of the residential project located in San Francisco at 300 Spear Street and commonly known as the Infinity ("Project"). The Project has been completed and fully occupied. 300 Spear no longer owns any residential units in the Project.

B. During the land use entitlement process for the Project, 300 Spear worked with a variety of City departments and agencies in selecting and installing 36 streetlights around the perimeter of the Project ("Existing Streetlights") and within the public sidewalk right of way along Spear, Folsom, and Main Street (see **Exhibit A**).

C. During the permitting process, the Parties worked diligently and in good faith to ensure that the correct streetlights were installed and the appropriate process followed so that the City would accept ownership of the Existing Streetlights.

D. Subsequently, a dispute arose between the Parties concerning whether or not the Existing Streetlights met City standards and needed to be replaced.

E. The Parties now desire to settle their differences on mutually agreeable terms.

NOW THEREFORE, for and in consideration of the promises, covenants, and releases hereinafter set forth in this Agreement, and for good and valuable consideration, the receipt and sufficiency of which is acknowledged, the Parties agree as follows:

**1. Recitals**

The above recitals are incorporated herein by reference and are hereby made a part of this Agreement.

**2. 300 Spear Obligations**

Within forty-five (45) days of the Effective Date, as defined below in Section 4, 300 Spear shall pay to City the amount of \$133,000. The date of 300 Spear's delivery of the payment required by this Section 2 shall be the "Payment Date." After making the payment required herein, 300 Spear shall have no further liability or responsibility with regard to either the Existing Streetlights or the New Streetlights.

### **3. City Obligations**

Except as otherwise provided in Sections 4 and 5, below, City hereby agrees to perform the following tasks within 15 (fifteen) months of the Payment Date:

- a) Purchase 36 new streetlights for installation at the Project that satisfy all City requirements ("New Streetlights");
- b) Maintain the Existing Streetlights until they are replaced with the New Streetlights;
- c) Remove the Existing Streetlights;
- d) Replace each of the Existing Streetlights with the New Streetlights;
- e) If necessary, pay any outstanding PG&E electric bills from the time the Existing Streetlights were installed until such time as the New Streetlights are installed; and
- f) Following the installation of the New Streetlights: (i) provide 300 Spear with documentation that the New Streetlights have been accepted by the City; (ii) assume sole responsibility for the operation, maintenance, and repair of the New Streetlights; and (iii) assume sole responsibility for all energy costs associated with the use of the New Streetlights.

### **4. Board of Supervisors Approval**

The City shall cause this Agreement to be submitted to the San Francisco Board of Supervisors ("Board") for approval. Notwithstanding anything herein to the contrary, 300 Spear understands and agrees that no officer or employee of City has authority to commit City to this Agreement unless and until the Board shall have duly approved this Agreement in accordance with the San Francisco Charter. The Board may approve this Agreement in its sole discretion. Therefore, any obligations of City hereunder are contingent upon such approval by the Board, and this Agreement shall not be effective unless and until such Board approval is final. In the event the Board does not approve this Agreement, then this Agreement shall terminate and shall be of no force and effect whatsoever. In the event that the Board does approve this Agreement, the effective date of the Board's approval shall be the effective date of this Agreement (the "Effective Date").

### **5. Conflict of Interest**

Through its execution of this Agreement, 300 Spear acknowledges that it is familiar with the provisions of Section 15.103 of City's Charter, Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts that constitute a violation of said provisions and agrees that it will immediately notify City if it becomes aware of any such fact during the term of this Agreement.

### **6. Release of Claims**

Each Party hereby fully releases the other from any and all claims, demands, controversies, causes of action, obligations, liabilities and damages (together, "**Claims**") relating to or arising out of any of the facts in connection with the installation of the Existing Streetlights and

replacement with the New Streetlights (the “**Released Claims**”). The Released Claims include, without limitation, any claims against any parent companies, affiliates, subsidiaries, equity partners, members, shareholders, partners, agents, insurance carriers, counsel, representatives, employees, agents, and officers of either Party and any elected or appointed City officials (together, the “**Released Parties**”).

**7. Waiver of Future Claims; Waiver of Civil Code Section 1542**

The Parties understand that they may have sustained damages that arise or may arise out of or relate to the Released Claims that may have not become apparent and that are presently unknown. The waivers and releases contained in this Agreement are specifically intended to include any such claims. The waivers and releases in this Agreement also include waivers and releases of any other claims for unknown or unanticipated injuries, losses or damages arising out of or relating to the Released Claims. The Parties waive, with respect to the Released Claims, all rights or benefits that he has or may have in the future under Section 1542 of the California Civil Code to the extent it would otherwise apply. Section 1542 read as follows:

**A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.**

The Parties acknowledges that they are assuming the risks described in this Section.

**8. No Admission of Liability**

Neither the transfer of any consideration, the doing of any of the acts referred to in this Agreement, nor anything else contained in this Agreement shall be construed to be an admission by either Party of any liability for any claims asserted by either Party against the other.

**9. Notice**

All notices, demands and other communications under this Agreement shall be in writing and signed by the party or authorized agent or attorney of the party and shall be either personally delivered to the party to whom it is addressed by courier service or overnight service (such as Federal Express or United Parcel Service), or by U.S. certified or registered mail, return receipt requested, postage prepaid, or via e-mail or facsimile, to the respective addresses of the Parties set forth below:

All notices to 300 Spear shall be sent to:	Carl Shannon Managing Director Tishman Speyer Properties One Bush Street, Suite 600 San Francisco, CA 94104 (415) 344-6630  Andrew Junius, Esq. Reuben & Junius LLP. One Bush Street, Suite 600 San Francisco, CA 94104 (415) 567-9000
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<p>All notices to City shall be sent to:</p>	<p>Barbara Hale  Assistant General Manager, SFCity Power  San Francisco Public Utilities Commission  525 Golden Gate Avenue, 13<sup>th</sup> Floor  San Francisco, CA 94102  415-554-2483</p> <p>Chief Energy and Telecommunications Deputy  Office of the City Attorney  City and County of San Francisco  City Hall, Room 234  1 Dr. Carlton B. Goodlett Place  San Francisco, CA 94102-4682  415-554-4700</p>
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**10. Successors and Assigns**

This Agreement shall inure to the benefit of and shall be binding upon the Parties to this Agreement and their respective heirs, successors, assigns or owners. Each Party shall provide a copy of this Agreement to any successor, assign or new owner prior to transfer of their respective property.

**11. Representations and Warranties**

- a) The person signing this Agreement on behalf of 300 Spear hereby warrants and represents that he or she has the power and authority to bind 300 Spear.
- b) Subject to the requirements of Section 4, the person signing this Agreement on behalf of the City hereby warrants and represents that it has the power and authority to bind the City.

**12. Entire Agreement; Controlling Law**

This Agreement sets forth the entire agreement of the Parties and any disputes concerning the Released Claims, and shall not be modified or altered except by a subsequent written agreement signed by the Parties. The laws of the State of California shall govern the validity, interpretation and enforcement of this Agreement.

**13. Counterparts; Severability; Time Is of the Essence**

This Agreement may be executed in multiple counterparts and signatures may be exchanged by facsimile or electronically, each of which shall be deemed to be an original document, and all of which together shall constitute one and the same document. In the event that any representation, warranty, acknowledgment, covenant, agreement, clause, provision, promise, or undertaking made by any party contained in this Agreement is deemed, construed, or alleged to be illegal, invalid, or unenforceable under present or future laws, in whole or in part, the Parties acknowledge that each and every other term of this Agreement shall remain valid and enforceable. Time is of the essence for the completion of the acts described in and required by this Agreement.

**14. Advice of Counsel**

The Parties represent and acknowledge that they have read and understood the terms of this Agreement and have obtained the advice of counsel on the meaning and effect of this Agreement. The Parties have had an opportunity to fully participate in preparing this Agreement and acknowledge that it is the product of the draftsmanship of the Parties. Accordingly, this Agreement shall not be construed for or against any party by virtue of their participation, or lack of participation, in the drafting hereof.

This Agreement is executed as of the Execution Date by the Parties.

300 SPEAR REALTY VENTURE LLC

By \_\_\_\_\_

Title:

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

City AND COUNTY OF SAN FRANCISCO

By:

  
\_\_\_\_\_  
HARLAN L. KELLY, JR.

Title: General Manager  
San Francisco Public Utilities  
Commission

Date: 5/24/13

APPROVED AS TO FORM:

DENNIS J. HERRERA  
City Attorney

  
\_\_\_\_\_  
WILLIAM K. SANDERS  
Deputy City Attorney


Date: 5/24/13

**14. Advice of Counsel**

The Parties represent and acknowledge that they have read and understood the terms of this Agreement and have obtained the advice of counsel on the meaning and effect of this Agreement. The Parties have had an opportunity to fully participate in preparing this Agreement and acknowledge that it is the product of the draftsmanship of the Parties. Accordingly, this Agreement shall not be construed for or against any party by virtue of their participation, or lack of participation, in the drafting hereof.

This Agreement is executed as of the Execution Date by the Parties.

300 SPEAR REALTY VENTURE, LLC,

By 

Title: **Steven R. Wechsler**  
Senior Managing Director

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

City AND COUNTY OF SAN FRANCISCO

By:

\_\_\_\_\_  
HARLAN L. KELLY, JR.

Title: General Manager  
San Francisco Public Utilities  
Commission

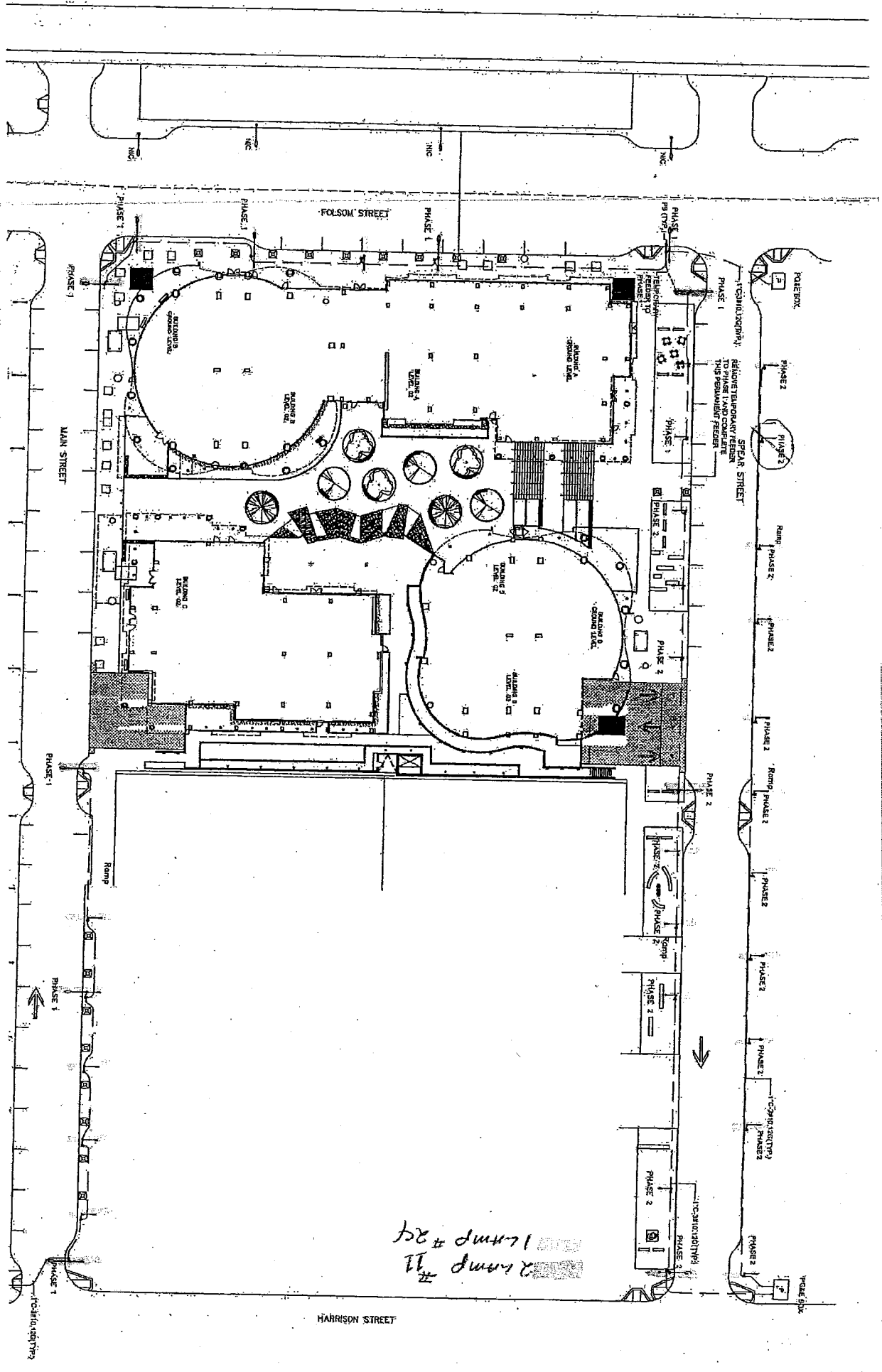
Date: \_\_\_\_\_

APPROVED AS TO FORM:

DENNIS J. HERRERA  
City Attorney

\_\_\_\_\_  
WILLIAM K. SANDERS  
Deputy City Attorney

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



Room # 201  
Room # 202

HARRISON STREET