

File No. 230541

Committee Item No. 1

Board Item No. 22

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Budget and Finance Committee Date June 9, 2023

Board of Supervisors Meeting Date June 27, 2023

Cmte Board

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OTHER (Use back side if additional space is needed)

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| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <u>Draft Lease</u> |
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| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <u>Port Resolution No. 21-07 2/5/2021</u> |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <u>Port Resolution No. 21-46 10/22/2021</u> |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <u>Port Resolution No. 23-20 4/25/2023</u> |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <u>PLN Final Environmental Impact Report 8/7/2008</u> |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <u>PLN Community Plan Exemption Checklist</u> |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <u>Mitigation Monitoring and Reporting Program</u> |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <u>PLN CEQA Exemption Det - No Substantial Mod 4/11/2022</u> |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | <u>Port Presentation 6/9/2023</u> |

Completed by: Brent Jalipa Date June 1, 2023

Completed by: Brent Jalipa Date June 9, 2023

1 [Real Property Lease - YMCA of San Francisco - Building 49 - 701 Illinois Street - Crane Cove
2 Park - Initial Annual Base Rent \$92,809.80]

3 **Resolution approving and authorizing the execution, delivery, and performance of**
4 **Lease No. 16997 for Building 49 located at 701 Illinois Street within Crane Cove Park by**
5 **the Young Men’s Christian Association (YMCA) of San Francisco, for an initial term of**
6 **10 years plus options to extend for a total term of up to 34 years, 11 months, with an**
7 **initial annual base rent of \$92,809.80 and a fee waiver for a companion license**
8 **agreement, effective upon approval of this Resolution; making findings under the**
9 **California Environmental Quality Act; and to authorize the Executive Director of the**
10 **Port to enter into any additions, amendments or other modifications to the Lease that**
11 **do not materially increase the obligations or liabilities of the City or Port and are**
12 **necessary or advisable to complete the transactions which this Resolution**
13 **contemplates and effectuate the purpose and intent of this Resolution.**

14
15 WHEREAS, Pursuant to Chapter 1333 of the Statutes of 1968 (as amended, the
16 “Burton Act”) and the implementing Agreement Relating to Transfer of the Port of San
17 Francisco from the State of California to the City and County of San Francisco (“Transfer
18 Agreement”), the State of California granted to the City and County of San Francisco (“City”)
19 certain current and former tide and submerged lands to be held under the jurisdiction of the
20 San Francisco Port (“Port”) and subject to the common law public trust for commerce,
21 navigation, and fisheries and the statutory trust imposed by the Burton Act, (collectively, the
22 “Public Trust”); and

23 WHEREAS, On February 9, 2021, the Port Commission, by Resolution No. 21-07,
24 authorized Port staff to issue a request for proposals (“Request for Proposals” or “RFPs”) and
25 manage the solicitation process for the adaptive rehabilitation, reuse, lease and operation of

1 two historic structures – the ‘Kneass Building’ and ‘Building 49’ – both located in the Pier 70
2 Area adjacent to Crane Cove Park generally along Illinois Street between 18th and 19th
3 Streets; and

4 WHEREAS, On April 14, 2021, the Port issued the Request for Proposals for the
5 Kneass Building” and “Building 49”, (or collectively the “Crane Cove Park Buildings”); and

6 WHEREAS, On October 26, 2021, the Port Commission approved Resolution No. 21-
7 46 authorizing staff to enter into lease negotiations with Young Men’s Christian Association of
8 San Francisco, a California Nonprofit Public Benefit Corporation (“YMCA SF” or “YMCA”); and

9 WHEREAS, On August 7, 2008, the Planning Commission finally certified the Final
10 Environmental Impact Report for the Eastern Neighborhoods Rezoning and Area Plans
11 (Eastern Neighborhoods EIR) (Planning Department Case No. 2004.0160E) in compliance
12 with the California Environmental Quality Act (CEQA) (Public Resources Code, Section 21000
13 et seq.), the CEQA Guidelines (14 Cal. Code Regs., Section 15000 et seq.) and Chapter 31 of
14 the San Francisco Administrative Code; copies of the Planning Commission certification
15 Motion and Eastern Neighborhoods EIR are on file with the Clerk of the Board in Board File
16 No. 230541 and are incorporated herein by reference; and

17 WHEREAS, On October 5, 2015, the Planning Department issued a Community Plan
18 Exemption (CPE) for the Crane Cove Park – Pier 70 project (Planning Department Case No.
19 2015-0013214ENV) under the Eastern Neighborhoods EIR, which found that the Crane Cove
20 Park project is encompassed within the analysis contained in the Eastern Neighborhoods EIR
21 and required no further environmental review; a copy of the CPE is on file with the Clerk of the
22 Board of Supervisors in Board File No. 230541 and is incorporated herein by this reference;
23 and

24 WHEREAS, Planning Department staff prepared a Mitigation Monitoring and Reporting
25 Program (MMRP) setting forth mitigation measures that were identified in the Eastern

1 Neighborhoods EIR that are applicable to the Crane Cove Park project, and these mitigation
2 measures are set forth in their entirety in the MMRP, a copy of which is on file with the Clerk
3 of the Board of Supervisors in Board File No. 230541 and incorporated herein by this
4 reference; and

5 WHEREAS, On April 11, 2022, the Planning Department issued a Determination of No
6 Substantial Modification which found that the YMCA SF Building 49 project (“Project”) is within
7 the scope of the project evaluated in the Eastern Neighborhoods EIR and the prior
8 Community Plan Exemption (2015-001314ENV), and no additional environmental review is
9 required, a copy of which is on file with the Clerk of the Board of Supervisors in Board File
10 No. 230541 and incorporated herein by this reference; and

11 WHEREAS, The proposed Lease No. 16997 (the “Lease”) between Port and YMCA
12 SF, a copy of which is on file with the Clerk of the Board of Supervisors in Board File
13 No. 230541 and incorporated herein by this reference, for the rehabilitation, reuse, lease, and
14 operation of Building 49 by the YMCA SF as described in the Memorandum to the Port
15 Commission dated April 21, 2023 (the “Memorandum”), a copy of which is on file with the
16 Clerk of the Board of Supervisors in Board File No. 230541 and incorporated herein by this
17 reference, will benefit the Public Trust through historic rehabilitation of and investment in Trust
18 assets, enhance water recreation opportunities, and provide visitor-serving amenities which
19 will attract the public to use and enjoy these cultural and historic resources and generate
20 revenue to fund necessary improvements throughout the Port; and

21 WHEREAS, Port staff recommends approval of a companion, no-fee License 17011
22 (the “License”) governing the YMCA SF’s use of a portion of Crane Cove Park for YMCA SF
23 programming, a copy of which is on file with the Clerk of the Board of Supervisors in Board
24 File No. 230541 and incorporated herein by this reference, as described in the Memorandum;
25 and

1 WHEREAS, On April 25, 2023, pursuant to Port Commission Resolution No. 23-20, the
2 Port Commission approved the Lease and License, both with the YMCA SF, and authorized
3 the Port Executive Director or her designee to execute the Lease and License upon approval
4 by the Board of Supervisors; now, therefore, be it

5 RESOLVED, That the Board of Supervisors has reviewed and considered the Final
6 EIR, CPE, Determination of No Substantial Modification, and all other environmental
7 documents on file referred to herein, and adopts them as its own and incorporates them by
8 reference as though fully set forth in this resolution, and adopts all required mitigation
9 measures contained in the MMRP as conditions of approval; and, be it

10 FURTHER RESOLVED, That there have been no substantial changes to the Eastern
11 Neighborhoods Rezoning and Area Plans or the Crane Cove Park project, and no substantial
12 changes in circumstances, that would require major revisions to the Eastern Neighborhoods
13 EIR or prior Community Plan Exemption due to the involvement of new significant
14 environmental effects or an increase in the severity of previously identified significant impacts,
15 and there is no new information of substantial importance that would change the conclusions
16 set forth in the Eastern Neighborhoods EIR or prior Community Plan Exemption; and, be it

17 FURTHER RESOLVED, That the Board of Supervisors hereby approves the Lease as
18 described in the Memorandum and on terms set forth in the Lease on file with the Clerk of the
19 Board of Supervisors and authorizes the Port Executive Director or her designee to execute
20 the Lease; and, be it

21 FURTHER RESOLVED, That the Board of Supervisors hereby approves the License
22 as described in the Memorandum and on terms set forth in the License on file with the Clerk
23 of the Board of Supervisors, and authorizes the Executive Director or her designee to execute
24 the License; and, be it

1 FURTHER RESOLVED, That the Board of Supervisors authorizes the Port Executive
2 Director or her designee, to enter into any additions, amendments or other modifications to
3 the Lease or License that the Executive Director, in consultation with the City Attorney,
4 determines are in the best interest of the Port, do not materially increase the obligations or
5 liabilities of the Port or materially decrease the public benefits accruing to the Port, and are
6 necessary and advisable to complete the transaction and effectuate the purpose and intent of
7 this resolution, such determination to be conclusively evidenced by the execution and delivery
8 by the Executive Director of any such documents; and, be it

9 FURTHER RESOLVED, That within thirty (30) days of the Lease and License being
10 fully executed by all parties, the Port shall provide the final agreements to the Clerk of the
11 Board for inclusion into the official file.

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<p>Item 1 File 23-0541</p>	<p>Department: Port Commission (Port)</p>
<p>EXECUTIVE SUMMARY</p>	
<p style="text-align: center;">Legislative Objectives</p> <ul style="list-style-type: none"> • The proposed resolution would approve a lease between the Port of San Francisco (Port) and the Young Men’s Christian Association of San Francisco (YMCA SF) for Building 49 at Pier 70 to develop a community wellness facility, a retail aquatics center and food and beverage space for a term of ten years with options to extend, for a total possible lease term of 34 years and 11 months. <p style="text-align: center;">Key Points</p> <ul style="list-style-type: none"> • In 2021, the Port conducted a competitive Request for Proposals (RFP) process to select a partner to develop and operate Building 49 located within Crane Cove Park at 701 Illinois Street, which is currently vacant. • A five-member scoring panel including community leaders, experts from key disciplines, and Port staff conducted a review and scoring of the two proposals submitted and conducted oral interviews for the two applicants. YMCA SF scored higher than the other applicant, and the scoring panel recommended them to develop the property. • YMCA SF is solely responsible for required tenant improvements estimated to cost \$5.2 million. The Port will provide up to 11 months of rent abatement during the construction of tenant improvements, as the building is unusable until the improvements are complete. • YMCA SF will also perform seismic improvements and structural upgrades estimated to cost \$1.36 million within 24 months after the Port issues the building permit. The Port will share these additional structural improvement costs through rent credits equal to 50 percent of the actual costs of the seismic strengthening and structural improvement work or \$500,000, whichever is less. <p style="text-align: center;">Fiscal Impact</p> <ul style="list-style-type: none"> • Over the initial 10-year lease term, the Port expects to receive \$288,827 in rent from YMCA SF, which is the base rent owed, net of the expected seismic credit and ongoing credit for maintenance of the publicly accessible restrooms. This does not include any percentage rent generated by gross revenues of for-profit subtenants, which would result in additional revenues to the Port if gross revenues sufficiently offset base rent allocated to each subtenant. <p style="text-align: center;">Recommendation</p> <ul style="list-style-type: none"> • Approve the proposed resolution. 	

MANDATE STATEMENT

City Charter Section 9.118(c) states that any lease, modification, amendment, or termination of a lease that had an initial term of ten years or more, including options to extend, or that had anticipated revenues of \$1 million or more is subject to Board of Supervisors approval.

BACKGROUND

In 2021, the Port of San Francisco (“Port”) conducted a competitive Request for Proposals (“RFP”) process to select a partner to develop and operate Building 49 located within Crane Cove Park at 701 Illinois Street, which is currently vacant.

In Summer 2021, a five-member scoring panel including community leaders, experts from key disciplines, and Port staff conducted a review and scoring of the two proposals submitted and conducted oral interviews for the two applicants.¹ The Young Men’s Christian Association of San Francisco (YMCA SF) scored higher than the other applicant, and the scoring panel recommended them to develop the property. Building 49 includes a rentable building area of 6,817 square feet. Use of the adjacent outdoor space within Crane Park is covered through a separate license agreement, as discussed below.

DETAILS OF PROPOSED LEGISLATION

The proposed resolution would approve a lease between the Port and YMCA SF for Building 49 at Pier 70 to develop a community wellness facility, a retail aquatics center and food and beverage space for an initial term of ten years with four, five-year options to extend, and two, two-year options to extend, for a total possible lease term of 34 years and up to 11 months of construction. The proposed resolution would also approve a fee-waiver for a companion license agreement for use of the outdoor, adjacent space.

YMCA SF would be the primary tenant of the lease, with two subtenants. Dogpatch Paddle, a human-powered boating (such as stand-up paddle boards and kayaks) business and club, would occupy approximately 2,289 square feet of the water-facing east side of the facility and offer lessons, rentals, classes, youth programs, and a retail store. Daily Driver, a community-oriented,

¹ The scoring panel included: a Bay Area Water Trail Planner, a Property Manager in the Port’s Real Estate & Development Division, the Director of Sustainable Design for an environmental consulting firm, a Port Advisory Group Member and Bayview Resident, and a Project Manager from the SF Office of Community Investment and Infrastructure. YMCA was the high scorer receiving 462/650 points compared to the other applicant (City Kayak) which received 347/650 points.

female-owned bagel business would be the second subtenant and would occupy 455 square feet of the space providing grab-and-go food and beverage service. Key lease terms are summarized in Exhibit 1 below.

No-Fee License for Use of Outdoor Space

The Port Commission will execute a separate non-exclusive, revocable license agreement with the YMCA SF that would grant access for use of the outdoor space in Crane Cove Park adjacent to Building 49 at no extra cost.

Exhibit 1: Key Terms of Proposed Lease

Premises	Building 49 including 6,817 rentable square feet (4,073 for YMCA community facility, 2,289 SF for aquatics center, and 455 square feet for food and beverage space)
Initial Term	10 Years, 11 months ²
Options to Extend	Four 5-Year options, followed by two, 2-Year options to extend
Initial Base Rent	\$92,809.80 annual (\$7,734.15 monthly)
Rent per Square Foot	\$13.61/rentable square foot per year, or \$1.13/rentable square foot per month
Base Rent Adjustments	3% annual increase during initial term. Adjusted by CPI during extension term.
Percentage Rent	6% of gross revenues generated by each for-profit subtenant less the subtenant's share of the Base Rent, unless 6% of gross revenues falls below the subtenant's share of the Base Rent
Security Deposit	\$15,486
Required Tenant Improvements	Tenant is required to contribute at least \$5.0 million to the improvements of Building 49, not including the seismic improvements described below. Tenant is solely responsible for these improvements and costs and must complete the initial improvements within 24 months of final approval of the building permit for the initial improvements.

² The initial term expires 10 years after the rent commencement date. The Port will provide a maximum of 11 months of rent abatement during the construction of tenant improvements, as the building is unusable until the improvements are complete.

Seismic Improvements and Rent Credit	Tenant will perform seismic improvements and structural upgrades, estimated to cost approximately \$1.36 million within 24 months after the Port issues the building permit. The Port will share these costs through rent credits equal to the lesser of: (a) 50% of the actual costs of the seismic strengthening and structural improvement work, or (b) \$500,000. ³
Construction Rent Abatement	Port will provide up to 11 months (330 days) of rent abatement during the construction of the Tenant Improvements.
Public Restrooms Rent Credit	Tenant shall receive a \$2,000 reduction in base rent each month (\$24,000 annually) in exchange for operating and maintaining the public restrooms, subject to an annual 3% escalation factor
Maintenance and Repair	Sole responsibility of the tenant
Connection to Existing Power Line	The Port will allow the Tenant to connect to the existing power line, currently provided to Building 49, if the Tenant does not install their own direct power line. Tenant will pay an annual capacity charge (\$16,361) plus actual costs charged by SFPUC (to be paid directly to SFPUC by Tenant) to supply the power, subject to an annual 3% escalation factor for any capacity charge aspect.

Source: Proposed Lease

Base Rent

Under Section 23.30 of the Administrative Code, an appraisal of fair market rent is not required if rent is less than \$45 per square foot per year. According to Port staff, base rent of \$13.62 per square foot per year was determined based on the highest rate offered under a competitive solicitation, effectively setting the fair market rent. The base rent indirectly acknowledges the sizable contribution required by the Tenant to occupy (not less than \$5.0 million) according to Port staff. The Port will provide up to 11 months of rent abatement during the construction of tenant improvements, as the building is unusable until the improvements are complete. If the for-profit subtenants generate sufficient revenues, the Port will also receive a share of gross revenues (percentage rent), as described in Exhibit 1 above.

³ The proposed lease states that the seismic rent credits would not exceed the *greater* of 50% of the actual costs of the seismic strengthening and structural improvement work or \$500,000, but Port staff report that this will be clarified in the final version to state rent credits will be equal to the *lesser* of the two amounts, i.e., the seismic rent credits will not exceed \$500,000.

Tenant Improvements & Seismic Upgrades

YMCA SF is solely responsible for required tenant improvements estimated to cost \$5.2 million as of April 2023, subject to escalations over time. Under the lease, the tenant improvements will include: 1) improvements to operate fitness and exercise areas, 2) infrastructure improvements to support the food and beverage retail, as well as the water sports retail shop, 3) electrical, HVAC, water and sewer facilities, and 4) improvements to the building's exterior. According to Port staff, construction is expected to begin in July 2023.

YMCA SF will also perform seismic improvements and structural upgrades estimated to cost \$1.36 million within 24 months after the Port issues the building permit. The Port will share these additional structural improvement costs through rent credits equal to the lesser of: (a) 50 percent of the actual costs of the seismic strengthening and structural improvement work, or (b) \$500,000.

Changes from Proposal

A memo from the Port Executive Director to the Port Commission dated April 21, 2023 highlighted three changes reflected in the proposed lease agreement that were not in the YMCA SF proposal, including: (1) the Seismic Rent Credit to partially offset the costs of seismic improvements that were unanticipated, (2) monthly rent credits to offset the costs of operating and maintaining the public restrooms, and (3) a 15 percent reduction to starting Base Rent in exchange for three percent annual escalation of base rent.

Environmental Review

On April 11, 2022, the San Francisco Planning Department issued a Determination of No Substantial Modification which found that the YMCA SF Building 49 project is within the scope of the project evaluated in the Eastern Neighborhoods EIR and the prior Community Plan Exemption (2015-001314ENV), and no additional environmental review is required.

FISCAL IMPACT

Over the initial 10-year lease term, the Port expects to receive \$288,827 in rent from YMCA SF, as shown in Exhibit 2 below. As shown below, the tenant is not expected to pay rent to the Port until the seventh year of the lease due to application of the Seismic Rent Credit. The Seismic Rent Credit is applied annually based on the amount of rent due to the Port until the full \$500,000 credit is applied. This does not include any percentage rent generated by gross revenues of for-profit subtenants, which would result in additional revenues to the Port if gross revenues sufficiently offset base rent allocated to each subtenant. According to Port staff, it is possible the Port could receive a percentage rent during the initial term, but it is difficult to estimate the amount at this time since the profits of the for-profit tenants are unknown.

Exhibit 2: Annual Rent Paid by YMCA SF

Lease Year	Monthly Base Rent	Annual Base Rent	Annual Restroom Credit	Rent Before Seismic Rent Credit	Annual Seismic Rent Credit	Total Expected Rent to Port
1	\$7,734	\$92,810	(\$24,000)	\$68,810	(\$68,810)	\$0
2	\$7,966	\$95,594	(\$24,720)	\$70,874	(\$70,874)	\$0
3	\$8,205	\$98,462	(\$25,462)	\$73,000	(\$73,000)	\$0
4	\$8,451	\$101,416	(\$26,225)	\$75,190	(\$75,190)	\$0
5	\$8,705	\$104,458	(\$27,012)	\$77,446	(\$77,446)	\$0
6	\$8,966	\$107,592	(\$27,823)	\$79,769	(\$79,769)	\$0
7	\$9,235	\$110,820	(\$28,657)	\$82,162	(\$54,910)	\$27,252
8	\$9,512	\$114,144	(\$29,517)	\$84,627		\$84,627
9	\$9,797	\$117,569	(\$30,402)	\$87,166		\$87,166
10	\$10,091	\$121,096	(\$31,315)	\$89,781		\$89,781
	Total Rent Paid	\$1,063,960	(\$275,133)	\$788,827	(\$500,000)	\$288,827

Source: Port

According to Port staff, lease revenues will be used to offset expenses incurred by the Port for operations and maintenance as an enterprise agency.

RECOMMENDATION

Approve the proposed resolution.

Port Lease No. L-16997 with the YMCA of San Francisco

Board of Supervisors

Budget and Finance Committee

June 9, 2023

Presented By: Josh Keene

Assistant Deputy Director - Waterfront Development



PROJECT TIMELINE OVERVIEW

RFP Process	April - August 2021
Port Commission Approval (Resolution 23-20)	April 25, 2023
BOS Approval*	June 2023
Building Construction	July – December 2023
Building Opens	Early 2024

*Beginning with today's hearing of the item at this June 9 Budget & Finance Committee meeting

OVERVIEW OF KEY LEASE TERMS

Term	Ten (10) Years Initial Term Four, 5-Year + two, 2-year Tenant Extension Options Total potential term: 34 years, 9 months
Capital Contribution by Tenant (YMCA of San Francisco)	YMCA commits to provide <u>at least \$5M</u> of Tenant Investment to Building.
Rent to Port	Initial Base Rent of \$93,500 per year Percentage Rent of 6% of gross revenues for each for-profit subtenant
Maintenance and Repair of Building Including Public Restrooms	Sole responsibility of Tenant. Port will have no maintenance obligations, including for the public restrooms serving Crane Cove Park.
Operating Expenses	With the exception of a rent credit of \$2,000 per month for costs associated with the public restrooms, Tenant to operate the facility at its sole expense including the payment of all utilities costs, applicable taxes, etc.



FOR YOUTH DEVELOPMENT®
FOR HEALTHY LIVING
FOR SOCIAL RESPONSIBILITY

OPEN AND ACCESSIBLE WATERFRONT

Crane Cove-Building 49





**CITY AND COUNTY OF SAN FRANCISCO
LONDON N. BREED, MAYOR**

LEASE NO. L-16997

BY AND BETWEEN

**THE CITY AND COUNTY OF SAN FRANCISCO
OPERATING BY AND THROUGH THE
SAN FRANCISCO PORT COMMISSION**

AND

**YOUNG MEN'S CHRISTIAN ASSOCIATION OF SAN FRANCISCO, A
CALIFORNIA NONPROFIT PUBLIC BENEFIT CORPORATION**

CRANE COVE PARK BUILDING 49

[LEASE DATE, 2023]

**ELAINE FORBES
EXECUTIVE DIRECTOR**

SAN FRANCISCO PORT COMMISSION

**KIMBERLY BRANDON, PRESIDENT
WILLIE ADAMS, VICE PRESIDENT
GAIL GILMAN, COMMISSIONER
ED HARRINGTON, COMMISSIONER
STEVEN LEE, COMMISSIONER**

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SCHEDULE 6 IMPROVEMENTS AND ALTERATIONS REMOVAL REQUEST FORM

**BASIC LEASE INFORMATION
LEASE AGREEMENT**

<i>Lease Date:</i>	XXXX XXXX, 2023
<i>Lease Number:</i>	L-16997
<i>Landlord or Port:</i>	CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation, operating by and through the SAN FRANCISCO PORT COMMISSION
<i>Landlord's Address:</i>	Port of San Francisco Pier 1 San Francisco, California 94111 Attention: Deputy Director, Real Estate and Development Telephone: (415) 274-0400 Facsimile: (415) 274-0494
<i>Tenant:</i>	YOUNG MEN'S CHRISTIAN ASSOCIATION OF SAN FRANCISCO, a California Nonprofit Public Benefit Corporation
<i>Tenant's Main Contact Person and Mailing Address:</i>	Jamie Bruning-Miles, President and CEO YMCA of San Francisco 169 Steuart St. San Francisco, CA 94105 Telephone: (415) 777-9622 Cell: (415) 932-9990 Email: JBruning-Miles@ymcasf.org
<i>Tenant's Billing Contact and Address:</i>	Mittie Grigsby, CFO YMCA of San Francisco 169 Steuart Street San Francisco, CA 94105 Telephone: (415) 777-9622 Cell: (510) 566-1215 Email: Mgrigsby@ymcasf.org
<i>Tenant's Emergency Contact and Address:</i>	Chris McComic, VP YMCA of San Francisco 169 Steuart Street San Francisco, CA 94105 Telephone: (415) 777-9622 Cell: (415) 688-9726 Email: Cmccomic@ymcasf.org

<p><i>Tenant's Insurance Contact and Address (not broker):</i></p>	<p>Jackie O'Brien YMCA of San Francisco 169 Steuart Street San Francisco, CA 94105 Telephone: (415) 777-9622 Cell: (617) 990-2757</p> <p>Email: JObrien@ymcasf.org</p>
<p><i>Contact Information for Tenant's Agent for Service of Process:</i></p>	<p>CT Corp 330 N. Brand Blvd. Glendale, CA 91023-2366</p>
<p><i>Premises:</i></p>	<p>The Premises is comprised of Building 49 (the "Building"), the existing improvements thereon of approximately 8,000 square feet with a rentable area of approximately Six Thousand Eight Hundred Seventeen (6,817) square feet, located within Crane Cove Park (the "Park"), in the City and County of San Francisco as more particularly shown on <i>Exhibit A</i> attached hereto, and all Improvements hereafter constructed in, on or around the Building.</p> <p>The address of Building 49 is 701 Illinois Street San Francisco, California 94107</p>
<p><i>Effective Date; Commencement Date; Rent Commencement Date; Expiration Date; Initial Term:</i></p>	<p>This Lease shall become effective and the Term shall commence upon full execution by Tenant and Port (the "Commencement Date" or the "Effective Date").</p> <p>Provided that there is no existing Event of Default, Rent shall be abated during construction of the Initial Improvements (as defined below) starting on the Commencement Date until the earlier of (i) the date Port issues a Temporary Certificate of Occupancy related to the Initial Improvements; or (ii) Three Hundred Thirty (330) days after the Commencement Date ("Construction Term"). Tenant shall pay Base Rent payments starting on the earlier of the date Port issues a Temporary Certificate of Occupancy related to the Initial Improvements or the Three Hundred Thirtieth (330th) day after the Commencement Date regardless of the status of completion of the Initial Improvements ("Rent Commencement Date"). Notwithstanding the foregoing, and subject to compliance with the terms and conditions of the Work Letter, Tenant must pay rent in the amount required by the then-current Port Commission-adopted parameter rates for any uses in the Building other than construction during the Construction Term.</p> <p>This Lease shall expire on the date that is the last day of the tenth (10th) year after the Rent Commencement Date ("Expiration Date").</p> <p>The "Initial Term" shall be from the Rent Commencement Date to the Expiration Date.</p> <p>Notwithstanding anything to the contrary in this Lease, if, despite Tenant's commercially reasonable efforts, the Building Permit for</p>

	<p>the Initial Improvements has not been issued and Finally Approved on or before the date that is 330 days after the Commencement Date (“Upset Date”) for any reason whatsoever, then Tenant may terminate this Lease by written notice to Port given within five (5) business days of the Upset Date. The termination notice shall immediately terminate this Lease as of the date of such notice; shall automatically terminate any other use agreements, including any licenses then in effect between the parties for the Building or the Park; and shall be irrevocable. Port shall return any unused portion of the Security Deposit as provided in Section 9. Except for provisions that survive the expiration or earlier termination of this Lease, the parties shall have no further obligations under this Lease as of the date of Tenant’s notice.</p> <p>Promptly following each of the actual Effective Date, Commencement Date and Rent Commencement Date, Port and Tenant shall execute a Memorandum substantially in the form attached hereto as Exhibit B, confirming the actual Effective Date, Commencement Date, Rent Commencement Date, Upset Date, and Expiration Date, but either party’s failure to do so shall not affect the commencement or expiration of the Term or the actual Rent Commencement Date.</p>
<i>Permitted Use:</i>	<p>Operation of a wellness center featuring fitness and wellness programming and classes and community events; an aquatics center which includes sales, rentals and lessons related to human-powered vessels such as kayaks and stand-up paddleboards; and a food and beverage concession. The Permitted Uses are more fully described in the Operations Plan.</p>
<i>Subtenant Space:</i>	<p>There shall be two (2) spaces in the Building designated for Subtenants as more particularly shown on Exhibit A attached hereto, as follows:</p> <p>(1) “Sublease Premises A”: of approximately 2,289 square feet located in the eastern area of the Building to be used as an aquatics center; and</p> <p>(2) “Sublease Premises B”: of approximately 455 square feet located in the southwestern area of the Building to be used for retail food and beverage operations.</p>
<i>Initial Subtenants: Dogpatch Paddle and Daily Driver:</i>	<p>As of the Effective Date, Port consents to the following Subleases on the terms and conditions of the Port’s Consents attached hereto as follows:</p> <p>(1) For Sublease Premises A: A Sublease to Dogpatch Paddle, LLC. Port’s Consent is attached as Exhibit C (the “Dogpatch Paddle Sublease”); and</p> <p>(2) For Sublease Premises B: A Sublease to Daily Driver LLC. Port’s Consent is attached as Exhibit D (the “Daily Driver Sublease”).</p> <p>Further subleasing is subject to the provisions of Section 23.5.</p>

<p><i>Initial Term Monthly Base Rent and Annual Adjustments:</i></p>	<p>Tenant is responsible for the payment of Rent. Tenant shall pay monthly base rent in an amount equal to Seven Thousand Seven Hundred Thirty Four Dollars and Fifteen Cents(\$7,734.15) (“Monthly Base Rent”). Base Rent is based on a blended rate of \$1.1345/square foot (“Blended Monthly Base Rent”).</p> <p>On each Anniversary Date during the Initial Term, Monthly Base Rent (including the Monthly Base Rent Allocation for each Subtenant as defined below) will increase by three percent (3%) (regardless of the CPI) (the “Annual Adjustment”).</p> <p>The table below sets out the Base Rent payable in each Lease Year inclusive of each Annual Adjustment.</p> <table border="1" data-bbox="542 621 1281 999"> <thead> <tr> <th>Lease Year</th> <th>Annual Base Rent</th> <th>Monthly Base Rent</th> </tr> </thead> <tbody> <tr> <td>1</td> <td>\$92,809.80</td> <td>\$7,734.15</td> </tr> <tr> <td>2</td> <td>\$95,594.09</td> <td>\$7,966.17</td> </tr> <tr> <td>3</td> <td>\$98,461.92</td> <td>\$8,205.16</td> </tr> <tr> <td>4</td> <td>\$101,415.77</td> <td>\$8,451.31</td> </tr> <tr> <td>5</td> <td>\$104,458.25</td> <td>\$8,704.85</td> </tr> <tr> <td>6</td> <td>\$107,591.99</td> <td>\$8,966.00</td> </tr> <tr> <td>7</td> <td>\$110,819.75</td> <td>\$9,234.98</td> </tr> <tr> <td>8</td> <td>\$114,144.35</td> <td>\$9,512.03</td> </tr> <tr> <td>9</td> <td>\$117,568.68</td> <td>\$9,797.39</td> </tr> <tr> <td>10</td> <td>\$121,095.74</td> <td>\$10,091.31</td> </tr> </tbody> </table>	Lease Year	Annual Base Rent	Monthly Base Rent	1	\$92,809.80	\$7,734.15	2	\$95,594.09	\$7,966.17	3	\$98,461.92	\$8,205.16	4	\$101,415.77	\$8,451.31	5	\$104,458.25	\$8,704.85	6	\$107,591.99	\$8,966.00	7	\$110,819.75	\$9,234.98	8	\$114,144.35	\$9,512.03	9	\$117,568.68	\$9,797.39	10	\$121,095.74	\$10,091.31
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<p><i>Percentage Rent; Participation Rent:</i></p>	<p>In addition to the Monthly Base Rent, in any month in which the amount under clause (i) below exceeds the Monthly Base Rent Allocation as further described in Section 5.2, Tenant shall pay to Port, as calculated on a monthly basis and paid quarterly, for each for-profit Tenant (for example, a Transferee that is a for-profit entity) and Subtenant, the difference between: (i) six percent (6%) of Gross Revenues generated by that Subtenant; and (ii) the respective monthly Base Rent allocation as shown below, subject to adjustments (“Monthly Base Rent Allocation”) (collectively, “Percentage Rent”).</p> <p>Initial Monthly Base Rent Allocation for Sublease Premises A: \$2,918.48</p> <p>Initial Monthly Base Rent Allocation for Sublease Premises B: \$1,353.63</p> <p>The Restroom Rent Credit, as defined below, shall not be taken into account when calculating Percentage Rent. There shall be no deductions from Percentage Rent for costs associated with subletting, including for broker commissions, attorneys’ fees or costs for improvements, fixtures or equipment.</p> <p>In the event that Tenant seeks consent to amend a Sublease or enter a new Sublease with sublease base rent in excess of the then-current Monthly Base Rent Allocation (including as a result of increased square footage in the sublease), then, in addition to the monthly</p>																																	

	<p>Base Rent and Percentage Rent, Tenant shall pay to Port, as Additional Rent, fifty percent (50%) of such rent or other sums paid or payable to Tenant under such Sublease as rent (excluding utility pass-through costs, a commercially reasonable property management fee, and the like) (allocated on a square footage basis in the case of increased square footage) in excess of the then-current Monthly Base Rent Allocation (“Participation Rent”) as further described in <i>Section 5.3</i>. Participation Rent shall be in addition to Base Rent and Percentage Rent and shall not be taken into account when calculating Percentage Rent.</p> <p>Further, Tenant agrees that as a condition of Port’s consent to a Sublease or Transfer to a tenant or Subtenant with a substantially different business model (such as alcohol sales) or if Tenant becomes a for-profit entity, Port may elect to increase the monthly Percentage Rent amount above six-percent (6%) or require Tenant to pay Percentage Rent in a commercially reasonable amount consistent with other Port tenants with similar operations, as determined by Port in its reasonable discretion.</p>
<p><i>Extension Options:</i></p>	<p>Subject to the terms and conditions described below and in <i>Section 7</i>, Tenant shall have: (i) four (4) options to extend the term for a period of five (5) years each; (ii) followed by two (2) options to extend the term for a period of two (2) years each. Each extension option and each extension term, whether for five (5) or two (2) years, is referred to in this Lease as an “Extension Option” and an “Extension Term.” Tenant may exercise an Extension Option by providing Port with written notice to exercise an Extension Option (each an “Option Notice”) no less than Three Hundred Sixty-Fifty (365) days prior to the relevant expiration date (each an “Option Notice Deadline”), except in the case of the two (2) year Extension Options, in which case the Option Notice shall be given no less than six (6) months prior to the relevant expiration date and such 6-month date shall be the Option Notice Deadline.</p> <p>Tenant may include in the Option Notice, a request to continue to use the Interim Power Line during the applicable Extension Term. Port will include in its written confirmation of the Extension Term Rent whether Tenant may access the Interim Power Line during the applicable Extension Term. If Port’s written confirmation is silent on whether Tenant may use the Interim Power Line, then it will be deemed as if the Interim Power Line is unavailable for Tenant’s use during the applicable Extension Term.</p> <p>If Port confirms, or is deemed to have confirmed, that the Interim Power Line is unavailable for Tenant’s use during the applicable Extension Term, then Tenant may revoke its Option Notice upon written notice to Port given within ninety (90) days after Port’s confirmation or deemed confirmation.</p> <p>If Port confirms that the Interim Power Line is available for Tenant’s use but only for a portion of the applicable Extension Term or such use is subject to a new limitation (e.g., available but at a lesser capacity), then Tenant may elect to revoke its Option Notice entirely or revoke and provide a modified Option Notice for an Extension Term that is only for the period of availability or only for</p>

	such period of time as the Interim Power Line is available without being subject to the new limitation. Tenant shall provide such revocation (or revocation and modified Option Notice) within ninety (90) days after receipt of Port's confirmation.
<i>Rent During an Extension Term:</i>	<p>On the commencement date of an Extension Term (if any) and on each Anniversary Date of an Extension Term, Monthly Base Rent shall be increased by an amount equal to the product obtained by multiplying the average of any annual (over-the-year) changes in the CPI for the five (5) years immediately preceding the Option Notice Deadline by the Monthly Base Rent, but subject to a minimum for such average of one percent (1%) and maximum of such average of four percent (4%) (the "Extension Term Annual Adjustment").</p> <p>For the final two, 2-year options, the Extension Term Annual Adjustment will be calculated in the same manner and subject to the same minimum and maximum, except that the average of any changes in the CPI for the two years preceding the Option Notice Deadline will be used.</p> <p>For any Extension Term for which Tenant has given an Option Notice, no later than the date that is Two Hundred Seventy (270) days (or ninety (90) days in the case of the 2-year options) prior to the commencement date of the relevant Extension Term, Tenant shall provide a calculation showing the applicable Extension Term Annual Adjustment and resulting Base Rent (including to the Monthly Base Rent Allocation for any Subtenants) and Restroom Rent Credit, for Port's review and written confirmation, which Port will provide within thirty (30) days after receipt. Port will include in its written notice whether Tenant may access the Interim Power Line during the applicable Extension Term. If Port's written notice is silent on whether Tenant may use the Interim Power Line, then it will be deemed as if the Interim Power Line is unavailable for Tenant's use during the applicable Extension Term. Tenant shall have the right to revoke, or revoke, modify and re-submit, its Option Notice as set forth above in the "Extension Option" section of this Basic Lease Information.</p> <p>The parties agree that such calculation is a straightforward and objective process; however, if Port rejects Tenant's calculation, then Port shall provide a written explanation of why it disagrees and shall provide its own calculation. The parties shall negotiate in good faith and use commercially reasonable efforts to reach agreement on the applicable Extension Term Annual Adjustment within sixty (60) days after the expiration of the 30-day period, including the schedule for Tenant to make payment of any amounts due or receive a credit for any overpayment.</p> <p>For illustrative purposes only:</p> <p>If the Rent Commencement Date is November 1, 2023, then the first Extension Term will commence on November 1, 2033 and the Option Notice Deadline is October 31, 2032 and Tenant will</p>

	<p>perform the calculations in the following manner and submit to Port no later than January 4, 2033.</p> <table border="0"> <tr> <td>October 2027 – October 2028:</td> <td>6.3%*</td> </tr> <tr> <td>October 2028 – October 2029:</td> <td>5.6%</td> </tr> <tr> <td>October 2029 – October 2030:</td> <td>6.4%</td> </tr> <tr> <td>October 2030 – October 2031:</td> <td>0.6%</td> </tr> <tr> <td>October 2031 – October 2032:</td> <td>3.8%</td> </tr> <tr> <td>Total:</td> <td>21.5%</td> </tr> <tr> <td>Annual Average:</td> <td>4.3%</td> </tr> <tr> <td>Extension Term Annual Adjustment:</td> <td>4.0% (capped)</td> </tr> </table> <p>*The percentage represents the annual (over-the-year) percentage change in the CPI measured based on the CPI publication date closest to the adjustment date. If CPI is published on a bimonthly basis, the calculation will be made using the most current CPI numbers published previous to the start and end dates of the relevant 12-month calculation period. For example, if the calculation requires numbers published in September and CPI is not published in that month but is published in August, then the calculation will be performed using the August CPIs immediately preceding the applicable Septembers of the 12 month determination period (e.g., August 2027 and 2028)).</p>	October 2027 – October 2028:	6.3%*	October 2028 – October 2029:	5.6%	October 2029 – October 2030:	6.4%	October 2030 – October 2031:	0.6%	October 2031 – October 2032:	3.8%	Total:	21.5%	Annual Average:	4.3%	Extension Term Annual Adjustment:	4.0% (capped)
October 2027 – October 2028:	6.3%*																
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<i>Security Deposit:</i>	Fifteen Thousand Four Hundred Sixty-Eight Dollars and 30/100 (\$15,468.30)																
<i>Initial Improvements:</i>	<p>Tenant must Complete the following Initial Improvements as more fully described in the Scope of Development attached to the Work Letter (Exhibit E):</p> <p>(1) tenant improvements generally including</p> <p>(A) improvements necessary for Tenant to operate fitness areas, group exercise spaces, restrooms and an office area,</p> <p>(B) infrastructure improvements to Sublease Premises B to support cooking, cleaning, refrigeration and food delivery at a retail coffee/bagel shop, (C) infrastructure improvements to Sublease Premises A to support operation of, and storage in, a water sports retail shop and aquatics center, including drainage for rinsing of human-powered watercraft, (D) electrical, IT, HVAC, water and sewer facilities, including a new topping slab and radiant heat, and (E) improvements to the exterior of the Building, including store front egress doors, window glazing, roll up access doors, repaired siding, connections between exterior and interior slabs, paint and exterior signage and lighting (“Initial Tenant Improvements”); and</p> <p>(2) seismic improvements and structural upgrades generally including lateral bracing, vertical bracing and roof truss bracing between existing steel Building structures (the “Seismic Project”; together with the Initial Tenant Improvements, , the “Initial Improvements”). The Initial Improvements shall be constructed at</p>																

	<p>Tenant’s sole cost and expense and in accordance with the Work Letter and Section 14 below.</p> <p>Tenant agrees that it will invest a minimum of Five Million dollars (\$5,000,000) in hard and soft costs in the Initial Tenant Improvements including for the fees and costs of design professionals, engineers, and construction management; internal management costs; landscaping and planters; costs of obtaining LEED or similar green building or environmental certifications; costs of complying with applicable Laws; inspection and testing (such as geotechnical, lead paint and asbestos testing); surveying costs; legal fees; building permit fees; insurance premiums and costs; costs of signage; costs of built in or fixed personal property, such as a lobby desk and built-in cabinets and lockers; kitchen equipment; water fountains; and security services and systems.</p> <p>Tenant must Complete the Initial Improvements no later than the Initial Improvements Completion Date as set forth in the Work Letter. Tenant’s Completion of the Initial Improvements by the Initial Improvements Completion Date is material consideration for this Lease and Port would not have entered into this Lease absent such terms.</p> <p>Subject to the conditions of Section 5.11, Tenant shall be entitled to a rent credit not to exceed the greater of: (i) fifty percent (50%) of the Tenant’s actual total cost for the Seismic Project or (ii) Five Hundred Thousand Dollars (\$500,000) (“Seismic Project Rent Credit”) to be taken on a monthly basis against one hundred percent (100%) of Rent commencing upon Completion of the Seismic Project until the earlier to occur of the events described in Section 5.11(a)(iii).</p> <p>Except for the Seismic Project Rent Credits as explicitly provided for in this Lease, Tenant understands and agrees that it will not receive or seek additional rent credits or other compensation or consideration for any improvements including without limitation the Initial Improvements and agrees that it will not seek additional term for the purpose of amortizing any improvements.</p>
<p><i>Park License:</i></p>	<p>In connection with this Lease, the parties are entering into a license agreement attached hereto as Exhibit F (the “License”).</p>
<p><i>Operations Plan:</i></p>	<p>All Permitted Uses must be performed in compliance with the attached Operations Plan (Exhibit G), as approved by the Port and amended from time to time as necessary. The Operations Plan is supplemental to the Lease; in the event of any conflict or inconsistency between the Lease and the Operations Plan, the Lease will control unless explicitly provided otherwise in this Lease. Tenant must prepare and maintain the Operations Plan to document procedures consistent with Laws, industry standards, best management practices and good housekeeping under this Lease and the License. The Operations Plan must address the following operations and components by Tenant and any Subtenants on or</p>

	<p>about the Premises or License Area as defined in the License (<i>Exhibit F</i>):</p> <ul style="list-style-type: none"> (A) Hours of Operation, Security, Staffing and Safety Plan; (B) List of required and obtained Regulatory Approvals; (C) Fitness class and aquatic activities safety measures (e.g., participant safety gear; participant/instructor ratio; instructor qualifications); (D) Reporting Accidents; (E) Noise Control; (F) Equipment Washing Protocols (G) Park Usage Areas (including paths of travel for staff and patrons). <p>Failure to comply with the Operations Plan after notice and an opportunity to cure as provided in <i>Section 26</i> is a material breach of this Lease. Port and Tenant may, from time to time, review the Operations Plan and make recommendations for revisions. All revisions to the Operations Plan, whether initiated by Port or Tenant, are subject to Port and Tenant approval, each in its reasonable discretion.</p>
<p><i>Obligations Regarding Public Restrooms:</i></p>	<p>Except as explicitly provided by this Section, all terms, conditions, obligations and liabilities of this Lease apply to the public restrooms (“Restrooms”). In addition, specifically, commencing within five (5) days after Tenant commences operations in the Building, Tenant must : (i) regularly clean, stock, and equip the Restrooms so that the Restrooms remain useable during their hours of operation; (ii) maintain clearly visible signage that the Restrooms are open to the public; (iii) ensure Restrooms are open from 9:00 a.m. – 6:00 p.m. Monday through Friday, 9:00 a.m. – 5:00 p.m. on weekends, and 9:00 a.m. – 2:00 p.m. on holidays (other than holidays when Tenant is not open at the Premises); (iv) provide Port with at least fifteen (15) days prior written notice of its intention to close the Restrooms to the public for any period longer than necessary to address any health or safety concerns or to perform routine maintenance and repair and obtain Port’s written consent to do so prior to closing the Restrooms. Subject to <i>Section 14.11</i>, Tenant may install signage in the Restrooms that Tenant considers necessary or appropriate to limit Tenant’s liability for their use.</p> <p>Tenant’s obligations with respect to the Restrooms are material and Port would not have entered into this Lease absent such terms.</p> <p>Starting on the day that Tenant notifies Port that Tenant commenced operations in the Building, and provided that Tenant complies with these provisions and subject to the terms and conditions of <i>Section 5.11(b)</i>, Port will contribute financially to the cost of capital expenses and repairs for the Restrooms by providing a monthly rent credit of Two Thousand dollars (\$2,000) against Base Rent, which amount shall be adjusted annually by the Annual Adjustment or the Extension Term Annual Adjustment as the case may be (“Restroom Rent Credit”). The Parties agree that the Restroom Rent Credit as</p>

	established in this Lease is reasonable irrespective of whether Tenant's costs increase or decrease over the Term.
<i>Additional Prohibited Uses:</i>	<p>In addition to, and without limiting, the Prohibited Uses specified in Section 10.2 below, the following are prohibited:</p> <p>(a) No discharges to the Bay;</p> <p>(b) Use of the Premises for operation of a night club, underage parties, raves, pay at the door events or other similar activities.</p> <p>Port shall have all remedies set forth in this Lease, and at law or equity in the event Tenant performs any of the Prohibited Uses.</p>
<i>Maintenance and Repair:</i>	<p>Tenant is solely responsible for maintenance and repair of the Premises including without limitation, the Building and all Building Systems including the structure, substructure, roof, core, shell, Utilities and other infrastructure, windows and interiors.</p> <p>Port will have no maintenance or repair obligations with respect to the Premises or the Interim Power Line.</p>
<i>Utilities; Services:</i>	<p>Port and Tenant acknowledge that as of the Effective Date, the electricity to the Premises is by means of a power line from outside the Premises ("Interim Power Line"). The location of the Interim Power Line is generally depicted on the attached Exhibit A and originates from areas outside the Premises and within Port's jurisdiction. Tenant has been unable to determine the financial feasibility of designing and constructing a direct connection from the Premises to an electrical power distribution line ("Direct Power Connection") for the Permitted Uses before the Effective Date.</p> <p>Subject to the terms and conditions set forth herein, without limiting Tenant's obligations under Section 15.1, Port agrees that Tenant may connect to the Interim Power Line in order to connect to and receive electrical power supplied by the SFPUC (i) while Tenant diligently works to determine the financial feasibility of a Direct Power Connection, (ii) if applicable, if Tenant concludes the Direct Power Connection is financially feasible, during construction of the Direct Power Connection until it is able to receive SFPUC electrical power, and (iii) if applicable, after Tenant reasonably concludes that a Direct Power Connection is financially infeasible.</p> <p>If Tenant reasonably concludes that a Direct Power Connection is financially infeasible, Tenant will promptly provide notice of such conclusion to Port, along with evidence to support such conclusion. The Parties agree that it will be reasonable for Tenant to conclude that a Direct Power Connection is financially infeasible if the cost to Tenant of such connection exceeds \$150,000. Reasonable evidence supporting such cost calculation shall constitute sufficient evidence to support such conclusion. Tenant will cease use of the Interim Power Line once a Direct Power Connection is constructed and SFPUC electrical power flows through the Direct Power Connection to the Premises.</p>

Tenant must contract directly with SFPUC and install a separate meter or sub-meter for the actual supply and metering of all electrical power to and at the Premises. Port has no obligation to pay for or reimburse any party, for any electrical power (including any infrastructure) supplied to or used at the Premises.

Tenant agrees and acknowledges that (i) if it elects to connect to the Interim Power Line, it will connect to the Interim Power Line in its as-is condition, (ii) the current as-is condition of the Interim Power Line is capable of carrying an adequate supply of electricity for the Permitted Use (“**Power Baseline**”), and (iii) Port has no obligation to maintain, repair, or replace the Interim Power Line at any time during the Term. Port has made no representation or warranty about the condition or life-span of the Interim Power Line, the feasibility of Tenant using the Interim Power Line for the Permitted Uses throughout the Term, or whether the Power Baseline is sufficient for the Permitted Uses.

Notwithstanding the foregoing, during the period when there is no Direct Power Connection, if all of the Premises is without electrical power due solely to the inability of the Interim Power Line to carry electricity (as opposed to the SFPUC’s inability to supply electricity) to the Premises in the amount of the Power Baseline, then Tenant will notify Port. If, within thirty (30) days after receipt by Port of such notice, Port has not restored or repaired the Interim Power Line such that it is once again capable of carrying electricity in the amount of the Power Baseline to the Premises, then, from and after such date, all of base Rent shall be abated until the date that is three (3) days after the date on which the Interim Power Line is once again capable of carrying the Power Baseline to the Premises provided Tenant also proportionately reduces the base rent for its Subtenants for the period of Tenant’s Rent abatement. The Parties further acknowledge that any Rent abatement will have no effect on the application of the Restroom Rent Credit or any other rent credit other than the Seismic Rent Credit, which application of the Seismic Rent Credit shall be tolled during the period the base Rent is abated.

If, notwithstanding the inability of the Interim Power Line to carry the Power Baseline, Tenant or any subtenants determine that they are able to use part of the Premises (e.g., by using mobile generators), then if the Power Baseline is not restored within thirty (30) days after receipt by Port of Tenant’s notice that only a portion of the Power Baseline is being met, Port may, in its sole discretion provide a partial abatement of Rent based on the partial use of the Premises contemplated in the notice.

Provided Tenant has made the determination (and the Port has concurred) that the Direct Power Connection is financially infeasible in accordance with the foregoing provisions in this “**Utilities; Services**” section of the Basic Lease Information and Tenant has been using the Interim Power Line but the Interim Power Line has not been able to carry the Power Baseline, if Port is unable to complete the restoration or repair of the Interim Power Line sufficient to allow it to carry the Power Baseline within two hundred seventy (270) days after the date of the cessation, then

Tenant may terminate the Lease without penalty by giving Port not less than ninety (90) days' prior written notice. Other than the Rent abatement and termination right without penalty permitted under this section of the Basic Lease Information, Tenant's release of Claims set forth in **Sections 22.4 and 22.5** includes the release of all Claims related to the inability of the Interim Power Line to carry the Power Baseline.

For the avoidance of doubt, Tenant shall not be entitled to any Rent abatement if the Interim Power Line ceases to carry electricity as a result of (a) a failure of equipment owned or leased by Tenant or SFPUC, (b) a failure by Tenant to pay SFPUC, (c) an outage at SFPUC, or (d) a SFPUC act, omission, negligence or failure.

Commencing on the Rent Commencement Date, as compensation to Port for Tenant's use of the Interim Power Line, Tenant will pay monthly to Port a "Capacity Charge" in the amount of One Thousand Three Hundred Sixty-Three and 40/100 Dollars (\$1,363.40)(which is equal to \$0.20 per rentable square foot of the Premises (6,817 x \$0.20 = \$1,363.40 per month)). Tenant will pay the Capacity Charge as and when Monthly Base Rent is due. On each Anniversary Date during the Initial Term, the Capacity Charge will increase annually by three percent (3%). On the commencement date of an Extension Term (if any) and on each Anniversary Date of an Extension Term, the Capacity Charge will be increased by the same percentage as Monthly Base Rent is increased following calculation of the Extension Term Annual Adjustment.

If at any time the Interim Power Line is no longer able to carry the Power Baseline to the Premises and such inability is not the result of (a) a failure of equipment owned or leased by Tenant or a failure by Tenant to pay SFPUC or (b) an outage at SFPUC, then the Capacity Charge shall be abated from and after such date until the date that is three (3) days after the date on which the Interim Power Line is once again capable of carrying the Power Baseline to the Premises (and provided that Tenant provides a similar abatement to any subtenants if applicable).

At any time during the Term (including any Extension Term) on not less than thirty (30) days prior written notice, Tenant may terminate use of the Interim Power Line, whereupon Tenant shall cease using such connection and shall no longer be obligated to pay the Capacity Charge. If the date this Lease terminates or the day before the date Tenant no longer requires use of or has use of the Interim Power Line occurs on a date other than the last day of a calendar month, then any payment of the Capacity Charge shall be pro-rated based on the number of days in such month, and Port shall refund any overpayment to Tenant within thirty (30) days after the applicable date.

Except as set forth above in this section of the BLI, Tenant's sole responsibility, as further described in **Section 15**. Port makes no representation regarding the availability of existing or new Utilities or capacity for the use of the Premises. Port will cooperate with Tenant at no cost to Port to obtain necessary Utilities.

<i>Development Project:</i>	Events in the Park, including general public events, special events, activation, vending programs, and other uses, including potential future improvements to the Park; redevelopment of the Kneass Building.
<i>Port's Participation in Transfer Proceeds:</i>	As detailed in Sections 23.3 and 23.4 , Tenant and all subsequent assignees must pay to Port twelve percent (12%) of Tenant's Net Sale Proceeds or Net Financing Proceeds from each Transfer concurrently with and as a condition to the Transfer closing (" Transfer Participation Rent ").
<i>Facility Conditions Reports:</i>	No later than the date that is six (6) months prior to the fifth (5 th) Anniversary Date of this Lease and no later than the date that is six (6) months prior to the relevant expiration date during any Extension Term, Tenant, at its sole cost, shall assess the Building's structural elements and key Building Systems (including without limitation, the roof, substructure, HVAC system, Restrooms and fire protection systems) and provide a report in a form acceptable to Port prepared by qualified, California registered structural engineer, including, at a minimum, the following: (i) a narrative description of the current conditions and expected useful life of each element; (ii) relevant photographs; (iii) a list of the immediate and longer term maintenance, repair and replacement needs and estimated cost to address them; (iv) recommendations for further investigation by engineers or construction specialists; and (v) an explanation of cost estimating methodologies and assumptions (" Facility Conditions Report "). In addition, Tenant must provide a Facility Conditions Report as reasonably requested by Port as to any element of the Building or Building Systems.
<i>Construction Warranties:</i>	<p>Notwithstanding any other provision of this Lease, Tenant shall not take any action that might impair the construction and associated manufacturing warranties listed in Schedule 5 ("Construction Warranties") associated with Port's recent construction work at the Building or Port's ability to enforce the Construction Warranties, including without limitation, in performing Tenant's maintenance and repair obligations under this Lease. Tenant represents and warrants to Port that Tenant has received and reviewed the Construction Warranties listed in Schedule 5.</p> <p>Port and Tenant agree to cooperate as needed in order to enforce the Construction Warranties. At Tenant's request, Port will use commercially reasonable efforts to cause the applicable contractor or subcontractor to perform its obligations under the applicable Construction Warranty including assignment of the warranty to Tenant (if requested by Tenant and at Tenant's sole cost and expense and by a commercially reasonable form of assignment and assumption agreement with respect to any such warranty(ies)).</p>
<i>California Environmental Quality Act; Mitigation Measures and Reporting Program ("MMRP"):</i>	In order to mitigate any potential significant environmental impacts, Tenant agrees that its development and operation will be in accordance with the MMRP attached as Exhibit H and fully incorporated herein. Tenant is responsible for implementation and compliance with all required measures relating to Tenant's activities. As appropriate, in addition, Tenant will incorporate the

	MMRP into any contract for the development and/or operation of the Premises. Failure to comply with the requirements of the MMRP Section shall be a default of this Lease; provided that, for any requirement for which Port is the enforcing agency, Port will provide notice and an opportunity to cure as provided in Section 26 .
<i>Diversity, Equity & Inclusion Plan:</i>	Tenant on behalf of itself, its Subtenants and any Transferees, acknowledges the importance of furthering the values of diversity, equity, and inclusion. Tenant agrees to abide by the “ DEI Plan ” generally described in Exhibit L attached hereto, which may be reasonably amended, updated, and clarified by Tenant from time to time at its own initiative or at Port’s suggestion. Tenant will promptly provide Port with a copy of any amended DEI Plan.
<i>Prior Licenses:</i>	The Parties agree that as of the Commencement Date, License 16931, dated June 3, 2022 for reference purposes , and License 16906, dated April 27, 2022 for reference purposes (the “ Prior Licenses ”) between Tenant and Port expired by their terms. The Parties shall continue to be liable for any obligations under the Prior Licenses which have accrued prior to the date of termination and any obligations which by their terms survive the termination or expiration of the Prior Licenses.
<i>Lease Prepared By:</i>	James Hurley, Development Project Manager

LEASE AGREEMENT

This Lease Agreement, dated for reference purposes only as of the Lease Date set forth in the Basic Lease Information, is by and between the **CITY AND COUNTY OF SAN FRANCISCO**, a municipal corporation (“**City**”), operating by and through the **SAN FRANCISCO PORT COMMISSION** (“**Port**”), as landlord, and the Tenant identified in the Basic Lease Information (“**Tenant**”). The basic lease information (the “**Basic Lease Information**”), the exhibits, schedule and this Lease Agreement are and shall be construed as a single instrument and are referred to herein as this “**Lease**”. In the event of any conflict or inconsistency between the Basic Lease Information and this Lease Agreement, the Basic Lease Information will control.

1. DEMISE.

In consideration for the rents and all other charges and payments payable by Tenant, and for the agreements, terms and conditions to be performed by Tenant in this Lease, Port does hereby lease to Tenant, and Tenant does hereby hire and take from Port, the Premises upon the agreements, terms and conditions of this Lease for the Term hereinafter stated.

2. DEFINITIONS.

Definitions used in this Lease are found in the specified locations in this Lease or are set forth below. Definitions that are not capitalized below are not capitalized when used in this Lease.

“**ACMs**” means asbestos-containing materials (“**ACMs**”) as defined in the Cal-OSHA General Industry Safety Order for Asbestos.

“**Additional Rent**” means all taxes, assessments, insurance premiums, operating and maintenance charges, fees, costs, expenses, liabilities and obligations of every description which Tenant assumes or is obligated to pay or discharge pursuant to this Lease, together with every fine, penalty, interest or other charge which may be added for non-payment or late payment, whether payable to Port or to other persons, parties or entities designated herein.

“**Adjusted Basis**” means the amount of the Certified Construction Costs of the Initial Improvements or Subsequent Alterations that constitute capital improvements to the extent unamortized on a Sale Closing date. If Tenant Completed the Initial Improvements and any Subsequent Alterations that constitute capital improvements, Tenant’s Adjusted Basis for such improvements may be deducted if Tenant previously complied with *Section 23.3(c)*.

“**Agents**” when used with reference to either party to this Lease or any other person means the commissioners, officers, directors, employees, agents, and contractors of the party or other person, and their respective heirs, legal representatives, successors, and assigns.

“**All-gender toilet facility**” means a toilet that is not restricted to use by persons of a specific sex or gender identity by means of signage, design, or the installation of fixtures.

“**Alterations**” means any alterations, installations, improvements, or additions to any Improvements or to the Premises and includes Subsequent Alterations.

“**Anniversary Date**” means the first and each subsequent anniversary of the Rent Commencement Date and the first and each subsequent anniversary of the commencement date of an Extension Term as the case may be.

“**Annual Adjustment**” is defined in the Basic Lease Information.

“**Annual Statement**” is defined in *Section 5.2(a)*.

“**Arbitration Notice**” is defined in *Section 20.8(b)*.

“**Arbitrator**” is defined in *Section 20.8(b)*.

“**Assignment**” means a proposed or actual Transfer of Tenant’s rights, title, and interest in all or any part of the Premises under a contractual assignment or an assignment by operation of Law.

“**Award**” means all compensation, sums or anything of value paid, awarded or received for a Condemnation, whether pursuant to judgment, agreement, settlement or otherwise.

“**Base Rent**” means the monthly Base Rent specified in the Basic Lease Information and described further in *Section 5.1*.

“**BCDC**” means the San Francisco Bay Conservation and Development Commission.

“**Blended Monthly Base Rent**” is defined in the Basic Lease Information.

“**Books and Records**” means all of Tenant’s or a Subtenant’s, as applicable, books, records, and accounting reports or statements relating to its business operations under this Lease or a Sublease, and the operation and maintenance of the Premises or subleased premises including construction activities, including cash journals, rent rolls, general ledgers, income statements, bank statements, income tax schedules relating to the Premises or subleased premises and any other bookkeeping documents used in Tenant’s or a Subtenant’s business operations on the Premises or subleased premises, whether maintained by Tenant, a Subtenant or a third-party contractor.

“**Building**” is defined in the Basic Lease Information.

“**Building Permit for the Initial Improvements**” means the permit issued by Port pursuant to the Port Building Code permitting construction of the Initial Improvements.

“**Building Systems**” means the plumbing, electrical, fire protection, life safety, security and other mechanical, electrical, and communications systems of the Building and includes Utilities.

“**business day**” means any weekday during which businesses are generally open for business, excluding local, state, and federal holidays observed by Port.

“**CMD**” means the Contract Monitoring Division of the City’s General Services Agency.

“**Cal-OSHA**” means the Division of Occupational Safety and Health of the California Department of Industrial Relations.

“**Cash Consideration**” means cash or its equivalent in immediately available funds.

“**Casualty**” is defined in *Section 20.1(a)*.

“**Casualty Notice**” is defined in *Section 20.1(b)*.

“**CEQA**” means the California Environmental Quality Act.

“**Certified**” means a written representation by a manager of the entity whose financial statements or costs reports are the subject to the Certification who is authorized and competent to make such a representation that, to the certifying party’s knowledge based on reasonably diligent inquiry, the information submitted is current, accurate, and complete.

“**Certificate of Final Completion and Occupancy**” is provided by the Port’s Chief Harbor Engineer or his or her designee through a signature on the back bottom of a permit card after all special inspections have been completed and a final affidavit has been issued by all necessary special inspections testing agencies as required by the Port Building Code.

“**Certified Construction Costs**” are Construction Costs that Port has approved through the procedures described in *Section 23.3(e)*.

“**Change in Laws**” is defined in *Section 11.2*.

“**Changes**” is defined in *Section 12.2*.

“CHE” is defined in *Section 16*.

“CHE Determination” is defined in *Section 16*.

“City” means the City and County of San Francisco, a municipal corporation.

“Claims” means all liabilities, injuries, losses, costs, claims, demands, rights, causes of action, judgments, settlements, damages, liens, fines, penalties and expenses, including without limitation, direct and vicarious liability of any kind for money damages, compensation, penalties, liens, fines, interest, attorneys’ fees, costs, equitable relief, mandamus relief, specific performance, or any other relief.

“Class Life” means thirty-four (34) years (in recognition that Tenant is not subject to the classification of and amortization period applicable to the Initial Improvements under Internal Revenue Code section 168(e)).

“Commencement Date” is defined in the Basic Lease Information.

“Commission” means the San Francisco Port Commission.

“Completion” in reference to the Initial Improvements is defined in the Work Letter; “Completion” in reference to any Subsequent Alteration means the issuance of a Final Certificate of Completion and Occupancy.

“Concession” is defined in *Section 36.16 below*.

“Condemnation” means the taking of all or any part of any property, or the right of possession thereof, for any public or quasi-public purpose by any lawful governmental power or authority, by exercise of the right of eminent domain, condemnation, inverse condemnation, or appropriation. Condemnation may occur pursuant to the recording of a final order of condemnation, or by a voluntary sale of all or any part of any property to any Person having the power of eminent domain (or to a designee of any such Person), provided that the property or such part thereof is then under the threat of condemnation or such sale occurs by way of settlement of a condemnation action.

“Condemnation Date” means the earlier of: (a) the date when the right of possession of the condemned property is taken by the condemning authority; or (b) the date when title to the condemned property (or any part thereof) vests in the condemning authority.

“Condemned Land Value” is defined in *Section 21.4(b)*.

“Construction Costs” means actual costs paid by Tenant for all categories of costs for the Initial Improvements or Subsequent Alterations as the case may be, without interest, and subject to the limitations set forth in the Work Letter as to the Initial Improvements, and amortized on a straight line basis over the Class Life of the Initial Improvements or Subsequent Alterations as the case may be, at an annual interest rate of eight percent (8%).

“Construction Costs Report” means a report Certified by a financial officer of Tenant or other accountant retained by Tenant prepared in accordance with sound accounting principles consistently applied specifying the Class Life of and verifying Tenant’s actual Construction Costs for the Initial Improvements or Subsequent Alterations as the case may be, accompanied by copies of documentation substantiating all expenditures, such as: (a) executed contracts; (b) invoices for labor, services, goods, and materials, bills of lading, and other bills or receipts marked “Paid” or similarly indicating payment in full; (c) canceled checks or other written evidence of payment; and (d) other documents reasonably requested by Port.

“Construction Term” is defined in the Basic Lease Information.

“Consumer Price Index” or “CPI” means the Consumer Price Index for All Urban Consumers for the San Francisco-Oakland- Hayward area (1982-84=100)(Series Id: CUURS49BSA0), published by the United States Department of Labor, Bureau of Labor

Statistics. If the Index is changed so that the base year differs from that used as of the date most immediately preceding the prior Anniversary Date, the Index will be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics. If the Index is discontinued during the Term, such other government index or computation with which it is replaced will be used in order to obtain substantially the same result as would be obtained if the Index had not been discontinued; provided, however, if there is no replacement government index or computation, then Port will select another similar published index, generally reflective of increases in the cost of living, in order to obtain substantially the same result as would be obtained if the Index had not been discontinued.

“**Control**” means the direct or indirect ownership of: (a) fifty percent (50%) or more of each class of equity interests in the entity; or (b) fifty percent (50%) or more of each class of interests that have the right to nominate, vote for, or otherwise select the members of the governing body that directs or causes the direction of substantially all of the management and policies of the entity or otherwise has the right to direct or cause the direction of substantially all of the management and policies of the entity.

“**Costs of Sale**” means the following costs, but only to the extent Tenant actually incurred them in connection with a Sale: (a) reasonable (as determined by the Port in its reasonable discretion) brokerage commissions; (b) customary closing fees and costs, including title insurance premiums, survey fees, escrow fees, recording charges, and transfer taxes; (c) reasonable attorneys’ fees; and (d) new tenant improvements made solely in connection with the Transfer and performed in compliance with *Section 14*. Costs of Transfer exclude rents, taxes, or other income or expense items customarily prorated in connection with sales of real property.

“**CPA**” means an independent certified public accounting firm acceptable to Port in its reasonable discretion.

“**Daily Driver Sublease**” is defined in the Basic Lease Information.

“**Disability Laws**” means the Americans with Disabilities Act, a federal law codified at 42 U.S.C. §§ 12101 et seq., including, but not limited to, Title III thereof, and all regulations and guidelines related thereto (“**ADA**”), together with any and all laws, rules, regulations, ordinances, codes and statutes now or hereafter enacted by local or state agencies having jurisdiction thereof, including all requirements of Title 24 of the State of California, as the same may be in effect on the date of this Lease and may be hereafter modified, amended or supplemented.

“**Disputed Amount**” is defined in *Section 20.8(a)*.

“**disturbed or removed**” is defined in *Section 14.7*.

“**Dogpatch Paddle Sublease**” is defined in the Basic Lease Information.

“**Early Termination Date**” is defined in *Section 11.2*.

“**Early Termination Notice**” is defined in *Section 11.2*.

“**Effective Date**” is defined in the Basic Lease Information.

“**Encroachment Area**” is defined in *Section 3.3*.

“**Encroachment Area Charge**” is defined in *Section 3.3*.

“**Environmental Laws**” means any Laws relating to Hazardous Material (including its Handling, Release, or Remediation) or to human health and safety, industrial hygiene, or environmental conditions in the environment, including structures, soil, air, bay water, and groundwater, and any environmental mitigation measure each to the extent adopted under Environmental Laws affecting any portion of the Premises. Environmental Laws include the Risk Management Plan for Pier 70 (Treadwell & Rollo, 7/25/13) as amended and as interpreted by Regulatory Agencies with jurisdiction (“**RMP**”).

“Environmental Regulatory Action” when used with respect to Hazardous Materials means any inquiry, Investigation, enforcement, Remediation, agreement, order, consent decree, compromise, or other action that is threatened, instituted, filed, or completed by an Environmental Regulatory Agency in relation to a Release of Hazardous Materials, including both administrative and judicial proceedings.

“Environmental Regulatory Agency” means the United States Environmental Protection Agency, OSHA, any California Environmental Protection Agency board, department, or office, including the Department of Toxic Substances Control and the San Francisco Bay Regional Water Quality Control Board, Cal-OSHA, the Bay Area Air Quality Management District, the San Francisco Department of Public Health, the San Francisco Fire Department, the San Francisco Public Utilities Commission, Port, or any other Regulatory Agency now or later authorized to regulate Hazardous Materials.

“Environmental Regulatory Approval” means any approval, license, registration, permit, or other authorization required or issued by any Environmental Regulatory Agency, including any hazardous waste generator identification numbers relating to operations on the Premises and any closure permit.

“Estimator” is defined in *Section 20.8(a)*.

“Event of Default” is defined in *Section 26*.

“Exacerbate” or **“Exacerbating”** when used with respect to Hazardous Materials means any act or omission that increases the quantity or concentration of Hazardous Materials in the affected area, causes the increased migration of a plume of Hazardous Materials in soil, groundwater, or bay water, causes a Release of Hazardous Materials that had been contained until the act or omission, or otherwise requires Investigation or Remediation that would not have been required but for the act or omission. Exacerbate also includes the disturbance, removal or generation of Hazardous Materials in the course of Tenant’s operations, Investigations, maintenance, repair, Improvements and Alterations under this Lease. **“Exacerbation”** has a correlating meaning.

“Expiration Date” means the date on which the Term expires as specified in the Basic Lease Information or the last date of a relevant Extension Term, if any.

“Extension Option” is defined in the Basic Lease Information.

“Extension Term” is defined in the Basic Lease Information.

“Extension Term Anniversary Date” means the first and each subsequent anniversary of the commencement date of an Extension Term.

“Extension Term Annual Adjustment” is defined in the in the Basic Lease Information.

“Exterior Improvements” means any improvements, furnishings, fixtures, or equipment including any mechanical equipment, photovoltaic panels, satellite dishes, antennae or other communication equipment, public art, statues, bollards, flower baskets, benches, tables, chairs, umbrellas, heaters, railings, gates, trash receptacles, cleats, signs, kiosks, flagpoles, canopies, awnings, landscaping, planter boxes, light poles, lighting fixtures, fountains, ticket booths, bicycle racks, plaques, markers, tents, other street furniture, paint, paving or other surface treatments.

“Facility Conditions Report” is defined in the Basic Lease Information.

“Finally Approved” means that all applicable appeal periods for the filing of any administrative or judicial appeal challenging the issuance or effectiveness of the (i) approval of the Lease by the Port Commission or San Francisco Board of Supervisors or (ii) issuance of the Building Permit for the Initial Improvements shall have expired and no such appeal shall have been filed, or if such an administrative or judicial appeal is filed, the Lease or Building Permit

for the Initial Improvements shall have been upheld by a final decision in each such appeal without material adverse effect on the applicable approval and the final judgment, order or ruling upholding the applicable approval has been entered.

“financial statements” mean a current balance sheet and profit and loss statements that have been prepared and reviewed or examined by the management of the entity to which such statements relate.

“Financing” means a Transfer affecting ownership of the beneficial interests in or business assets of Tenant including without limitation through a mortgage, deed of trust, or similar security instrument using Tenant’s leasehold interest in the Premises or this Lease as collateral.

“Financing Closing” means the date that a Financing closes through close of escrow or otherwise.

“Financing Reinvestment” means any portion of Gross Financing Proceeds that are dedicated to be used for the benefit of the Building, including such proceeds that are designated for investment in building improvements or resiliency improvements, as approved by Port.

“Flood Protection Measures” is defined in *Section 16*.

“Force Majeure” means events that cause delays due to causes beyond a party’s control and not caused by the acts or omissions of such party (excluding, in any case, Tenant’s performance of the payment of money required under the terms of this Lease), including: acts of nature or of the public enemy; war; invasion; insurrection; riots; any general moratorium in the issuance of Regulatory Approvals (but in the absence of such a moratorium, acts of the government relating to issuance of building permits or other Regulatory Approvals are governed by Section 12); fires; floods; tidal waves; epidemics; pandemics; quarantine restrictions; freight embargoes; earthquakes; unusually severe weather (but only if such unusually severe weather causes actual delays); delays of contractors or subcontractors due to any of the foregoing causes; the unanticipated presence of Hazardous Materials or other concealed conditions on the Premises that would not have reasonably been discovered through due diligence and that would actually delay or materially and adversely impair or delay Tenant’s ability to construct the Initial Improvements; archeological finds on the Premises; strikes and substantial interruption of work because of labor disputes (excluding strikes and labor disputes directly related to any contracts between Tenant and its contractors or work performed on behalf of Tenant); inability to obtain materials or reasonably acceptable substitute materials (provided that Tenant has ordered such materials on a timely basis and Tenant is not otherwise at fault for such inability to obtain materials). The following are excluded from the definition of Force Majeure: (1) Tenant’s failure to secure anticipated financing for the Initial Improvements unless caused by a direct result of some other event of Force Majeure; (2) sea level rise; and (3) any event that does not cause an actual delay.

“goodwill” means the value assigned to Tenant’s intangible business assets in connection with a Transfer, but only if the Transferee will continue to operate substantially the same operation or use that Tenant operated at the Premises and Port reasonably agrees with the valuation.

“Gross Financing Proceeds” means all sums actually disbursed in connection with a financing or refinancing.

“Gross Revenues” means the following: all payments, revenues, fees, or amounts received by Subtenant or by any other party for the account of Tenant or a Subtenant from any Person for any Person’s use or occupancy of any portion of the Premises (excluding security or other deposits to be returned to such Person upon the termination of such use or occupancy), or from any other sales, advertising, concessions, licensing, or programming generated from the Premises. Without limiting the foregoing, **“Gross Revenue”** also includes any and all payments

made to Tenant from its or a Subtenant's business interruption or delayed opening insurance proceed to the extent such payments are made to compensate for lost revenue. "**Gross Revenue**" does not include any of the following: (i) proceeds from any Sale or Financing, or (ii) proceeds from any Condemnation; (iii) insurance proceeds arising from a Casualty at the Premises.

Except as specified below, Gross Revenues shall be determined without reserve or deduction for failure or inability to collect (including, without limitation, spillage and waste) and without deduction or allowance for cost of goods sold or other costs, charges or expenses of purchasing or selling incurred by Tenant or a Subtenant. No value added tax, no franchise or capital stock tax and no income, gross receipts or similar tax based upon income, profits or gross receipts as such shall be deducted from Gross Revenues.

The following shall be excluded from Gross Revenues, provided that Tenant provides to Port separate records to support the exclusions and separate notations are made for same on Tenant's Quarterly and Annual Statements: (i) the amount of any refund made or credit allowed due to a bona fide complaint from a customer concerning the quality of food, beverages, merchandise, or service by Tenant or a Subtenant; (ii) sales by redemption of gift certificates or like vouchers, but only to the extent previously reported as part of Gross Revenues; and (iii) sums collected for any tax or imposition imposed directly upon Tenant or a Subtenant under any governmental authority, but only if stated separately from the selling price of the goods or merchandise, or services, and collected from customers and such amounts are in fact paid to the appropriate governmental entities for which they are collected. As used in this definition, references to "Tenant" shall mean any Tenant that is a for-profit entity.

"**Gross Sale Proceeds**" means all consideration in any form directly or indirectly received by or for the account of the Tenant in connection with a Sale, including: (a) Cash Consideration; (b) the principal amount of any loan by Tenant to the Transferee to finance the Sale; and (c) the fair market value of any other non-cash consideration representing a portion of the purchase price.

"**Habitual Late Payer**" means Tenant has received at least two (2) notices of monetary default within a twelve (12) month period.

"**Handle**" or "**Handling**" means to use, generate, process, manufacture, produce, package, treat, transport, store, emit, discharge, or dispose of a Hazardous Material.

"**Hard costs**" is defined in *Section 13.3 below*.

"**Hazardous Material**" means any substance, waste, or material that is now or in the future designated by any Regulatory Agency to be capable of posing a present or potential risk of injury to human health or safety, the environment, or property. This definition includes anything designated or defined in any Environmental Law as hazardous, hazardous substance, hazardous waste, toxic, pollutant, or contaminant; any asbestos, ACM and presumed asbestos-containing materials ("**PACMs**") (as such terms are defined in Cal-OSHA General Industry Safety Order for Asbestos), whether or not part of the structure of any existing Improvements on the Premises, any Improvements to be constructed on the Premises by or on behalf of Tenant, or occurring in nature; and other naturally-occurring substances such as petroleum, including crude oil or any fraction, and natural gas or natural gas liquids.

"**Hazardous Material Claim**" means any Environmental Regulatory Action or any Claim made or threatened by any third party against the Indemnified Parties or the Premises, relating to damage, contribution, cost recovery compensation, loss or injury resulting from the presence or Release of any Hazardous Materials, including, without limitation, claims or losses based in common law. Hazardous Material Claims include, without limitation, Investigation and Remediation costs, fines, natural resource damages, damages for decrease in value of the Premises, or other Port property, the loss or restriction of the use or any amenity of the Premises, or other Port property, and attorneys' fees and consultants' fees and experts' fees and costs.

“Hazardous Material Condition” means the presence, Release, or threatened Release of Hazardous Materials in, on, or about the Premises, other Port property, or the environment, or from any vehicles or vessels Tenant, or its Agents and Invitees use during Tenant’s occupancy of the Premises.

“HEPA” is defined in *Section 14.7*.

“Historic Fabric” means the distinctive architectural design of any materials, features, or finishes of the Building and considered important in defining a building’s historical character, as described in the Historic Resource Evaluation, Crane Cove Park, San Francisco, California, prepared for Port of San Francisco, prepared by Architectural Resources Group, San Francisco, California, revised August 2015, and attached to the Historic Resource Evaluation Response, San Francisco Planning Department, Case No. 2015-001314ENV, dated September 15, 2015.

“Improvements” means any and all buildings, structures, fixtures or other improvements constructed or installed on the Premises, including those constructed by or on behalf of Tenant pursuant to this Lease (including, without limitation, the Initial Improvements, Subsequent Alterations, any trailers, signs, roads, trails, driveways, parking areas, curbs, walks, fences, walls, stairs, poles, plantings and landscaping).

“Improvements Pertaining to the Realty” means machinery or equipment installed for use on the property that cannot be removed without a substantial economic loss or without substantial damage to the property on which it is installed, regardless of the method of installation. In determining whether particular property can be removed “without a substantial economic loss,” the value of the machinery or equipment in place and considered as part of the realty should be compared with its value if it were removed and sold.

“Indemnified Parties” is defined in *Section 22.1 below*.

“Indemnify” means to indemnify, protect, defend, and hold harmless forever.
“Indemnification” and **“Indemnity”** have correlating meanings.

“Initial Improvements” means the improvements more particularly described in the Basic Lease Information and Scope of Development attached as Attachment 1 to the Work Letter.

“Initial Improvements Completion Date” is defined in Work Letter.

“Interest Rate” means ten percent (10%) per year or, if a higher rate is legally permissible, the highest rate an individual is permitted to charge under Law.

“Interim Power Line” is defined in the **“Utilities; Services”** section of the Basic Lease Information.

“Investigate” or **“Investigation”** when used with reference to Hazardous Materials means any activity undertaken to determine and characterize the nature and extent of Hazardous Materials that have been, are being, or are threatened to be Released in, on, under or about the Premises, other Port property, or the environment, and includes, without limitation, preparation and publication of site history, sampling, and monitoring reports, performing equipment and facility testing such as testing the integrity of secondary containment and above and underground tanks, and sampling and analysis of environmental conditions before, during, and after Remediation begins and continuing until the appropriate Environmental Regulatory Agency has issued a no further action letter, lifted a clean-up order, or taken similar action.

“Invitees” means Tenant’s clients, customers, invitees, patrons, guests, members, licensees, permittees, concessionaires, assignees, subtenants, and any other person whose rights arise through them.

“Late Charge” means a fee equal to the higher of (a) five percent (5%) of all Rent or any portion thereof that remains unpaid following the date it is due (or with respect to a failure by Tenant to deliver the Quarterly Percentage Rent Statement or Annual Statement to Port on the

due date, five percent (5%) of Percentage Rent due for the period of the Quarterly Percentage Rent Statement or Annual Statement), or (b) fifty dollars (\$50.00).

“**Law**” means any present or future law, statute, ordinance, code, resolution, rule, regulation, judicial decision, requirement, proclamation, order, decree, the Waterfront Land Use Plan and any successor land use plan, and Regulatory Approval of any Regulatory Agency with jurisdiction over any portion of the Premises, including Regulatory Approvals issued to Port which require Tenant’s compliance, and any and all recorded and legally valid covenants, conditions, and restrictions affecting any portion of the Premises, whether in effect when this Lease is executed or at any later time and whether or not within the present contemplation of the parties, as amended from time to time; provided that each of the foregoing has the force of law and applies non-discriminatorily to Tenant or the Premises.

“**Lease**” is defined in the preamble to this Lease.

“**Lease Quarter**” means a calendar quarter or portion thereof starting on the Rent Commencement Date.

“**Lease Year**” means each year of the Term starting on the Rent Commencement Date.

“**Leasehold Estate**” means Tenant’s leasehold estate created by this Lease.

“**License**” is defined in the Basic Lease Information.

“**License Area**” is defined in the Basic Lease Information.

“**Major Casualty**” is defined in *Section 20.4(a)*.

“**Monthly Base Rent Allocation**” is defined in the Basic Lease Information.

“**Monthly Percentage Rent Statement**” is defined in *Section 5.2*.

“**Net Awards and Payments**” is defined in *Section 21.4*.

“**Net Financing Proceeds**” means Gross Financing Proceeds after subtracting the following items, as applicable: (i) amounts necessary (a) to pay all actual lenders’ costs of such Financing paid by Tenant including application fees, closing costs, points, and other customary lenders’ fees such as lenders’ attorneys’ fees and costs and title insurance costs paid at close of escrow; and (b) to pay down the amount of outstanding indebtedness by an amount, if any, desired by Tenant or required by any lender; (ii) any Financing Reinvestment; (iii) all of Tenant’s reasonable and documented cash equivalent costs of the Initial Improvements and any Subsequent Alterations that were not paid with outstanding indebtedness; and (iv) to pay Tenant’s costs including reasonable attorneys’ fees and costs associated with the Financing.

“**Net Sale Proceeds**” means Gross Sale Proceeds less Costs of Sale and goodwill. If Tenant made Initial Improvements or Subsequent Alterations that constitute capital improvements at the Premises, Tenant’s Adjusted Basis may be deducted if Tenant previously complied with *Section 23.3(c)*.

“**Notice to Cease Prohibited Use**” is defined in *Section 10.3 below*.

“**Notice of Request to Sublease**” is defined in *Section 23.5(b)*.

“**Notice to Vacate**” is defined in *Section 3.3*.

“**OEWD**” means the City’s Office of Economic Workforce and Development.

“**Official Records**” means the official records of the City and County of San Francisco.

“**Operations Plan**” is attached as *Exhibit G* to this Lease.

“**Option Notice**” is defined in the Basic Lease Information.

“**Option Notice Deadline**” is defined in the Basic Lease Information.

“**OSHA**” means the United States Occupational Safety and Health Administration.

“**Park**” is defined in the Basic Lease Information.

“**Partial Condemnation**” is defined in *Section 21.3(b)*.

“**Participation Rent**” is defined in the Basic Lease Information.

“**Party**” means Port or Tenant, as a party to this Lease; Parties means both Port and Tenant, as Parties to this Lease.

“**Percentage Rent**” is defined in the Basic Lease Information.

“**Permitted Use**” and variations thereof is defined in the Basic Lease Information.

“**Permitted Mortgagee**” means a mortgagee approved by Port under the terms and conditions of *Section 23.1*.

“**Person**” means any natural person, corporation, limited liability entity, partnership, joint venture, or governmental or other political subdivision or agency.

“**Port**” means the San Francisco Port Commission.

“**Port program or project**” means any development, removal or renovation, by public and/or private parties, of a building, pier or seawall lot in, on or in the vicinity of the Premises (including, but not limited to any Development Project described in the Basic Lease Information) and the Seawall Earthquake Safety Program.

“**Port representative**” means Port, a City auditor, or any auditor or representative designated by Port.

“**Port Work**” is defined in *Section 14.12*.

“**Port’s Financing Participation**” means the amount due to Port in connection with a Financing as described in *Section 23.4*.

“**Port’s Sale Participation**” means the amount due to Port in connection with a Sale as described in *Section 23.3*.

“**Power Baseline**” is defined in the “**Utilities; Services**” section of the Basic Lease Information.

“**Premises**” means the real property described in *Section 3.1* and depicted on *Exhibit A*.

“**Prior Licenses**” is defined in the Basic Lease Information.

“**Prevailing party**” is defined in *Section 28.1 below*.

“**Prohibited Use(s)**” is defined in *Section 10.2 below*.

“**Public Trust**” is defined in *Section 6.3*.

“**Quarterly Percentage Rent Statement**” is defined in *Section 5.2*.

“**Regulatory Agency**” means the municipal, county, regional, state, or federal government and their bureaus, agencies, departments, divisions, courts, commissions, boards, officers, or other officials, including BCDC, any Environmental Regulatory Agency, Port (in its regulatory capacity), other departments, offices, and commissions of the City and County of San Francisco (each in its regulatory capacity), Port’s Chief Harbor Engineer, the State Lands Commission, the Army Corps of Engineers, the United States Department of Labor, the United States Department of Transportation, or any other governmental agency each to the extent now or later having jurisdiction over Port property.

“**Regulatory Approval**” means any authorization, approval, license, registration, or permit required or issued by any Regulatory Agency.

“**Rehabilitate**” and “**Rehabilitation**” means the repair or alteration of an historic building that does not damage or destroy the Historic Fabric.

“**Release**” when used with respect to Hazardous Materials means any actual or imminent spilling, introduction, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing in, on, under or about the Premises, other Port property, or the environment.

“**Remediate**” or “**Remediation**” when used with respect to Hazardous Materials means to clean up, abate, contain, treat, stabilize, monitor, remediate, remedy, remove, or otherwise control Hazardous Materials, or to restore the affected area to the standard required by the applicable Environmental Regulatory Agency in accordance with applicable Environmental Laws and any additional Port requirements. “**Remediation**” also includes the creation of a remedial work plan to be approved by the appropriate Environmental Regulatory Agency when required.

“**Rent**” means the Base Rent, Percentage Rent, Participation Rent, Transfer Participation Rent, Additional Rent and all other sums payable by Tenant to Port hereunder, including, without limitation, any Late Charge and any interest.

“**Restoration**” and “**Restore**” means the restoration, replacement, renovation, reconstruction, repair, or rebuilding of the Improvements (or the relevant portion thereof) in accordance with all Laws (including the Secretary’s Standards and any conditions or requirements resulting from review under the California Environmental Quality Act) then applicable. All Restoration shall be conducted in accordance with the provisions of *Section 14.2* (Subsequent Alteration). “**Restored**” has a correlative meaning.

“**Restoration Cost**” is defined in *Section 20.8(a)*.

“**Rules and Regulations**” means any reasonable or typical landlord requirements or restrictions applicable to the Premises, as may be amended from time to time.

“**Sale**” means Tenant’s Transfer of its entire interest in this Lease or the entire leasehold estate, including the sale to any other Person or entity.

“**saltwater immersion**” is defined in *Section 34.12*.

“**Scope of Development**” means the Scope of Development attached to the Work Letter (*Exhibit E*) as Attachment 1.

“**Secretary’s Standards**” is defined in *Section 14.3(d) below*.

“**Security Deposit**” means the amount specified in the Basic Lease Information and as further described in *Section 9 below*.

“**SHPO**” means the State’s Historic Preservation Officer.

“**Sublease**” means the following events or proposed events: (a) a proposed or actual sublease, sublicense or agreement of similar effect with a subtenant, sublicensee, manager, vendor, concessionaire, for all or any part of the Premises as defined in a lease or similar agreement that has a term of more than thirty (30) days; (b) any person other than Tenant uses, occupies or claims a right of possession to any part of the Premises; or (c) any further sublease, sublicense or agreement of similar effect with a subtenant of any of its interest in its sublease or premises.

“**Sublease Premises A**” is defined in the Basic Lease Information.

“**Sublease Premises B**” is defined in the Basic Lease Information.

“**Subletting Expenses**” as pertains only to the calculation of Participation Rent, means verifiable and reasonable expenses such as brokerage commissions and attorney fees incurred in

connection with a Sublease and the costs of any new tenant improvements for which Tenant is responsible under the Sublease.

“**Subtenant**” is a person with a Sublease.

“**Subsequent Alteration**” means all alterations, installations, Improvements, repairs to and reconstruction, replacement, addition, expansion, restoration, alteration or modification of any Improvements, or any construction of additional Improvements, following Completion of the Initial Improvements pursuant to the Work Letter.

“**Substantial Condemnation**” is defined in *Section 21.3(a)*.

“**Subtenant’s Property**” means all furniture, trade fixtures, office equipment, fitness equipment, and articles of property included therein and any Improvements or Alterations constructed on or affixed to the Premises by or on behalf of a Subtenant.

“**SWPPP**” is defined in *Section 18.8(a) below*.

“**Temporary Certificate of Occupancy**” may be issued by the Port’s Chief Harbor Engineer or his or her designee only if requested by Tenant and the Building or a portion of the Building is approved for occupancy prior to issuance of the Certificate of Final Completion and Occupancy.

“**Tenant**” means the party identified as Tenant in the Basic Lease Information.

“**Tenant’s Property**” means all furniture, trade fixtures, office equipment, and articles of property included therein and any Improvements or Alterations constructed on or affixed to the Premises by Tenant and Subtenant’s Property.

“**Term**” is the Construction Term, the Initial Term and any Extension Term.

“**Termination Fee**” is defined in *Section 11.2*.

“**Threat Determination**” is defined in *Section 16*.

“**Threat Determination Notice**” is defined in *Section 16*.

“**Total Condemnation**” is defined in *Section 21.2*.

“**trade fixtures**” means those items of personalty, furniture, equipment, machinery used in trade by Tenant or a Subtenant which are customarily removed without damage to the Premises at the end of a lease term in the ordinary course of businesses of the type operated by Tenant or any Subtenant at the Premises.

“**Transfer**” means any of the following events or proposed events, whether voluntary, involuntary, or by operation of Law: (a) any sale, assignment, encumbrance (other than in connection with a Financing), or other transfer of any of Tenant’s interest in this Lease or in the Premises (other than a Sublease or Financing); (b) any Person other than Tenant occupies or claims a right of possession to any part of the Premises other than under a Sublease; (c) if Tenant is a corporation, limited liability company, partnership or similar entity and is not traded on a nationally recognized security exchange, any change in Control of Tenant (including without limitation a dissolution, merger, consolidation, transfer or sale); or (d) any interest of any assignee, or other Transferee of Tenant’s interest in the Lease or premises is sold, assigned, encumbered, or otherwise Transferred (other than a Sublease). For the purpose of this Lease, references to “this Lease” and “the Premises” in the context of a Transfer mean this Lease and the Premises to the extent Tenant’s leasehold interest is affected by a Transfer.

“**Transfer Agreement**” means all document(s) effecting or evidencing Tenant’s proposed sale, assignment, encumbrance, or other Transfer.

“**Transfer Closing**” means the date that any Sale closes.

“**Transfer Date**” means the effective date of a Transfer including a Sale Closing or Financing Closing.

“**Transfer Notice**” means Tenant’s prior written notice to Port of an intent to Transfer, specifying: (a) the Transferee’s name, address, other contact information, and, if the Transferee is not a natural Person, its form of organization and the identity of each Person with Control of the Transferee; (b) the proposed Transfer Date and a full description of the Transfer Terms; (c) a description of the Transferee’s proposed use of the Premises, including any required or desired Alterations or Improvements to the Premises that the Transferee may undertake in order to facilitate its proposed use; and (d) a list of the Transferee’s personal, business, and credit references.

“**Transfer Participation Rent**” is defined in the Basic Lease Information and includes Port’s Sale Participation and Port’s Financing Participation.

“**Transfer Terms**” means the terms and conditions in the proposed or final Transfer Agreement, as appropriate in context.

“**Transferee**” means the Person to which Tenant makes or proposes to make a Transfer.

“**Uninsured Casualty**” is defined in *Section 20.4(a)*.

“**Upset Date**” is defined in the Basic Lease Information.

“**Utilities**” means electricity, water, gas, heat, sewers, oil, telecommunication services and all other Utilities.

“**WDAC**” means the Waterfront Design Advisory Committee authorized under Planning Code Section 240, whose members are appointed by the City and Port, and that is advisory to the Port Commission and to the City’s Planning Commission.

“**Waiving Party**” is defined in *Section 19.5 below*.

“**Work**” when used in reference to construction is defined in *Section 14.3(c) below*.

“**worth at the time of award**” is defined in *Section 27.10*.

3. PREMISES; AS-IS CONDITION.

3.1. Premises. Subject to the provisions of this Lease, Port hereby leases to Tenant, and Tenant hereby leases from Port, the Premises identified in the Basic Lease Information. The Premises has the address and contains the square footage specified in the Basic Lease Information. The location and dimensions of the Premises are depicted on *Exhibit A* attached hereto and incorporated herein by reference. Port and Tenant agree and acknowledge that any statement of rentable or usable (if applicable) square footage set forth in this Lease is an approximation which Port and Tenant agree is reasonable and that the usable square footage of the Premises may be less than the rentable square footage of the Premises.

3.2. Accessibility Inspection Disclosure.

California law requires commercial landlords to disclose to tenants whether the property being leased has undergone inspection by a Certified Access Specialist (“**CASp**”) to determine whether the property meets all applicable construction-related accessibility requirements. The law does not require landlords to have the inspections performed. Tenant is hereby advised that the Premises has not been inspected by a CASp and Port shall have no liability or responsibility to make any repairs or modifications to the Premises in order to comply with accessibility standards. The following disclosure is required by law:

“A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the

arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises.”

3.3. San Francisco Disability Access Disclosures. Tenant is hereby advised that the Premises may not currently meet all applicable construction-related accessibility standards, including standards for public restrooms and ground floor entrances and exits. Tenant understands and agrees that Tenant may be subject to legal and financial liabilities if the Premises does not comply with applicable federal and state disability access Laws. As further set forth in **Section 11** (Compliance with Laws), Tenant further understands and agrees that it is Tenant’s obligation, at no cost to Port, to cause the Premises, and Tenant’s use thereof to be conducted in compliance with the Disability Laws and any other federal or state disability access Laws. Tenant shall notify Port if it is making any Alterations or Improvements to the Premises that might impact accessibility standards required under federal and state disability access Laws.

3.4. No Right to Encroach.

(a) If Tenant (including, its Agents, Invitees, successors and assigns) uses or occupies space outside the Premises other than use in a manner allowable by the general public in a public space without the prior written consent of Port (the “**Encroachment Area**”), then upon written notice from Port (“**Notice to Vacate**”), Tenant shall immediately vacate such Encroachment Area and pay as Additional Rent for each day Tenant used, occupied, uses or occupies such Encroachment Area, an amount equal to the rentable square footage of the Encroachment Area, multiplied by the higher of the (i) highest rental rate then approved by the San Francisco Port Commission for the Premises, or (ii) then current fair market rent for such Encroachment Area, as reasonably determined by Port (the “**Encroachment Area Charge**”). If Tenant uses or occupies such Encroachment Area for a fractional month, then the Encroachment Area Charge for such period shall be prorated based on a thirty (30) day month. In no event shall acceptance by Port of the Encroachment Area Charge be deemed a consent by Port to the use or occupancy of the Encroachment Area by Tenant, its Agents, Invitees, successors or assigns, or a waiver (or be deemed as a waiver) by Port of any and all other rights and remedies of Port under this Lease (including Tenant’s obligation to Indemnify Port as set forth in **Section 3.4(c)**), at law or in equity.

(b) In addition, Tenant shall pay to Port, as Additional Rent, an amount equaling Two Hundred Dollars (\$200.00) upon delivery of the initial Notice to Vacate plus the actual cost associated with a survey of the Encroachment Area. In the event Port determines during subsequent inspection(s) that Tenant has failed to vacate the Encroachment Area, then Tenant shall pay to Port, as Additional Rent, an amount equaling Three Hundred Dollars (\$300.00) for each additional Notice to Vacate, if applicable, delivered by Port to Tenant following each inspection. The parties agree that the charges associated with each inspection of the Encroachment Area, delivery of each Notice to Vacate and survey of the Encroachment Area represent a fair and reasonable estimate of the administrative cost and expense which Port will incur by reason of Port’s inspection of the Premises, issuance of each Notice to Vacate and survey of the Encroachment Area. Tenant’s failure to comply with the applicable Notice to Vacate and Port’s right to impose the foregoing charges shall be in addition to and not in lieu of any and all other rights and remedies of Port under this Lease, at law or in equity.

(c) In addition to Port’s rights and remedies under this Section, the terms and conditions of the indemnity and exculpation provision set forth in **Section 22** (Indemnity and Exculpation) shall also apply to Tenant’s (including, its Agents, Invitees, successors and assigns) use and occupancy of the Encroachment Area as if the Premises originally included the Encroachment Area, and Tenant shall additionally Indemnify Port from and against any and all loss or liability resulting from delay by Tenant in surrendering the Encroachment Area including, without limitation, any loss or liability resulting from any Claims against Port made by any tenant or prospective tenant founded on or resulting from such delay and losses to Port due to

lost opportunities to lease any portion of the Encroachment Area to any such tenant or prospective tenant, together with, in each case, actual attorneys' fees and costs.

(d) All amounts set forth in this Section shall be due within three (3) business days following the applicable Notice to Vacate and/or separate invoice relating to the actual cost associated with a survey of the Encroachment Area. By signing this Lease, each party specifically confirms the accuracy of the statements made in this Section and the reasonableness of the amount of the charges described in this Section.

3.5. Proximity of Development Project. Tenant acknowledges that during the Term, a Port program or project and/or the Development Project(s) described in the Basic Lease Information, if any, is scheduled to be, or may be, conducted in the vicinity of the Premises. Tenant is aware that such project(s) and the activities associated with such projects will generate certain adverse impacts which may result in some inconvenience to or disturbance of Tenant. Impacts may include, but are not limited to, increased vehicle and truck traffic, traffic delays and re-routing, loss of street and public parking, dust, dirt, construction noise and visual obstructions. Tenant hereby waives any and all Claims against Port, City and their Agents arising out of such inconvenience or disturbance. To the extent a Port program or project or Development Project is undertaken by Port, Port shall use commercially reasonable efforts to conduct any of the foregoing activities in a manner that, to the extent reasonably practicable, will minimize inconvenience or disturbance to Tenant, but Port will have no obligation to minimize inconvenience or disturbance to Tenant if a Port program or project Development Project is necessary, in Port's sole and absolute discretion, to maintain Port property in a safe, hazard-free condition.

3.6. No Light, Air or View Easement. This Lease does not include an air, light, or view easement. Any diminution or shutting off of light, air or view by any structure which may be erected on lands near or adjacent to the Premises or by any vessels berthed near the Premises shall in no way affect this Lease or impose any liability on Port, entitle Tenant to any reduction of Base Rent or Additional Rent, or affect this Lease in any way or Tenant's obligations hereunder.

3.7. Unique Nature of Premises. Tenant acknowledges that: (a) the Premises is located along the waterfront; (b) Port's regular maintenance may involve activities, such as pile driving, that create noise and other effects not normally encountered in locations elsewhere in San Francisco due to the waterfront location of the Premises; and (c) there is a risk that all or a portion of the Premises will be inundated with water due to floods or sea level rise.

3.8. As-Is Condition. Tenant acknowledges and agrees that Tenant is familiar with the Premises, the Premises is being leased and accepted in their "as-is" condition, without any improvements or alterations by Port, without representation or warranty of any kind, and subject to all applicable Laws governing their use, occupancy and possession. Tenant represents and warrants to Port that Tenant has received and reviewed the FEMA disclosure notice attached as *Schedule 2* and a copy of the report(s), if any, relating to the substructure and/or structure of the Building, as further described in *Schedule 3* attached hereto. Tenant further represents and warrants to Port that Tenant has investigated and inspected, either independently or through agents of Tenant's own choosing, the condition of the Premises and the suitability of the Premises for Tenant's business and intended use. Tenant acknowledges and agrees that neither Port nor any of its agents have made, and Port hereby disclaims, any representations or warranties, express or implied, concerning the rentable area of the Premises, the physical or environmental condition of the Premises, the present or future suitability of the Premises for Tenant's business, or any other matter whatsoever relating to the Premises, including, without limitation, any implied warranties of merchantability or fitness for a particular purpose.

3.9. Release and Waiver. As part of its agreement to accept the Premises in their "As Is With All Faults" condition, Tenant, on behalf of itself and its successors and assigns, will be deemed to waive any right to recover from, and forever release, acquit and discharge, Port and

the other Indemnified Parties of and from any and all Claims, whether direct or indirect, known or unknown, foreseen or unforeseen, that Tenant may now have or that may arise on account of or in any way be connected with (i) the physical, geotechnical or environmental condition in, on, under, above, or about the Premises, including any Hazardous Materials in, on, under, above or about the Premises (including soil and groundwater conditions), (ii) the suitability of the Premises for the development of the Improvements and the Permitted Uses, (iii) any Laws applicable thereto, including Environmental Laws as of the Effective Date, (iv) damages by death of or injury to any Person, or to property of any kind whatsoever and to whomever belonging, and (v) goodwill, or business opportunities arising at any time and from any cause in, on, around, under, and pertaining to the Premises, including all claims arising from the joint, concurrent, active or passive negligence of any of Indemnified Parties, but excluding any intentionally harmful acts committed solely by Port or City.

3.10. Port's Rights Regarding Premises. Port shall have the full right and authority to make, revoke, impose, and amend any Rules and Regulations pertaining to and reasonably necessary for the proper use, operation and maintenance of the Premises and Tenant agrees to be bound by any such Rules and Regulations upon prior written notice by Port. Tenant also acknowledges that Port's exercise of any of its rights regarding the Premises and other Port property in the vicinity of the Premises will not entitle Tenant to any abatement or diminution of Rent.

4. TERM.

4.1. Term. The Term of this Lease includes the Construction Term, Initial Term and any Extension Term as defined in this Lease.

4.2. Delivery. If Port is unable to deliver possession of the Premises to Tenant on or before the Commencement Date, then the validity of this Lease shall not be affected thereby and Port shall not be liable to Tenant for any Claims resulting therefrom, and Tenant waives all provisions of any Laws to the contrary. In such case, the Term and regular payments of Rent shall not commence until Port delivers possession of the Premises. Notwithstanding anything to the contrary above, if Port's inability to deliver possession of the Premises on the estimated Commencement Date results from Tenant's or its Agents' acts or omissions, then Base Rent and Additional Rent payable by Tenant hereunder shall commence on the date when Port would have delivered possession of the Premises but for such acts or omissions.

4.3. Waiver of Relocation Benefits. To the extent allowed by applicable Law, Tenant hereby waives any and all rights, benefits or privileges of the California Relocation Assistance Law, California Government Code §§ 7260 et seq., or under any similar law, statute or ordinance now or hereafter in effect, except as specifically provided in this Lease.

5. RENT.

Tenant shall pay to Port, in the manner herein described, the following Rent:

5.1. Base Rent; Annual Base Rent Adjustment. Throughout the Initial Term and any Extension Term, Tenant shall pay to Port the Base Rent set forth in the Basic Lease Information. Base Rent shall not be reduced due to subtenant vacancies. Tenant shall make the first payment of Base Rent from no later than the Rent Commencement Date and thereafter shall pay the Base Rent, in advance, on or before the first day of each calendar month throughout the Initial Term and during any Extension Term. If the Expiration Date is other than the last day of the month, the Base Rent for that month shall be apportioned based on a thirty (30) day month.

5.2. Percentage Rent. As described in the Basic Lease Information and subject to Port's consent to each Sublease as required in **Section 23.5**, Tenant agrees to pay to Port, in addition to the monthly Base Rent payable by Tenant pursuant to **Section 5.1**, a monthly Percentage Rent in the amount described in the Basic Lease Information in the following manner:

(a) Percentage Rent shall be calculated monthly and shall be paid by Tenant quarterly for each Lease Quarter within thirty (30) days after the end of the prior Lease Quarter, except that in the event this Lease expires or terminates on a day other than the last day of a Lease Quarter, Percentage Rent for such Lease Quarter shall be paid within thirty (30) days after such expiration or termination date. On the date Percentage Rent is determined and due, Tenant shall furnish a complete statement (the “**Quarterly Percentage Rent Statement**”) in a form approved by Port. In addition, Tenant shall furnish to Port, within sixty (60) days after the expiration of each applicable Subtenant’s fiscal year as stated in the relevant Sublease, a complete statement, showing the computation of the Percentage Rent for the immediately preceding Lease Year (“**Annual Statement**”) in a form approved by Port. The Annual Statement is for verification and certification of Quarterly Percentage Rent Statements only and shall not result in any averaging of monthly Percentage Rent. Each Quarterly Percentage Rent Statement and Annual Statement shall set forth in reasonable detail Gross Revenues for such immediately preceding Lease Quarter or Lease Year, as applicable, including an itemized list of any and all deductions or exclusions from Gross Revenues that Tenant may claim and which are expressly permitted under this Lease, and a computation of the Percentage Rent for the immediately preceding Lease Quarter or Lease Year, as applicable.

(b) Each Quarterly Percentage Rent Statement and Annual Statement shall be Certified. Tenant must submit payment of the balance owing together with any Annual Statement showing that Tenant has underpaid Percentage Rent. At Port’s option, overpayments may be refunded to Tenant, applied to any other amount then due under the Lease and unpaid, or applied to Rent due at the first opportunity following Tenant’s delivery of any Annual Statement showing an overpayment.

(c) If Tenant fails to (i) pay the Percentage Rent on the date due as provided above; (ii) submit the Quarterly Percentage Rent Statement therewith (even if the statement indicates that Percentage Rent is not due); or (iii) fails to submit the Annual Statement, such failure in each instance shall be subject to a Late Charge. Tenant shall also pay any costs including attorneys’ fees reasonably incurred by Port by reason of such failure. Additionally, if Tenant fails to deliver any Quarterly Percentage Rent Statement or Annual Statement within the time period set forth in this **Section 5.2** (irrespective of whether any Percentage Rent is actually paid or due to Port) and such failure continues for thirty (30) days after the date Tenant receives (or refuses receipt of) written notice of such failure from Port, Port shall have the right, among its other remedies under this Lease, to employ a CPA to make such examination of Tenant’s Books and Records (and the Books and Records of any other occupant of the Premises) as may be necessary to certify the amount of Percentage Rent due under this Lease for the period in question and the certification so made shall be binding upon Tenant and Tenant shall promptly pay to Port the total reasonable cost of the examination, together with the full amount of Percentage Rent due and payable for the period in question, including any Late Charge. Tenant acknowledges that late submittal of the Quarterly Percentage Rent and Annual Statements and late payment of Percentage Rent will cause Port increased costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. The parties agree that the charges set forth in this Section represent a fair and reasonable estimate of the cost that Port will incur by reason of Tenant’s lateness.

(d) Acceptance by Port of any monies paid to Port by Tenant as Percentage Rent as shown by any Quarterly Percentage Rent Statement or Annual Statement, shall not be an admission of the accuracy of said Quarterly Percentage Rent Statement or Annual Statement or the amount of such Percentage Rent payment.

(e) Tenant agrees to submit Quarterly Percentage Rent Statements on a monthly basis if requested by Port with no less than twelve (12) months prior written notice, in which case, all references in this Lease to Quarterly Percentage Rent Statements will be changed to “Monthly Percentage Rent Statements” and all requirements pertaining to Quarterly Percentage Rent Statements shall apply to Monthly Percentage Rent Statements.

5.3. Participation Rent. As described in the Basic Lease Information and subject to Port's consent to each Sublease as required in *Section 23.5*, Tenant agrees to pay to Port, in addition to the monthly Base Rent payable by Tenant pursuant to *Section 5.1*, and the Percentage Rent pursuant to *Section 5.2*, Tenant agrees to pay to Port immediately upon receipt all Participation Rent, less Subletting Expenses in the amounts and manner approved by Port in its reasonable discretion, as Additional Rent.

5.4. Books and Records. Tenant agrees that the business of Subtenants upon the Premises shall be operated with a non-resettable register and so that a duplicate dated sales slip or such other recording method reasonably acceptable to Port shall be issued with each sale, whether for cash, credit or exchange. Furthermore, Tenant shall keep (and shall cause its Subtenants and assignees to keep) at the Premises or at a convenient location in San Francisco at all times during the Term complete and accurate Books and Records that contain all information required to permit Port to verify Gross Revenues and deductions and exclusions therefrom that are in accordance with this Lease and with generally accepted accounting practices consistently applied with respect to all operations of the business to be conducted in or from the Premises and shall retain such Books and Records until the later of (i) four (4) years after the end of each Lease Year to which such Books and Records apply or, (ii) if an audit is commenced or if a controversy should arise between the parties hereto regarding the Percentage Rent payable hereunder, until such audit or controversy is concluded even if such audit period extends beyond the expiration or earlier termination of the Lease (the "**Audit Period**").

5.5. Audit.

(a) Tenant on its own behalf and on behalf of its Subtenants agrees to make all Books and Records available to Port, or to any City auditor, or to any auditor or representative designated by Port or City (hereinafter collectively referred to as "**Port Representative**"), upon no less than thirty (30) business days prior written notice to Tenant, for the purpose of examining said Books and Records to determine the accuracy of Tenant's reporting of Percentage Rent for a period not to exceed the Audit Period after a Percentage Statement is delivered to the Port. Tenant shall cooperate with the Port Representative during the course of any audit, provided however, such audit shall occur at Tenant's business office, or at such other location in San Francisco where the Books and Records are kept, and no books or records shall be removed by Port Representative without the prior express written consent of Tenant (provided, however, copies may be made by the Port Representative on site), and once commenced, with Tenant's cooperation, such audit shall be diligently pursued to completion by Port within a reasonable time of its commencement, provided that Tenant makes available to the Port Representative all the relevant Books and Records in a timely manner. If an audit is made of Tenant's Books and Records and Port claims that errors or omissions have occurred, the Books and Records shall be retained by Tenant and made available to the Port Representative until those matters are expeditiously resolved with Tenant's cooperation. If Tenant operates the Premises through one or more Subtenants or Agents (other than Port), Tenant shall require each such Subtenant or Agent to provide the Port with the foregoing audit right with respect to its Books and Records. Upon completion of the audit, Port shall promptly deliver a copy of the audit report to Tenant.

(b) If an audit reveals that Tenant has understated Gross Revenues for said audit period, Tenant shall pay Port, promptly upon demand, the difference between the amount Tenant has paid and the amount it should have paid to Port, plus interest at the Interest Rate from the date of the error in the payment. If an audit reveals that Tenant has overstated Gross Revenues for said audit period, Tenant shall be entitled to a credit against rent for either Base Rent or Percentage Rent next owed equal to the difference between the amount Tenant has paid and the amount it should have paid to Port. If Tenant understates Gross Revenues for any audit period by three percent (3%) or more (subject to a minimum understatement of five thousand dollars (\$5,000), increased annually by three percent (3%)), Tenant shall pay the cost of the

audit. A second understatement within any three (3) Lease Year period of the first such understatement shall be considered an Event of Default.

5.6. *Default Interest.* Any Rent, if not paid within five (5) days following the due date and any other payment due under this Lease not paid by the applicable due date, shall bear interest from the due date until paid at the Interest Rate. However, interest shall not be payable on Late Charges incurred by Tenant nor on other amounts to the extent this interest would cause the total interest to be in excess of that which an individual is lawfully permitted to charge. Payment of interest shall not excuse or cure any default by Tenant. Tenant shall also pay any costs, including attorneys' fees incurred by Port by reason of Tenant's failure to pay Rent or other amounts when due under this Lease.

5.7. *Late Charges/Habitual Late Payer.* Tenant acknowledges that late payment by Tenant to Port of Rent or other sums due under this Lease will cause Port increased costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Accordingly, if Tenant fails to pay Rent on the date due, such failure shall be subject to a Late Charge at Port's discretion; provided that such Late Charge shall be imposed with respect to the first two (2) occurrences of such a delinquency in any twelve (12)-month period only if Tenant fails to cure such delinquency within five (5) days after written notice from Landlord thereof. Tenant shall also pay any costs including attorneys' fees incurred by Port by reason of Tenant's failure to timely pay Rent. Additionally, in the event Tenant is notified by Port that Tenant is considered to be a Habitual Late Payer, Tenant shall pay, as Additional Rent, an amount equal to Fifty Dollars (\$50.00) (as such amount may be adjusted from time to time by the Port Commission) upon written notification from Port of Tenant's Habitual Late Payer status. The parties agree that the charges set forth in this Section represent a fair and reasonable estimate of the cost that Port will incur by reason of any late payment. Such charges may be assessed without notice and cure periods and regardless of whether such late payment results in an Event of Default. Payment of the amounts under this Section shall not excuse or cure any default by Tenant.

5.8. *Returned Checks.* If any check for a payment for any Lease obligation is returned without payment for any reason, Tenant shall pay, as Additional Rent, an amount equal to Fifty Dollars (\$50.00) (as such amount may be adjusted from time to time by the Port Commission) and the outstanding payment shall be subject to a Late Charge as well as interest at the Interest Rate.

5.9. *Net Lease.* It is the purpose of this Lease and intent of Port and Tenant that all Rent shall be absolutely net to Port, so that this Lease shall yield to Port the full amount of the Rent at all times during the Term, without deduction, abatement or offset. Except as otherwise expressly set forth in this Lease, under no circumstances, whether now existing or hereafter arising, and whether or not beyond the present contemplation of the Parties shall Port be expected or required to incur any expense or make any payment of any kind with respect to this Lease or Tenant's use or occupancy of the Premises, including any Improvements. Without limiting the foregoing, but except as expressly provided to the contrary in this Lease, Tenant shall be solely responsible for paying each item of cost or expense of every kind and nature whatsoever, the payment of which Port would otherwise be or become liable by reason of Port's estate or interests in the Premises and any Improvements, any rights or interests of Port in or under this Lease, or the ownership, leasing, operation, management, maintenance, repair, rebuilding, remodeling, renovation, use or occupancy of the Premises, any Improvements, or any portion thereof. No occurrence or situation arising during the Term, nor any present or future Law, whether foreseen or unforeseen, and however extraordinary, shall relieve Tenant from its liability to pay all of the sums required by any of the provisions of this Lease, or shall otherwise relieve Tenant from any of its obligations under this Lease, or shall give Tenant any right to terminate this Lease in whole or in part, except as otherwise expressly provided in this Lease. Tenant waives any rights now or hereafter conferred upon it by any existing or future Law to terminate this Lease or to receive any abatement, diminution, reduction or suspension of

payment of such sums, on account of any such occurrence or situation, provided that such waiver shall not affect or impair any right or remedy expressly provided Tenant under this Lease.

5.10. Additional Charges. Without limiting Port's other rights and remedies set forth in this Lease, at law or in equity, in the event Tenant fails to submit to the appropriate party, on a timely basis, the items identified in *Sections: 15* (Utilities), *18.3* (Tenant's Environmental Condition Notification Requirements), *18.8* (Storm Water Pollution Prevention), *34.1(d)* (CMD Form), and *38* (Estoppel Certificate) or to provide evidence of the required insurance coverage described in *Section 19 below*, then within twenty (20) days after written notice from Port of such failure, Tenant shall pay, as Additional Rent, an amount equaling One Hundred Dollars (\$100.00). In the event Tenant fails to provide the necessary document within the time period set forth in the initial notice (which shall not be less than fifteen (15) days under this Lease) and Port delivers to Tenant additional written notice requesting such document, then Tenant shall pay to Port, as Additional Rent, an amount equaling One Hundred Fifty Dollars (\$150.00) for each additional written notice Port delivers to Tenant requesting such document. The parties agree that the charges set forth in this *Section 5.10* represent a fair and reasonable estimate of the administrative cost and expense which Port will incur by reason of Tenant's failure to provide the documents identified in this *Section 5.10* and that Port's right to impose the foregoing charges shall be in addition to and not in lieu of any and all other rights under this Lease, at law or in equity. By signing this Lease, each party specifically confirms the accuracy of the statements made in this *Section 5.10* and the reasonableness of the amount of the charges described in this *Section 5.10*.

5.11. Rent Credits; Seismic Project Rent Credits.

(a) Seismic Project Rent Credits. Tenant shall be entitled to the Seismic Project Rent Credit as provided in the Basic Lease Information subject to the following conditions.

(i) Within ninety (90) days after Completion of the Seismic Project, Tenant shall deliver to Port an itemized statement of the actual costs expended by Tenant on the Seismic Project, accompanied by documentation reasonably satisfactory to Port evidencing all said expenditures. Such appropriate proofs of expenditure shall include, without limitation, (i) copies of canceled checks, (ii) copies of executed contracts, (iii) invoices for labor services and/or materials marked "Paid"; or otherwise evidenced as having been paid; bills of lading marked "Paid"; other bills, contracts and receipts for goods, materials and/or services marked "Paid", (iv) and such other proofs of expenditure as may be reasonably approved by Port, and (v) unconditional lien waivers from all the general contractors and all subcontractors and suppliers for the particular items of the Seismic Project covered by the rent credit request. All such proofs of expenditure must be attributable directly to work or materials performed, constructed or installed in connection with the Seismic Project. Costs expended for the Seismic Project that are eligible for rent credits shall not include any items other than those specified in the Work Letter and shall not include items related to the Initial Tenant Improvements or any other items nor any fees, exactions, impositions, or similar charges imposed as a condition to permit approval. Notwithstanding anything to the contrary in this Lease, fees paid for the Building Permit for the Initial Improvements apportioned to the Seismic Project are eligible for rent credits. To the extent Tenant (through its employees, contractors, or any party in which Tenant has a direct financial interest) performs any of the work, the costs for such labor shall be no more than the commercially reasonable, market-rate labor charges typically charged for such work by parties in an arms-length transaction. In no event shall maintenance, repair and/or replacement costs be eligible for rent credits. During construction of the Seismic Project, Tenant may submit interim statements with the foregoing information for Port's review and approval in order to expedite the initiation of the rent credits. Within ninety (90) days of receipt of the final statement and based upon said statement and accompanying documentation which substantiate the actual costs expended, Port in its reasonable discretion shall determine in writing the costs eligible for rent credits and Tenant may apply such rent credits in accordance with this Section.

(ii) Notwithstanding any other provision of this Lease, the determination of Completion of the Seismic Project is independent of the determination of Completion of the Initial Tenant Improvements for purposes of eligibility for and application of the Seismic Rent Credits.

(iii) In the event all or any portion of the Seismic Project Rent Credit available to Tenant exceeds such monthly installment of Rent due, the remaining portion of the Seismic Rent Credit shall be carried forward to the next installment of monthly Rent until the earlier to occur of (i) the rent credit being fully applied, (ii) the expiration or earlier termination of this Lease excluding any holdover period (with or without Port consent), or (iii) if an Event of Default occurs, then following the cure of such Event of Default.

(b) Conditions for All Rent Credits, including Seismic Project Rent Credits.

(i) Tenant agrees and acknowledges that any right or claim Tenant may have to any rent credit that has not yet been actually applied against Rent shall, upon the earlier to occur of (i) Tenant's failure to submit to Port within ninety (90) days adequate evidence of expenditures (if submission is required under this Lease); or (ii) the expiration or earlier termination of this Lease, be immediately terminated, without notice, and Port shall have no liability or obligation to pay or credit Tenant all or any portion of the unused rent credit.

(ii) Rent credits cannot be applied retroactively.

(iii) Notwithstanding anything to the contrary contained herein, in no event shall Tenant receive any rent credit during any existing Event of Default. Upon the occurrence of an Event of Default during the period Tenant is eligible for rent credits, Tenant's right to receive any rent credit shall cease and shall not be reinstated until the Event of Default is cured. If an Event of Default occurs on a day other than the first day of the calendar month or an Event of Default is cured on a day other than the last day of the calendar month, Base Rent due to Port shall be apportioned based on a thirty (30) day month. In no event shall the cessation in the application of any rent credit extend the rent credit period or amount.

6. TENANT'S MANAGEMENT AND OPERATING COVENANTS.

6.1. *Operating Standards/Covenants.* Tenant will maintain and operate the Premises, or cause the Premises to be maintained and operated, in a manner consistent with (i) the maintenance and operation of other YMCA of San Francisco locations in San Francisco, California or, if YMCA of San Francisco is no longer the Tenant, then consistent with the maintenance and operation of similar fitness facilities in San Francisco and (ii) with respect to all other uses, consistent with the maintenance and operation of a similar first-class development of the same or similar use located in the Dogpatch neighborhood of San Francisco, and in, in all cases, in accordance with this Lease. Tenant is exclusively responsible, at no cost to Port, for the management and operation of the Premises. In connection with managing and operating the Premises, Tenant will provide (or require Subtenants or others to provide), services as necessary and appropriate for the use of the Improvements, including (a) repair and maintenance of the Improvements, as more fully described in *Section 13*; (b) utility and telecommunications (including internet/Wi-Fi) services; and (c) cleaning, janitorial, pest extermination, recycling, composting, and trash and garbage removal.

6.2. *Continuous Operations.* Tenant shall use commercially reasonable efforts to ensure that all of the Premises are used continuously during the opening hours set forth in this Lease including in the Operations Plan and shall not allow any portion of the Premises to remain unoccupied or unused without the prior written consent of Port, which consent may be withheld in Port's reasonable discretion. Notwithstanding the foregoing, the Port shall not withhold its consent to any cessation of operations of any portion of the Premises for any reasonably necessary time period due to the following causes or in the following circumstances: (a) if the Premises or a portion thereof becomes untenable due to fire or other Casualty, (b) as may be necessary in connection with performing Improvements, Alterations or major maintenance

activities that materially impact the ability to use the Premises or a portion thereof, (c) while conducting periodic inventory of Tenant's goods and merchandise, or (d) during re-subtenanting. Notwithstanding anything to the contrary, the Restrooms shall remain open on the terms and conditions stated in the Basic Lease Information at any time that Tenant is operating at the Premises.

6.3. Subleasing Program. Consistent with the purpose of this Lease to support maritime recreation and promote public access to the Bay and shoreline, Tenant will make every reasonable effort to obtain and retain desirable Subtenants that are consistent with the tidelands public trust for commerce, navigation and fisheries, including the statutory trust imposed by the Burton Act as set forth in the Burton Act. ("**Public Trust**"). In the event of vacant subleasable space, Tenant shall first market to Public Trust-consistent users offering similar retail goods and services as the original Subtenants (i.e. aquatics center; food and beverage). Nothing in this section is intended to require Tenant to enter into any Sublease that represents a below market rate or that will materially reduce the economic return to Tenant from the Sublease or require Tenant to enter into an agreement with someone that is not otherwise qualified. Tenant agrees to meet with Port from time to time, and, to consider in good faith whether to implement such steps as the Port may recommend to increase usage for Public Trust-related uses. In the event of any subtenant vacancies, Tenant will provide Port with quarterly reports on the status of its subleasing efforts (the "**Leasing Activity Report**") and maintain accurate records as to space leased, optioned, and available to lease to ensure the best placement of tenants taking into consideration options to extend and to expand. The Leasing Activity Report is due by the twentieth (20th) day of each Lease Quarter for the immediately preceding quarter and will be submitted concurrently with the applicable Quarterly Percentage Rent Statement.

6.4. Restaurant/Retail Businesses Open to the General Public. Any restaurant and/or retail operation (other than trade-only showrooms) on the Premises must be open to the general public and operated in a manner consistent with *Section 6.1* and *Section 10* and the Operations Plan.

6.5. Flags. Throughout the Term, a Port flag will fly on the Building. At Port's sole cost, Port will provide the Port flag to Tenant and will promptly replace worn Port flags. Tenant will promptly, at no charge, install, raise, lower, and remove Port flags at Port's request. The dimensions of Port flags will be similar to the dimensions of Port flags flown on the roofs of Port buildings. Tenant also may fly other flags on the Building, provided that such other flags, other than the flags of the United States and the State of California, must be placed beneath the Port flag and Port must first reasonably approve the dimensions, color, text, design, and materials for each flag. If Port determines that Tenant's response to Port's request to raise or lower Port flags is inadequate, then at Port's election, Port may exercise its rights to access the Flagpoles as further described in *Section 29*.

If Port does not provide a replacement flag to replace a worn Port flag, then Tenant shall provide Port with notice requesting that a replacement flag be provided ("**Replacement Notice**"). If Port reasonably believes the flag in question is not worn sufficiently enough to warrant its replacement, Port shall notify Tenant within five (5) days following receipt of the Replacement Notice, and such flag shall remain in place and not be replaced. If Port has not timely notified Tenant that Port disputes the need to replace the flag and if Port does not provide Tenant with a replacement flag within thirty (30) days following the Replacement Notice, then Tenant shall deliver to Port a second notice, which notice shall include a statement in bold, all caps, and underlined that if Port does not provide Tenant with a replacement flag within ten (10) days of such second notice, then Tenant shall have the right to remove the worn flag. If Port does not provide Tenant with a replacement flag within five (5) days of such second notice, then Tenant shall have the right to remove the worn flag; provided, however, if Port notifies Tenant that Port cannot provide Tenant with a replacement flag due to unavailability of a replacement flag, Tenant shall not remove the worn flag until Port is able to obtain a replacement flag, but in no

event shall Tenant be obligated to fly a worn flag more than sixty (60) days from delivery of the first Replacement Notice from Tenant.

6.6. Exterior Improvements. Tenant will not install any Exterior Improvements without Port's prior consent. Tenant will provide to Port the size, height, design, color, dimensions, text (if any), materials, location, and method of installation of the Exterior Improvements to enable Port to evaluate the proposed Exterior Improvement. Within thirty (30) days following Port's receipt of the proposed Exterior Improvement, Port will notify Tenant if Port requires the proposed Exterior Improvement to be reviewed by the WDAC or another Port advisory body, in Port's sole discretion, and Tenant will incorporate Port's requested changes, if any, into the proposed Exterior Improvement so long as such changes do not materially increase Tenant's cost or materially delay installation of the proposed Exterior Improvement. Construction of the Exterior Improvements will be in accordance with *Section 14*.

7. EXTENSION OPTIONS.

7.1. Options to Extend Term. Provided that (i) Tenant has invested a minimum of \$5,000,000 in the Initial Improvements by the Initial Improvements Completion Date (as may be extended as provided in the Work Letter) as set forth in a summary that Tenant provides to Port of the amounts Tenant has spent, along with reasonably satisfactory evidence of Tenant's payment of such amounts) and (ii) Tenant provides a timely Option Notice, Tenant shall have the Extension Options described in the Basic Lease Information. Any Option Notice by Tenant shall be irrevocable by Tenant. The lease for an Extension Term shall cover the entire Premises and shall be upon all of the terms, covenants and conditions of this Lease, except that the Expiration Date shall mean the last day of the Extension Term.

If any Event of Default by Tenant is outstanding either at the time of Tenant's Option Notice or at any time prior to the first day of an Extension Term and remains uncured after notice and the expiration of all applicable cure periods, then Port may elect by written notice to Tenant to reject Tenant's exercise of the Extension Option, whereupon the Extension Option shall be null and void. If Tenant fails to exercise any Extension Option or Port rejects Tenant's exercise of any Extension Option in accordance with this Section, then all successive Extension Options shall be null and void and this Lease will terminate as of the original or relevant Expiration Date. The Parties acknowledge and agree that the prerequisite conditions to Tenant's extension option right set forth for in this Section are a material part of the bargained-for consideration under this Lease.

7.2. Rent During Extension Term(s). During any Extension Term, Tenant shall pay to Port the Base Rent set forth in the Basic Lease Information as adjusted on each Extension Term Anniversary Date by the Extension Term Annual Adjustment as provided in the Basic Lease Information. Percentage Rent, Participation Rent and Transfer Participation Rent will remain the same during any Extension Term.

7.3. Other Terms. The lease for an Extension Term shall cover the entire Premises and shall be upon all of the terms, covenants and conditions of this Lease, except that the Expiration Date shall mean the last day of the Extension Term.

8. TAXES AND ASSESSMENTS.

8.1. Payment of Taxes. During the Term, Tenant agrees to pay, when due, to the proper authority any and all real and personal property taxes, general and special assessments, real property transfer taxes, license fees, permit fees and all other governmental charges of any kind or nature whatsoever, including without limitation all penalties and interest thereon, levied or assessed on Tenant's Property, the leasehold or subleasehold estate or Tenant's use of the Premises, or any transfer of a leasehold interest or subleasehold interest in the Premises (including but not limited to the transfer of the leasehold interest in the Premises pursuant to the Lease) whether in effect at the time this Lease is entered into or which become effective thereafter, and all taxes levied or assessed on the possession, use or occupancy, as distinguished

from the ownership, of the Premises. Tenant further recognizes and agrees that its leasehold interest may be subject to the payment of special taxes, including without limitation a levy of special taxes to finance energy efficiency, water conservation, water pollution control and similar improvements under the Special Tax Financing Law in Chapter 43 Article X of the Administrative Code. Tenant shall not permit any of the above taxes, assessments or other charges to become a defaulted lien on the Premises or the Improvements thereon; provided, however, that in the event any such tax, assessment or similar charge is payable in installments, Tenant may make, or cause to be made, payment in installments; and provided, further, that Tenant may, through such proceeding as Tenant considers necessary or appropriate, contest the legal validity or the amount of any tax, assessment or similar charge so long as such assessment or charge does not become a defaulted lien. In the event of any such dispute, Tenant shall Indemnify Port, City, and their Agents from and against all Claims resulting therefrom.

8.2. Possessory Interest Tax. Tenant recognizes and understands that this Lease may create a possessory interest subject to property taxation and that Tenant may be subject to the payment of property taxes levied on such interest. Tenant further recognizes and understands that any sublease or assignment permitted under this Lease and any exercise of any option to renew or other extension of this Lease may constitute a change in ownership for purposes of property taxation and therefore may result in a revaluation of any possessory interest created hereunder. Tenant agrees to pay taxes of any kind, including, but not limited to, possessory interest taxes, that may be lawfully assessed on the leasehold interest hereby created and to pay all other taxes, excises, licenses, permit charges and assessments based on Tenant's usage of the Premises that may be imposed upon Tenant by Law, all of which shall be paid when the same become due and payable and before delinquency. Tenant agrees not to allow or suffer a lien for any such taxes to be imposed upon the Premises or upon any equipment or property located thereon without promptly discharging the same, provided that Tenant, if so desiring, may have reasonable opportunity to contest the validity of the same. San Francisco Administrative Code Sections 23.38 and 23.39 (or any successor statute) require that certain information relating to the creation, renewal, extension, assignment, sublease, or other transfer of this Lease be reported to the County Assessor within sixty (60) days after any such transaction. Accordingly, Tenant must provide a copy of this Lease to the County Assessor not later than sixty (60) days after the Effective Date, and any failure of Tenant to timely provide a copy of this Lease to the County Assessor will be a default under this Lease. Tenant will also timely provide any information that Port or City may request to ensure compliance with this or any other reporting requirement.

9. SECURITY DEPOSIT.

Tenant shall pay to Port upon execution of this Lease, the Security Deposit, in cash, in the sum specified in the Basic Lease Information, as security for the faithful performance by Tenant of all terms, covenants and conditions of this Lease. At all times, the Security Deposit shall equal the amount that is twice the current Monthly Base Rent and Tenant shall increase the amount of the Security Deposit on the same date that any increase in Base Rent is first due, including with respect to any Annual Adjustment and upon the commencement date of any Extension Term to maintain such ratio.

Tenant agrees that Port may (but shall not be required to) apply the Security Deposit in whole or in part to (a) pay any sum due to Port under this Lease; (b) compensate Port for any expense incurred or damage caused by Tenant, its Agents or Invitees; (c) cure any default by Tenant; or (d) cure, or attempt to cure, any failure of Tenant to perform any other covenant, term or condition contained herein. Tenant shall immediately upon demand pay Port a sum equal to the portion of the Security Deposit expended or applied by Port. Port shall not be required to keep the Security Deposit separate from its general funds, and Tenant shall not be entitled to any interest on the Security Deposit. Nothing contained in this Section shall in any way diminish or be construed as waiving any of Port's other remedies set forth in this Lease or provided by law or equity.

Tenant hereby waives the provisions of California Civil Code Section 1950.7 and/or any successor statute, it being expressly agreed that Port may apply all or any portion of the Security Deposit in payment of any and all sums reasonably necessary to compensate Port for any other loss or damage, foreseeable or unforeseeable, caused by the act or omission of Tenant or any Agent or Invitee of Tenant, and that following a default by Tenant, all or any portion of the Security Deposit may be retained by Port following a termination of this Lease and applied to future damages, including damages for future Rent, pending determination of the same.

10. USE OF THE PREMISES.

10.1. Permitted Use. The Premises shall be used and occupied only for the Permitted Use specified in the Basic Lease Information and for no other purpose.

10.2. Prohibited Use. Tenant agrees that the following activities, by way of example only and without limitation, (in each instance, a “Prohibited Use” and collectively, “Prohibited Uses”), are inconsistent with this Lease, are strictly prohibited and are considered Prohibited Uses:

(a) any activity, or the maintaining of any object, which will in any way materially increase the existing rate of, or cause a cancellation of, any fire or other insurance policy covering the Premises, any part thereof or any of its contents;

(b) any activity or object which will exceed load restrictions, if any, or cause damage to the Premises;

(c) any activity which constitutes waste or nuisance, including, but not limited to, the preparation, manufacture or mixing of anything that might emit any objectionable odors, noises or lights onto adjacent properties or the use of loudspeakers or sound or light apparatus which can be heard or seen outside the Premises in a manner inconsistent with Laws;

(d) any activity which will in any way injure, obstruct or interfere with the rights of other users or of owners, users, or occupants of adjacent properties, including, but not limited to, rights of ingress and egress;

(e) use of the Premises for residential, sleeping or personal living quarters and/or "Live/Work" space;

(f) any auction, distress, fire, bankruptcy or going out of business sale on the Premises without the prior written consent of Port, which consent may be granted, conditioned, or withheld in the sole and absolute discretion of Port;

(g) any vehicle and equipment maintenance, including but not limited to, fueling, changing oil, transmission or other automotive fluids;

(h) the storage of any and all excavated materials, including but not limited to, dirt, concrete, sand, asphalt, and pipes;

(i) except during periods of permitted construction, the storage of any and all aggregate material, or bulk storage, such as wood or of other loose materials;

(j) except as provided in the Operations Plan, the washing of any vehicles, vessels or equipment; or

(k) other Prohibited Uses identified in the Basic Lease Information, if any.

10.3. Notice of Prohibited Use Charge. In the event Port determines after inspection that Prohibited Uses are occurring, then Tenant shall cease the Prohibited Use and shall pay to Port, as Additional Rent, an amount equaling Two Hundred Dollars (\$200.00) upon delivery of written notice to Tenant to cease the Prohibited Use (“Notice to Cease Prohibited Use”). In the event Port determines in subsequent inspection(s) that Tenant has not ceased the Prohibited Use, then Tenant shall pay to Port, as Additional Rent, an amount equaling Three Hundred Dollars

(\$300.00) for each additional Notice to Cease Prohibited Use delivered to Tenant. The parties agree that the charges associated with each inspection and delivery of the Notice to Cease Prohibited Use, if applicable, represent a fair and reasonable estimate of the administrative cost and expense which Port will incur by reason of Port's inspection and Tenant's failure to comply with the applicable Notice to Cease Prohibited Use and that Port's right to impose the foregoing charges shall be in addition to and not in lieu of any and all other rights under this Lease, at law or in equity. By signing this Lease, each party specifically confirms the accuracy of the statements made in this Section and the reasonableness of the amount of the charges described in this Section.

11. COMPLIANCE WITH LAWS; CHANGE IN LAWS.

11.1. *Compliance with Laws.* Tenant, at Tenant's sole cost and expense, promptly shall comply with all Laws relating to or affecting the condition, use or occupancy of the Premises and shall comply with all Laws relating to Tenant's specific use of the Premises and all Rules and Regulations, if any, in effect either at the time of execution of this Lease or which may hereafter be in effect at any time during the Term, whether or not the same are now contemplated by the parties. Tenant further understands and agrees that it is Tenant's obligation, at Tenant's sole cost and expense, to cause the Premises including the activities and operations conducted thereon, to be in compliance with the Disability Laws. Tenant shall be solely responsible for conducting its own independent investigation of this matter and for ensuring that the design of all Alterations and Improvements strictly complies with all requirements of the Disability Laws. If Tenant's use or occupancy of the Premises triggers a requirement to remove barriers or perform other work to any Port property outside of the Premises to comply with the Disability Laws, then, Tenant will perform the work at Tenant's sole cost and expense.

The parties acknowledge and agree that Tenant's obligation to comply with all Laws as provided herein is a material part of the bargained for consideration under this Lease. Tenant's obligation under this **Section 11** shall include, without limitation, the responsibility of Tenant to make substantial or structural repairs and Alterations to the Premises, regardless of, among other factors, the relationship of the cost of curative action to the Rent under this Lease, the length of the then remaining Term hereof, the relative benefit of the repairs to Tenant or Port, the degree to which the curative action may interfere with Tenant's use or enjoyment of the Premises, the likelihood that the parties contemplated the particular Laws involved, and whether the Laws involved are related to Tenant's particular use of the Premises. Any Alteration or Improvements made by or on behalf of Tenant pursuant to the provisions of this **Section 11** shall comply with the provisions of **Section 14**. Except as otherwise expressly set forth in this Lease, no occurrence or situation arising during the Term, nor any present or future Law, whether foreseen or unforeseen, and however extraordinary, shall relieve Tenant of its obligations hereunder, nor give Tenant any right to terminate this Lease in whole or in part or to seek redress against Port, except to the extent Tenant may have remedies against Port pursuant to this Lease or applicable Law. Tenant waives any rights now or hereafter conferred upon it by any existing or future Law to terminate this Lease, to receive any abatement, diminution, reduction or suspension of payment of Rent, or to compel Port to make any repairs to comply with any such Laws, on account of any such occurrence or situation.

11.2. *Change in Laws.* Notwithstanding **Section 11.1**, if, during an Extension Term, an existing Law is amended or a new Law is enacted (regardless of its effective or implementation date) for reasons unrelated to: (i) Tenant's violation of any Laws; (ii) an unpermitted use, Prohibited Use or change in Permitted Uses; (iii) a Law affecting the License Area or the Park (unless such Law materially and adversely affects access to the Premises); or (iv) temporary health protection measures during a pandemic or other health emergency, and such amended or new Law is effective during the Extension Term, would require Tenant to comply during the Extension Term and either (x) materially impacts Tenant's ability to operate the Premises as generally contemplated under the Lease; or (y) would present a demonstrable financial hardship to Tenant if Tenant had to comply with amended or new Law (each a "**Change in Law**"), then

Tenant may terminate this Lease; provided that there is no existing Event of Default (as further described in **Section 11.2(c)**) and in accordance with the following:

(a) Within four months after the date on which a Change in Law becomes effective (e.g., becomes law following expiration of any time period in which to challenge such law or if challenged, following the final, unappealable judgment upholding such law, as opposed to the deadline under such Change in Law by which Tenant must comply with the Change in Law), Tenant must provide written notice to Port (“**Early Termination Notice**”) with the following information:

(i) details about how Tenant anticipates such change will materially impact Tenant’s ability to operate the Premises as generally contemplated under the Lease;

(ii) an analysis of the costs associated with the Change in Laws and the financial hardship to Tenant;

(iii) Tenant’s intention to terminate the Lease as of the date specified in the notice (“**Early Termination Date**”), which shall not be less than one hundred eighty (180) days from the date of Tenant’s Early Termination Notice unless: (1) the Change in Law requires Tenant to achieve compliance in less than 180 days, in which case, Tenant shall propose an earlier termination date; (2) if the Change in Law is a new or updated life safety requirement and Tenant reasonably anticipates that the failure to comply therewith would materially impact Tenant’s continuous use of the Premises (or a material portion thereof) for the Permitted Uses, starting at any time earlier than 180 days and continuing for the remainder of the Term, then (x) the 180-day notice period shall not apply and, at Tenant’s election, the Early Termination Date may be a date sooner than 180 days, and (y) Tenant shall implement such temporary safeguards as Tenant reasonably believes are necessary to address any imminent threat to life or property that the life safety non-compliance under the Change in Law may present; or (3) if the date by which Tenant needs to commence the work necessary in order to be in compliance with the Change in Law by the required deadline is more than one hundred eighty (180) days from the date of Tenant’s Early Termination Notice, then Tenant’s Early Termination Date shall not be earlier than the date that is one hundred eighty (180) days prior to the date on which Tenant needs to commence the compliance work; and

(iv) the amount of the termination fee which shall be fifty percent (50%) of the Base Rent payable (excluding any then-applicable rent credits) from the termination date to the last day of the Extension Term (“**Termination Fee**”).

(b) Within ninety (90) days (or such shorter period as may be necessary under sub-clauses (1) or (2) of **Section 11.2(a)(iii)**) of Tenant’s Early Termination Notice, Port shall either (i) accept Tenant’s Early Termination Notice in which case, Tenant shall promptly pay the Termination Fee and this Lease will expire on the Early Termination Date without further action by the parties or (ii) object in writing stating the basis of its objection (which shall only be based on the criteria in this **Section 11.2** including without limitation the Early Termination Date or the calculation of the Termination Fee). If Port states an objection, Port and Tenant will work in good faith to resolve such objection within a reasonable time period, and Tenant may resubmit its Early Termination Notice, subject again to Port’s acceptance.

(c) If any Event of Default by Tenant is outstanding either at the time of Tenant’s Early Termination Notice or at any time prior to Early Termination Date and remains uncured after notice and the expiration of all applicable cure periods, then Port may reject Tenant’s Early Termination Notice. The Parties acknowledge and agree that the termination right provided by this **Section 11.2** provides an extraordinary remedy for Tenant, will be interpreted narrowly and that the prerequisite conditions to Tenant’s termination right as set forth for in this Section are a material part of the bargained-for consideration for this termination right.

12. PORT ACTING AS OWNER OF PROPERTY; REGULATORY APPROVALS; COMPLIANCE WITH CITY'S RISK MANAGER'S REQUIREMENTS.

12.1. *Port Acting as Owner of Property.* Tenant understands and agrees that Port is entering into this Lease in its capacity as a landowner with a proprietary interest in the Premises and not as a Regulatory Agency of the City with certain police powers. By entering into this Lease, Port is in no way modifying or limiting the obligation of Tenant to obtain any required Regulatory Approvals from Regulatory Agencies, and to cause the Premises to be used and occupied in accordance with all Laws and required Regulatory Approvals. Examples of Port actions as a Regulatory Agency include Port issuance of building, encroachment and other construction-related permits, and the Chief Harbor Engineer's actions to protect public health and safety.

12.2. *Regulatory Approvals.* Tenant understands that Tenant's operations on the Premises, changes in use, or Improvements or Alterations to the Premises (individually and collectively, "**Changes**") may require Regulatory Approvals, including Regulatory Approvals issued by Port in its capacity as a Regulatory Agency.

Tenant shall be solely responsible for obtaining any Regulatory Approvals, and Tenant shall not seek any Regulatory Approval without first obtaining the prior written approval of Port. All costs associated with applying for and obtaining any necessary Regulatory Approval shall be borne solely and exclusively by Tenant. Tenant shall be solely responsible for complying with any and all conditions imposed by Regulatory Agencies as part of a Regulatory Approval; provided, however, Tenant shall not agree to the imposition of conditions or restrictions in connection with its efforts to obtain a permit or other entitlement from any Regulatory Agency (other than Port), if the Port is required to be a co-permittee under such permit or other entitlement, or if the conditions or restrictions it would impose on the project could affect future use or occupancy of the Premises or Port's interest therein or would create obligations on the part of Port (whether on or off of the Premises) to perform or observe, unless in each instance Port has previously approved such conditions in writing, in Port's sole and absolute discretion.

Any fines or penalties imposed as a result of the failure of Tenant to comply with the terms and conditions of any Regulatory Approval shall be promptly paid and discharged by Tenant, and Port shall have no liability, monetary or otherwise, for any fines and penalties. To the fullest extent permitted by Law, Tenant agrees to Indemnify City, Port and their Agents from and against any Claim which City or Port may incur as a result of Tenant's failure to obtain or comply with the terms and conditions of any Regulatory Approval.

Without limiting the terms and conditions of *Sections 12.1 and 12.2*, by signing this Lease, Tenant agrees and acknowledges that (i) Port has made no representation or warranty that Regulatory Approvals to allow for the Changes, if any, can be obtained, (ii) although Port is an agency of the City, Port has no authority or influence over any Regulatory Agency responsible for the issuance of such required Regulatory Approvals, (iii) Port is entering into this Lease in its capacity as a landowner with a proprietary interest in the Premises and not as a Regulatory Agency of the City with certain police powers, and (iv) Tenant is solely responsible for obtaining any and all required Regulatory Approvals in connection with any Changes. Accordingly, Tenant understands that there is no guarantee, nor a presumption, that any required Regulatory Approvals will be issued by the appropriate Regulatory Agency and Port's status as an agency of the City shall in no way limit the obligation of Tenant to obtain approvals from any Regulatory Agencies (including Port) that have jurisdiction over the Premises. Tenant hereby releases and discharges Port from any liability relating to the failure of any Regulatory Agency (including Port) from issuing any required Regulatory Approval.

12.3. *Compliance with City's Risk Manager's Requirements.* Tenant shall faithfully observe, at no cost to Port, any and all requirements of City's Risk Manager with respect to Tenant's use and occupancy of the Premises, so long as such requirements do not unreasonably

interfere with Tenant's or Subtenants' use of the Premises or are otherwise connected with standard prudent commercial practices of other landlords.

13. MAINTENANCE AND REPAIRS.

13.1. *Tenant Maintenance and Repair Obligations.* Unless otherwise set forth in the Basic Lease Information, Tenant shall at all times during the Term, starting on the Commencement Date, or upon use of the Premises by Tenant under a Prior License to the extent required under the Prior License, and at its sole cost and expense, maintain, repair and replace in good and working order, condition and repair the Premises and all Improvements and Alterations thereon, including, but not limited to, glazing. Port shall not be obligated to make any repairs, replacement or renewals of any kind, nature or description whatsoever to the Premises nor to any Improvements or Alterations now or hereafter located thereon. Tenant hereby waives all rights to make repairs at Port's expense under Sections 1932(1), 1941 and 1942 of the California Civil Code or under any similar Law now or hereafter in effect. Notwithstanding any maintenance obligations of Port that may be set forth in the Basic Lease Information, in the event that Tenant, its Agents or Invitees cause any damage to the Premises or any other property within Port's jurisdiction, Tenant shall be responsible for repair and Port may repair the same at Tenant's sole cost and expense and Tenant shall immediately reimburse Port therefor.

Tenant shall not make, nor cause or suffer to be made, any repairs or other work for which a permit is required by any applicable building code, standard or regulation, including, without limitation, the Port Building Code or of any rule or regulation of Port without first obtaining Port's prior written consent (provided that, no consent shall be required for any minor or routine repairs to the Initial Improvements or any Subsequent Alterations for which Port consent was previously obtained) and a permit therefor.

In the event that damage or deterioration to the Premises or any portion thereof which is Tenant's obligation to maintain results in the same not meeting the standard of maintenance required by Port for such uses as Tenant is making of the Premises, then Tenant shall have the independent responsibility for, and shall promptly undertake, maintenance or repair of the Premises and complete the same with due diligence.

13.2. *Port's Right to Inspect.* Without limiting *Section 29 below*, Port may make periodic inspections of the Premises and may advise Tenant when maintenance or repair of the Premises is required, but such right of inspection shall not relieve Tenant of its independent responsibility to maintain such Premises and Improvements in a condition as good as, or better than, their condition at the Commencement Date, excepting ordinary wear and tear.

13.3. *Port's Right to Repair.* In the event Tenant fails to maintain the Premises in accordance with this Lease or Tenant fails to promptly repair any damage to the Premises or the Building Systems caused by Tenant or its Agents within the cure period provided by this Lease, but in no event for more than thirty (30) days after Port's written notice to Tenant, then Port may repair the same at Tenant's sole cost and expense and Tenant shall immediately reimburse Port therefor. If the cost (including, but not limited to, salaries of Port staff and attorneys' fees) of any such repairs or replacements made at Tenant's expense is in excess of Two Thousand Dollars (\$2,000) (increased annually by three percent (3%)), then Tenant shall pay to Port an administrative fee equal to ten percent (10%) of the total "**Hard costs**" of the work. "**Hard costs**" shall include the cost of materials and installation, but shall exclude any costs associated with design, such as architectural fees. With respect to any work where the total hard costs of such work are less than Two Thousand Dollars (\$2,000), Tenant shall pay to Port, as Additional Rent, an amount equaling Two Hundred Dollars (\$200).

In addition, upon delivery of the initial notice relating to Tenant's failure to maintain the Premises in accordance with *Section 13* ("**Maintenance Notice**"), Tenant shall pay, as Additional Rent, an amount equaling Two Hundred Dollars (\$200.00). In the event Port determines during subsequent inspection(s) that Tenant has failed to maintain the Premises in accordance with

Section 13, then Tenant shall pay to Port, as Additional Rent, an amount equaling Three Hundred Dollars (\$300) for each additional Maintenance Notice, if applicable, delivered by Port to Tenant following each inspection. By signing this Lease, each party specifically agrees that the charges associated with each inspection of the Premises and delivery of each Maintenance Notice represent a fair and reasonable estimate of the administrative cost and expense which Port will incur by reason of Port's inspection of the Premises and issuance of each Maintenance Notice. Tenant's failure to comply with the applicable Maintenance Notice and Port's right to impose the foregoing charges shall be in addition to and not in lieu of any and all other rights and remedies of Port under this Lease, at law or in equity. The amounts set forth in this Section shall be due within three (3) business days following delivery of the applicable Maintenance Notice.

For purposes of this Lease, the term "ordinary wear and tear" shall not include any deterioration in the condition or diminution of the value of any portion of the Premises in any manner whatsoever related directly or indirectly to Tenant's failure to comply with the terms and conditions of this Lease.

13.4. Acts of Nature. Nothing contained herein shall require Port to repair or replace the Premises or the Improvements thereon as a result of damage caused by acts of war, earthquake, tidal wave or other acts of nature, except that this provision shall not affect any obligation to make repairs to the Premises pursuant to **Section 20** in the event of any damage or destruction of the Premises.

14. IMPROVEMENTS.

14.1. Initial Improvements. Tenant will construct the Initial Improvements in accordance with, and subject to all the terms, covenants, conditions, and restrictions of this Lease including the Work Letter. Port, in its proprietary capacity, has consented to the Initial Improvements.

14.2. Subsequent Alteration.

(a) Tenant shall not make nor cause or suffer to be made, any Subsequent Alteration to the Premises (i) without the prior written consent of Port, which consent shall not be unreasonably withheld; provided, however, that Port shall have the right in its sole and absolute discretion to consent or to withhold its consent to any Alterations or Improvements which affect the structural portions of the Premises, the Building or Building Systems, and (ii) until Tenant shall have procured and paid for all Port and other Regulatory Approvals of the various Regulatory Agencies having jurisdiction over the Premises, including, but not limited to, any building or similar permits required by Port or its Chief Harbor Engineer in the exercise of its jurisdiction with respect to the Premises.

(b) At least thirty (30) days before commencing any Subsequent Alterations, Tenant shall notify Port. Tenant's notice shall be accompanied by final construction documents for the Subsequent Alterations, if applicable. Port shall have the right to object to any of the Subsequent Alterations within sixty (60) days after receipt of notice from Tenant. Port's failure to notify Tenant of Port's consent within the 60-day period shall be deemed Port's disapproval of the Subsequent Alterations.

(c) As a condition to giving consent to any Subsequent Alteration the estimated cost of which (per project) is reasonably expected to exceed \$1,000,000 (increased annually by three percent (3%)), Port may require Tenant to provide Port, at Tenant's sole cost and expense, one or more financial guarantees, each in a form and issued by a bank or surety acceptable to Port, such as: (i) a standby letter of credit or bond; and/or (ii) a payment and performance bond from Tenant's contractors naming Port as co-obligee, each in a principal amount up to one hundred ten percent (110%) but not less than one hundred percent (100%) of the estimated costs of the Subsequent Alteration, to ensure Port against any liability for mechanics' and materialmen's liens, stop notices, and to ensure Completion of work.

(d) None of the following will constitute Subsequent Alterations requiring Port's consent, unless the installation will affect the Building Systems or the structure of the Building: (i) the installation, repair, or replacement of furnishings, fixtures, equipment, or decorative improvements within the interior of the Building that does not materially affect the Historic Fabric of the Building and otherwise complies with the Secretary's Standards, (ii) recarpeting, repainting, altering the wall coverings or window treatments, or similar alterations within the interior of the Building that do not materially affect the Historic Fabric of the Building and otherwise complies with the Secretary's Standards.

14.3. Construction Requirements. All Alterations and Improvements to the Premises made by or on behalf of Tenant shall be subject to the following conditions, which Tenant covenants faithfully to perform:

(a) All Alterations and Improvements shall be performed in a good and workmanlike manner in accordance with plans and specifications previously approved by Port in writing and in compliance with the applicable building, zoning and other applicable Laws, including, but not limited to, compliance with Disability Laws, and in compliance with the terms of and conditions imposed in any Regulatory Approval or any permit or authorization for the Premises.

(b) All Alterations and Improvements shall be performed at the sole cost and expense of Tenant, with reasonable dispatch and prosecuted to Completion, and only by duly licensed and bonded contractors or mechanics, and subject to any conditions that Port may reasonably impose.

(c) Tenant, while performing any Subsequent Alteration or maintenance or repair of the Improvements (for purposes of this Section only, "Work"), shall undertake commercially reasonable measures in accordance with good construction practices to minimize the risk of injury or damage to adjoining portions of the Premises and Improvements and the surrounding property, or the risk of injury to members of the public, caused by or resulting from the performance of its Work. Tenant shall undertake commercially reasonable measures to minimize damage, disruption or inconvenience caused by the Work and make adequate provision for the safety and convenience of all persons affected by the Work.

(d) At the Completion of any Work described in this Section, Tenant shall furnish to Port one reproducible "as built" drawing of all Alterations and Improvements made in the Premises. If Tenant fails to provide such as-built drawings to Port within sixty (60) days after Completion, Port, after giving notice to Tenant shall have the right, but not the obligation, to cause the preparation by an architect of Port's choice of "as-built" drawings, at Tenant's sole cost, to be paid by Tenant to Port within thirty (30) days after Port's request therefor.

14.4. Construction.

(a) Construction Standards. All Improvements and Alterations will be accomplished diligently to Completion and in accordance with good construction and engineering practices and applicable Laws and will be consistent with the Secretary's Standards and the historic register status of the Premises. Tenant must make adequate provision for the safety of all persons affected by the Construction, and Tenant will undertake commercially reasonable measures in accordance with good construction practices to: (i) minimize damage, disruption, or inconvenience caused by the Construction (including to areas adjoining portions of Improvements and the surrounding property), (ii) minimize the risk of injury or damage to the Premises and the surrounding property, or the risk of injury or death to members of the public and (iii) make adequate provision for the safety of all Persons affected by any construction activities. Dust, noise and other effects of such work will be controlled in accordance with any applicable dust control ordinance and other effects of the Construction must be controlled using commercially reasonable methods customarily used to control deleterious effects associated with construction projects in populated or developed urban areas.

(b) Reports and Information. During periods of Construction, Tenant shall submit to Port written progress reports when and as reasonably requested by Port.

(c) Construction Fencing and Barriers. Tenant shall provide appropriate construction barriers, construction signs and a project sign or banner, and shall post the signs on the Premises during the period of construction to the extent reasonably necessary to minimize the risk of hazardous construction conditions. Tenant will obtain a building permit from Port before the placement of any construction fencing, signage and/or barriers.

14.5. Port of San Francisco Union Iron Works Historic District. Tenant expressly acknowledges that the Building is a contributing resource to the Port of San Francisco Union Iron Works Historic District at Pier 70 which is listed on the National Register of Historic Places. Accordingly, all interior and exterior Alterations (including but not limited to, any repair, alteration, improvement, or construction to the interior or exterior of the Building) are subject to review by Port for consistency with the design policies and criteria set forth in the Waterfront Land Use Plan, Design and Access Element, the Secretary of the Interior's Standards for the Treatment of Historic Properties, which are published by the National Park Service and posted on its website at <http://www.nps.gov/history/hps/tps/Standards/index.htm> (the "Secretary's Standards") and summarized in the attached *Exhibit I*. Tenant expressly agrees to comply with the Secretary's Standards for all current and future interior and exterior repair, alteration, improvement or construction.

14.6. Asbestos-containing Materials. Without limiting *Section 18 below* (Hazardous Materials), in the event that asbestos-containing materials ("ACM") are determined to exist in or about the Premises, Tenant shall ensure that all Alterations and Improvements and any asbestos related work, as further defined in California Health & Safety Code Section 25914.1(b), is performed in compliance with all Laws relating to asbestos, including but not limited to, Cal-OSHA regulations found in Title 8 of the California Code of Regulations, Sections 1502 and 1529. Additionally, Tenant shall distribute notifications to all employees and contractors as required pursuant to California Health & Safety Code Sections 25915 et seq. informing them of the existence of ACM and that moving, drilling, boring, or otherwise disturbing ACM may present a health risk and should not be attempted by an unqualified employee. No Alterations or Improvements affecting ACM-containing areas or any asbestos related work shall be performed without Port's prior written consent in each instance.

14.7. Lead-Based Paint. Tenant, on behalf of itself and its Agents or Invitees, shall comply with all requirements of the Port Building Code, Section 3424, and all other Laws, including, without limitation, the California and United States Occupational Health and Safety Acts and their implementing regulations, when the work of Alterations or Improvements disturbs or removes lead-based or presumed lead-based paint (as described below). Tenant and its Agents or Invitees shall give to Port three (3) business days prior written notice of any disturbance or removal of lead-based or presumed lead-based paint. Further, Tenant and its Agents or Invitees, when disturbing or removing lead-based or presumed lead-based paint, shall not use or cause to be used any of the following methods: (a) acetylene or propane burning and torching; (b) scraping, sanding or grinding without containment barriers or a High Efficiency Particulate Air filter ("HEPA") local vacuum exhaust tool; (c) hydroblasting or high-pressure wash without containment barriers, without Port's prior written consent; (d) abrasive blasting or sandblasting without containment barriers or a HEPA vacuum exhaust tool, without Port's prior written consent; and (e) heat guns operating above 1,100 degrees Fahrenheit. Paint on the interior and exterior of buildings built before December 31, 1978, is presumed to be lead-based paint unless lead-based paint testing, as defined in Section 3424 of the Port Building Code, demonstrates an absence of lead-based paint on the surfaces of such buildings. Under this *Section 14*, lead-based paint is "disturbed or removed" if the work of Alterations or Improvements involves any action that creates friction, pressure, heat or a chemical reaction upon any lead-based or presumed lead-based paint on an interior or exterior surface so as to abrade, loosen, penetrate, cut through or eliminate paint from that surface.

14.8. Title to Improvements; Removal of Improvements. Provided that no Event of Default then exists, Tenant shall not be obligated to remove at the end of the Term, (a) any of the Initial Improvements that are listed on *Attachment 3* to the Work Letter, (b) any Subsequent Alteration where Port has agreed in writing (in the form of Schedule 6 or its written equivalent) that the applicable Subsequent Alteration may remain on the Premises at the end of the Term in the form of Schedule 6 or its written equivalent, or (c) Tenant's replacement of any of the items listed in the immediately foregoing sub-clauses (a) and (b) in connection with Tenant's obligation to maintain and repair as further described in *Section 13.1*. During the Term, without limiting Tenant's obligations to maintain, repair and replace the Premises, Tenant will own the Initial Improvements, Subsequent Alterations and all Tenant's Property (except for any Subtenant's Property, which shall be owned by the applicable Subtenant). Tenant has the right at any time during the Term to remove Tenant's Property from the Premises; provided, however, that if the removal of Tenant's Property causes damage to the Premises, Tenant shall promptly cause the repair of such damage at no cost to Port. Unless Port has agreed that Tenant's Improvements and Alterations may remain on the Premises in the form of *Schedule 6* or its written equivalent and other than as set forth on Attachment 3 to the Work Letter, prior to the Expiration Date or earlier termination of this Lease, Tenant, at its own expense, must remove all Improvements and Alterations it constructed from the Premises in accordance with *Section 30*. Any such removal is subject to the requirements of this Section, including the requirement to obtain a Port building or similar permit. Tenant shall promptly repair, at its own expense, in good and workmanlike fashion any damage occasioned thereby. If Tenant fails to complete any required demolition or removal on or before the expiration or earlier termination of this Lease, Port may perform such removal or demolition at Tenant's expense, and Tenant shall reimburse Port within three (3) business days after demand therefor. At the expiration or earlier termination of this Lease, title to any Improvements or Alterations that are allowed to remain on the Premises will vest in Port without further action of any party, and without compensation or payment to Tenant.

14.9. Removal of Non-Permitted Improvements. If Tenant constructs any Alterations or Improvements without Port's prior written consent or without complying with this Section, then, in addition to any other remedy available to Port, Port may require Tenant to remove, at Tenant's expense, any or all such Alterations or Improvements and to promptly repair, at Tenant's expense and in good workmanlike fashion, any damage occasioned thereby. Tenant shall pay to Port all special inspection fees as set forth in any applicable building code, standard or regulation, including, without limitation, the Port Building Code, for inspection of work performed without required permits. The foregoing obligation of Tenant to reimburse Port for all cost and expenses incurred by Port in connection with Tenant's failure to comply with the provisions of this Section shall survive the expiration or earlier termination of this Lease.

14.10. All-Gender Toilet Facilities. If applicable, Tenant shall comply with San Francisco Administrative Code Section 4.1-3 requiring at least one all-gender toilet facility on each floor of any new building on City-owned land and within existing buildings leased by the City, including the Premises, where extensive renovations are made. An "**all-gender toilet facility**" means a toilet that is not restricted to use by persons of a specific sex or gender identity by means of signage, design, or the installation of fixtures, and "**extensive renovations**" means any renovation where the construction cost exceeds 50% of the cost of providing the toilet facilities required by this section. If Tenant has any question about applicability or compliance, Tenant should contact the Port's Property Manager for guidance.

14.11. Signs. Tenant shall not install business signage, awnings or other exterior decoration or notices on the Premises without Port's prior written consent. Any sign that Tenant is permitted to place, construct or maintain on the Premises shall comply with all Laws relating thereto, including but not limited to, Port's Sign Guidelines, as revised by Port from time to time, and building permit requirements, and Tenant shall obtain all Regulatory Approvals required by such Laws. Port makes no representation with respect to Tenant's ability to obtain such

Regulatory Approval. Tenant, at its sole cost and expense, shall remove all signs placed by it on the Premises at the expiration or earlier termination of this Lease.

14.12. Port's Alterations. Port reserves the right at any time to make Alterations, additions, repairs, deletions or improvements to the Building, Building Systems, or adjacent Port property ("**Port Work**"). Port shall use commercially reasonable efforts to conduct any of the foregoing activities in a manner that, to the extent reasonably practicable, will minimize inconvenience or disturbance to Tenant; Port will have no obligation to minimize inconvenience or disturbance to Tenant for Port Work when the Port Work is necessary, in Port's sole and absolute discretion, to maintain Port property in a safe, hazard-free condition. In no event will inconvenience or disturbance caused by Port Work constitute an actual or constructive eviction of Tenant, entitle Tenant to any abatement or diminution of Rent, or otherwise relieve Tenant from any of its obligations under this Lease. Tenant hereby waives any and all Claims against Port, City and their Agents arising out of any inconvenience or disturbance occasioned by Port Work.

15. UTILITIES.

15.1. Utility Services. Subject to the terms in the Basic Lease Information regarding the Interim Power Line and the Capacity Charges, Tenant, at its sole expense, must (i) arrange for the provision and construction of all on-site and off-site utilities necessary to construct, operate and use the Premises, (ii) be responsible for contracting with, and obtaining, all necessary utility and other services, as may be necessary and appropriate for the uses (it being acknowledged that City (including its San Francisco Public Utilities Commission ("**SFPUC**")) is the sole and exclusive provider to the Premises of certain public utility services), and (iii) maintain and repair all utilities serving the Premises to the point provided by the respective utility service provider (whether on or off the Premises). Tenant agrees and acknowledges that Port, in its proprietary capacity as owner of the Premises and landlord under this Lease, will not provide any utility services to the Premises or any portion of the Premises. Tenant also must coordinate with the respective utility service provider with respect to the installation of utilities, including providing advance notice to appropriate parties of trenching requirements. Tenant will purchase all electrical service (to the extent not provided by a PV System, if any) for the Improvements and the Premises from SFPUC unless SFPUC first determines that such service is not feasible for the Premises.

Tenant will pay or cause to be paid when due, all deposits, charges, meter installation fees, connection fees and other costs for all public or private utility services at any time rendered to the Premises or any part of the Premises, and will do all other things required for the maintenance, repair, replacement, and continuance of all such services. Tenant agrees, with respect to any public utility services provided to the Premises by City, that no act or omission of City in its capacity as a provider of public utility services, shall abrogate, diminish, or otherwise affect the respective rights, obligations and liabilities of Tenant and Port under this Lease, or entitle Tenant to terminate this Lease or to claim any abatement or diminution of Rent. Further, Tenant covenants not to raise as a defense to its obligations under this Lease, or assert as a counterclaim or cross-claim in any litigation or arbitration between Tenant and Port relating to this Lease, any Claim arising from or in connection with City's provision (or failure to provide) public utility services, except to the extent to preserve its rights under this Lease that failure to raise such claim in connection with such litigation would result in a waiver of such claim. The foregoing shall not constitute a waiver by Tenant of any claim it may now or in the future have (or claim to have) against any such public utility provider relating to the provision of (or failure to provide) utilities to the Premises.

15.2. Photovoltaic Panels. Tenant shall have the right but not the obligation to install or cause to be installed on the roof(s) of buildings a photovoltaic energy generation facility for the generation and delivery of electrical energy to the Premises and if excess energy is available, potentially to other sites (the "**PV System**"). Before commencing installation of a PV System,

Tenant must obtain Port's consent and all required permits and Regulatory Approvals for the PV System, which may include, among other things, approval by SHPO and requirements to strengthen the roof of the applicable building(s). The design, construction and installation of any PV System will be done in accordance with *Section 14.2*.

15.3. Energy Consumption Disclosure. Tenant consents to Tenant's utility service providers disclosing energy use data for the Premises to City for use under California Public Resources Code Section 25402.10, as implemented under California Code of Regulations Sections 1680–1685, and San Francisco Environment Code Chapter 20, as each may be amended from time to time (“**Energy Consumption Reporting Laws**”), and for such data to be publicly disclosed under the Energy Consumption Reporting Laws.

15.4. Waiver. Tenant waives any benefits of any applicable Law, including the provisions of California Civil Code Section 1932(1) permitting the termination of this Lease due to any interruption or failure of utility services. The foregoing shall not constitute a waiver by Tenant of any claim it may now or in the future have (or claim to have) against any public utility provider relating to the provision of (or failure to provide) utilities to the Premises.

16. FLOOD RISK AND SEA LEVEL RISE.

16.1. Sea Level Rise. The City's current sea level rise capital planning guidance can be found at https://onesanfrancisco.org/sites/default/files/inline-files/San_Francisco%20SLR_Guidance%20SLRTC%20REV%20TO%20CPC%20Jan%202020.pdf (the “**SLR Guidance**”).

16.2. Flood Protection Measures. In addition to Tenant's obligations to comply with Laws under *Section 11* (Compliance with Laws) and to repair and maintain the Premises (including, but not limited to the structure and substructure under *Section 13* (Maintenance and Repairs)), if, at any time during the Term of this Lease, and subject to compliance with CEQA, the Chief Harbor Engineer (“**CHE**”) determines in his or her regulatory capacity in accordance with applicable Laws that there is a need for temporary public access closures, sandbagging or similar temporary measures to minimize the risks associated with flooding (“**Flood Protection Measures**”) at the Premises or proximate to the Premises to protect the Premises from a significant risk of flooding or other damage resulting from climate change or sea level rise, in order to protect public health and safety (“**CHE Determination**”), Tenant shall be responsible at no cost to Port for permitting, constructing and implementing any such Flood Protection Measures in the manner described in this Section. Tenant understands and agrees that it will not receive or seek rent credits or other compensation or consideration for any Flood Protection Measures and agrees that it will not seek additional term for the purpose of amortizing the cost of any Flood Protection Measures. Port and Tenant agree that a CHE Determination under this *Section 16* shall not be a Condemnation for purposes of this Lease.

If Tenant fails to implement any required Flood Protection Measures within the time required in the CHE Determination, Port shall provide Tenant with thirty (30) days written notice and the right to cure such failure. If Tenant fails to cure within the 30-day period, Port shall have the right but not the obligation to implement the measure(s) on Tenant's behalf following an additional thirty (30) days' written notice of Port's intent to do so (unless Tenant's failure to cure gives rise to an emergency which creates an imminent danger to public health or safety as determined by the CHE) and Tenant shall reimburse Port for its actual costs as Additional Rent.

16.3. Required Flood Protection Improvements for Other Port Property. If the CHE determines that there is a need to install flood protection measures within the Premises to protect other Port property, Tenant shall cooperate by providing access and other reasonably requested assistance at no cost to Port. Nothing in this *Section 16* shall imply any duty upon the part of Port to perform any work that under this Lease Tenant may be required to perform, nor to place upon Port any obligation, or liability, for the care, supervision or repair of Port property outside the Premises.

16.4. Limitations; Waiver.

(a) No occurrence or situation arising during the Term, nor any present or future Law or circumstance, whether foreseen or unforeseen, and however extraordinary, shall relieve Tenant of its obligations under this *Section 16*, nor give Tenant any right to terminate this Lease in whole or in part or to otherwise seek redress against Port except with respect to Tenant's right to terminate under the terms and conditions specified in *Section 11.2* (Change in Laws), *Section 20* (Damage and Destruction) or *Section 21* (Condemnation). Without waiving the right to terminate as provided in *Section 11.2* (Change in Laws), *Section 20* (Damage and Destruction) or *Section 21* (Condemnation), Tenant waives any rights now or later conferred upon it by any existing or future Law to terminate this Lease, to receive any abatement, diminution, reduction or suspension of payment of Rent, or to compel Port to make any repairs to comply with any such Laws or on account of any such occurrence or situation.

(b) If the CHE determines that there is a need for Flood Protection Measures, the rights and obligations of the Parties shall be as set forth in this *Section 16*. Accordingly, Port and Tenant each waive the provisions of Sections 1932(2) and 1933(4) of the California Civil Code and Sections 1265.110, 1265.120, 1265.130, and 1265.140 of the California Code of Civil Procedure as such sections may from time to time be amended, replaced, or restated. Notwithstanding the prior sentence, Port and Tenant do not intend to waive their rights under *Section 11.2* (Change in Laws), *Section 20* (Damage and Destruction) or *Section 21* (Condemnation).

16.5. Additional Improvements To Address Sea Level Rise. At any time during the Term, Port or Tenant may propose optional additional improvements to be performed by Tenant, at its option in Tenant's sole discretion and at its cost that (i) are beyond the scope of the potential Flood Protection Measures contemplated in this Section; and (ii) are not otherwise Tenant's obligation under this Lease (including under *Section 11* (Compliance with Laws) and *Section 13* (Maintenance and Repairs)). Tenant acknowledges that additional Regulatory Approvals will be required for such improvements.

17. LIENS.

Tenant shall keep the Premises free from any liens arising out of any work performed, materials furnished or obligations incurred by Tenant or its Agents. In the event that Tenant shall not, within twenty (20) days following the imposition of any such lien, cause the same to be released of record, Port shall have, in addition to all other remedies provided by this Lease or by Law, the right but not the obligation to cause the same to be released by such means as it shall deem proper, including without limitation, payment of the claim giving rise to such lien. All sums paid by Port for such purpose, plus interest at the Interest Rate, and all reasonable expenses incurred by Port in connection therewith (including, without limitation, reasonable attorneys' fees) shall be payable to Port by Tenant upon demand. Port shall have the right to post on the Premises any notices that Port may deem proper for the protection of Port or the Premises, from mechanics' and materialmen's liens. Tenant shall give to Port at least fifteen (15) days' prior written notice of commencement of any Alteration, repair or construction on the Premises. Tenant agrees to Indemnify Port, City and their respective Agents from and against any Claims for mechanic's, materialmen's or other liens in connection with any Alterations, repairs or construction on the Premises, or materials furnished or obligations incurred by or for Tenant.

Without limiting the foregoing, Tenant shall not create, permit or suffer any liens or encumbrances affecting any portion of the Premises or Port's interest therein or under this Lease.

18. HAZARDOUS MATERIALS.

18.1. Requirements for Handling. Subject to *Section 18.2(b)*, neither Tenant nor its Agents or Invitees may Handle or permit any other person to Handle any Hazardous Material in, on, under or about the Premises, or other Port property, subject only to the following exceptions, provided that Handling is at all times in full compliance with all Environmental Laws: janitorial,

disinfectant, pest control, office, and other supplies and equipment in amounts customarily used for the Permitted Uses and subject to the Operations Plan.

18.2. Tenant Responsibility.

(a) Generally. Subject to *Section 18.2(b)*, Tenant agrees to protect its Agents and Invitees in its operations on the Premises from hazards associated with Hazardous Materials in accordance with all Environmental Laws and also agrees, for itself and on behalf of its Agents and Invitees, that during its use and occupancy of the Premises, each of them:

- (i)** will not permit any Hazardous Materials to be present in, on, under or about the Premises, or other Port property except as permitted under *Section 18.1*;
- (ii)** will not cause or permit any Hazardous Material Condition; and
- (iii)** will comply with all Environmental Laws relating to the Premises and any Hazardous Material Condition, and will not engage in or permit any activity at the Premises, other Port property, or in the operation of any vehicles or vessels used in connection with the Premises in violation of any Environmental Laws.

(b) Other Port Property. Port agrees that with respect to “other Port property” only (in other words, on Port property other than the Premises) as such term is used under *Sections 18.1 and 18.2(a)*, (i) without limiting any other agreement Tenant may have with Port, Tenant has no obligations to or for Tenant’s Invitees on other Port property, and (ii) Tenant’s obligations with respect to Tenant’s Agents on other Port property arise only to the extent such Agent is performing work on Tenant’s behalf or otherwise acting on Tenant’s behalf in furtherance of the Permitted Uses under this Lease.

18.3. Tenant’s Environmental Condition Notification Requirements.

(a) Tenant must notify Port immediately, orally or by other means that will transmit the earliest possible notice to Port staff, followed within twenty-four (24) hours by written notice, of and when Tenant learns or has reason to believe Hazardous Materials were Released or, except as allowed under *Section 18.1*, Handled, in, on, or about the Premises, other Port property, or the environment, or from any vehicles or vessels that Tenant or its Agents or Invitees use during Tenant’s occupancy of the Premises, whether or not the Release or Handling is in quantities that would be required under Environmental Laws to be reported to an Environmental Regulatory Agency.

(b) Tenant must notify Port immediately, orally or by other means that will transmit the earliest possible notice to Port staff, followed within twenty-four (24) hours by written notice, and contemporaneously provide Port with an electronic copy, of:

- (i)** Any notice of the Release or Handling of Hazardous Materials, in, on, or about the Premises, other Port property, or the environment, or from any vehicles or vessels Tenant, or its Agents and Invitees uses during Tenant’s occupancy of the Premises that Tenant or its Agents or Invitees provides to an Environmental Regulatory Agency;
- (ii)** Any notice of a violation, or a potential or alleged violation, of any Environmental Law that Tenant or its Agents or Invitees receives from any Environmental Regulatory Agency;
- (iii)** Any other Environmental Regulatory Action that is instituted or threatened by any Environmental Regulatory Agency against Tenant or its Agents or Invitees and that relates to the Release or Handling of Hazardous Materials, in, on, or about the Premises, other Port property, or the environment, or from any vehicles or vessels Tenant, or its Agents and Invitees uses during Tenant’s occupancy of the Premises;
- (iv)** Any Hazardous Material Claim that is instituted or threatened by any third party against Tenant or its Agents or Invitees and that relates to the Release or

Handling of Hazardous Materials, in, on, or about the Premises, other Port property, or the environment, or from any vehicles or vessels Tenant, or its Agents and Invitees uses during Tenant's occupancy of the Premises; and

(v) Any notice of the termination, expiration, or substantial amendment of any Environmental Regulatory Approval needed by Tenant or its Agents or Invitees for their operations at the Premises.

(c) Tenant must notify Port of any meeting, whether conducted face-to-face or telephonically, between Tenant and any Environmental Regulatory Agency regarding an Environmental Regulatory Action. Port will be entitled to participate in any such meetings at its sole election.

(d) Tenant must notify Port of any Environmental Regulatory Agency's issuance of an Environmental Regulatory Approval. Tenant's notice to Port must state the issuing entity, the Environmental Regulatory Approval identification number, and the date of issuance and expiration of the Environmental Regulatory Approval. In addition, Tenant must provide Port with a list of any plan or procedure required to be prepared and/or filed with any Environmental Regulatory Agency for operations on the Premises, including a "Spill Prevention Control and Countermeasure Plan." Tenant must provide Port with copies of any of the documents within the scope of this section upon Port's request.

(e) Tenant must provide Port with copies of all communications with Environmental Regulatory Agencies and all non-privileged communications with other persons regarding potential or actual Hazardous Material Claims arising from Tenant's or its Agents' or Invitees' operations at the Premises. Upon Port's request, Tenant must provide Port with a log of all communications withheld under a claim of privilege that specifies the parties to and subject of each withheld communication.

(f) Port may from time to time request, and Tenant will be obligated to provide, information reasonably adequate for Port to determine that any and all Hazardous Materials are being Handled in a manner that complies with all Environmental Laws.

18.4. Requirement to Remediate.

(a) Tenant's Remediation obligations under this subsection are subject to *Sections 18.4(b)* and *18.4(c)*.

(i) After notifying Port in accordance with *Section 18.3(a)*, Tenant must Remediate at its sole cost in compliance with all Environmental Laws and this Lease, any Hazardous Material Condition occurring during the Term or while Tenant or its Agents or Invitees otherwise occupy any part of the Premises. Tenant must obtain Port's approval of a Remediation work plan, whether or not required under Environmental Laws, then begin Remediation actions immediately following Port's approval of the work plan and continue diligently until Remediation is complete, as determined by Port, in its sole discretion.

(ii) In addition to its obligations under clause (i), before this Lease terminates for any reason, Tenant must Remediate at its sole cost in compliance with all Environmental Laws and this Lease: (A) any Hazardous Material Condition caused by Tenant's or its Agents' or Invitees' Handling Hazardous Materials during the Term; and (B) any Hazardous Material Condition discovered during Tenant's occupancy that any Regulatory Agency requires to be Remediated if Remediation would not have been required but for Tenant's use of or Changes to the Premises.

(iii) If Environmental Laws governing Remediation require a remedial action plan, Tenant must provide a draft of its plan to Port for comment and approval before submittal to the appropriate Environmental Regulatory Agency, and a copy of the final plan as submitted.

(iv) In all situations relating to Handling or Remediating Hazardous Materials, Tenant must take all actions that are reasonably necessary in Port's sole judgment to protect the value of the Premises, such as obtaining Environmental Regulatory Approvals related to Hazardous Materials and taking measures to remedy any deterioration in the condition or diminution of the value of any portion of the Premises in any manner related directly or indirectly to Hazardous Materials.

(b) Unless Tenant or its Agents or Invitees Exacerbate the Hazardous Material Condition, and subject further to **Section 18.4(c)**, Tenant will not be obligated to Remediate any Hazardous Material Condition: (i) caused solely by City, Port, or their Agents during Tenant's occupancy of the Premises; or (ii) arising before the Commencement Date or the date of Tenant's first use of the Premises under the Prior Licenses, whichever is earlier.

(c) Tenant will not be obligated to Remediate any Hazardous Material Condition on other Port property (in other words, on Port property other than the Premises) (i) caused by Tenant's Agent's acts, omissions or negligence on other Port Property, unless at the time such Hazardous Material Condition was caused or Exacerbated, such Agent was performing work directly or indirectly on Tenant's behalf or otherwise acting directly or indirectly on Tenant's behalf in furtherance of the Permitted Uses under this Lease; or (ii) caused by Tenant's Invitee's acts, omissions or negligence on other Port Property.

18.5. Port's Right to Audit. Port will have the right, but not the obligation, to inspect and audit the Premises for any Hazardous Materials, including the right to Investigate, at reasonable times under **Section 29** (Port's Entry on Premises). Port's failure to inspect or obtain samples or to detect conditions attributable to Tenant's operations if an inspection is conducted may not be deemed to be a release of any liability for any Hazardous Materials subsequently determined to be Tenant's responsibility under this Lease.

18.6. Notification of Asbestos. Port hereby notifies Tenant, in accordance with the OSHA Asbestos Rule (1995), 59 Fed. Reg. 40964, 29 CFR §§ 1910.1001, 1926.1101 (as amended, clarified and corrected) (OSHA Asbestos Rule); California Health and Safety Code §§ 25915-259.7 and Cal-OSHA General Industry Safety Order for Asbestos, 8 CCR § 5208, of the presence of asbestos-containing materials ("ACMs") and/or presumed asbestos-containing materials ("PACMs") (as such terms are defined in Cal-OSHA General Industry Safety Order for Asbestos), in the locations identified in the summary/table, if any, set forth in **Schedule 4** attached hereto.

This notification by Port is made pursuant to a building inspection survey(s), if any, performed by Port or its contractors qualified to perform an asbestos building survey identified in the summary/table, if any, set forth in **Schedule 4** attached hereto. Such survey(s), monitoring data and other information are kept at Port of San Francisco, Pier 1, San Francisco, California, 94111 and are available for inspection upon request.

Tenant hereby acknowledges receipt of the notification specified in the first paragraph of **Section 18.6** hereof and the notice or report attached as **Schedule 4** hereto and understands, after having consulted its legal counsel, that it must make its employees and contractors aware of the presence of ACMs and/or PACMs in or about the Premises in order to avoid or minimize any damage to or disturbance of such ACMs and/or PACMs. Tenant further acknowledges its obligations under Cal-OSHA General Industry Safety Order for Asbestos to provide information to its employees and contractors regarding the presence of ACMs and PACMs at the Premises and to provide a training program for its employees that conforms with 8 CCR § 5208(j)(7)(C).

Tenant agrees that its waiver of Claims set forth in **Section 22** (Indemnity and Exculpation) is given with full knowledge of the presence, or possibility, of asbestos in or about the Premises and the potential consequences of such fact. Tenant is aware that the presence, or possibility, of asbestos in or about the Premises may limit Tenant's ability to construct Improvements and Alterations to the Premises without Tenant first performing abatement of such

asbestos. The presence of asbestos in the Premises and the removal or non-removal by Port of all or a portion of the asbestos, shall not, however, (i) entitle Tenant to any Claim, (ii) relieve Tenant of any of its obligations hereunder, including without limitation the obligation to pay Rent, or (iii) constitute or be construed as a constructive or other eviction of Tenant.

Notwithstanding any other provisions of this Lease, Tenant agrees to Indemnify Port for Tenant's acts or omissions that result in (1) asbestos-related enforcement actions, including both administrative or judicial proceedings, and (2) any Claims arising from an alleged violation of Cal-OSHA General Industry Safety Order for Asbestos and/or exposures to asbestos.

18.7. Notification of Lead. Port hereby notifies Tenant of the potential presence of lead-containing and presumed lead-containing materials in the Premises. Disturbance or removal of lead is regulated by, among other Laws, 29 CFR §§ 1910.1025, 1926.62; California Health & Safety Code §§ 105185-105197 and 105250-105257; Cal-OSHA Construction Safety Order for Lead, Title 8 CCR § 1532.1; Title 17 CCR Chapter 8; and Port Building Code § 3424.

Tenant agrees that its waiver of Claims set forth in *Section 22* (Indemnity and Exculpation) is given with full knowledge of the presence, or possibility, of lead in or about the Premises and the potential consequences of such fact. Tenant is aware that the presence, or possibility, of lead in or about the Premises may limit Tenant's ability to perform any Improvements or Alterations to the Premises without Tenant first performing abatement of such lead. The presence of lead in the Premises and the removal or non-removal by Port of all or a portion of the lead, whether in the Premises, shall not, however, (i) entitle Tenant to any Claim, (ii) relieve Tenant of any of its obligations hereunder, including without limitation the obligation to pay Rent, or (iii) constitute or be construed as a constructive or other eviction of Tenant. Notwithstanding any other provisions of this Lease, Tenant agrees to Indemnify Port for its acts or omissions that result in (1) lead-related enforcement actions, including both administrative or judicial proceedings, and (2) any Claims arising from an alleged violation of Cal-OSHA Construction Safety Order for Lead and/or exposures to lead.

18.8. Storm Water Pollution Prevention.

(a) Tenant must comply with the applicable provisions of the Statewide General Permit for Discharge of Industrial Storm Water issued by the State Water Resources Control Board, including filing a Notice of Intent to be covered, developing and implementing a site-specific Storm Water Pollution Prevention Plan ("SWPPP"), and conducting storm water monitoring and reporting. Tenant's SWPPP and a copy of a Notice of Intent for Tenant's Premises must be submitted to Port's Real Estate Division before beginning operations on the Premises.

(b) Post-Construction Requirements. In addition to requiring compliance with the permit requirements under Subsection (a), Tenant shall comply with the post-construction stormwater control provisions of the Statewide General Permit for Discharge of Stormwater from Small Municipalities and the San Francisco Stormwater Management Requirements and Design Guidelines, subject to review and permitting by the Port.

18.9. Presence of Hazardous Materials. California Law requires landlords to disclose to tenants the presence or potential presence of certain Hazardous Materials. Accordingly, Tenant is hereby advised that Hazardous Materials (as herein defined) may be present on or near the Premises, including, but not limited to, vehicle fluids, janitorial products, tobacco smoke, and building materials containing chemicals, such as asbestos, naturally-occurring radionuclides, lead and formaldehyde. Further, the following known Hazardous Materials are present on the property: , naturally occurring asbestos, contamination commonly found in fill, petroleum contamination, lead-based paint, etc. and the Hazardous Materials described in the reports listed in *Schedule 4*, copies of which have been delivered to or made available to Tenant. By execution of this Lease, Tenant acknowledges that the notice set forth in this section satisfies the requirements of California Health and Safety Code Section 25359.7 and related Laws. Tenant

must disclose the information contained in this *Section 18.9* to any subtenant, licensee, transferee, or assignee of Tenant's interest in this Lease. Tenant also acknowledges its own obligations pursuant to California Health and Safety Code Section 25359.7 as well as the penalties that apply for failure to meet such obligations.

18.10. Survival. Tenant's obligations under *Section 18* shall survive the expiration or earlier termination of this Lease.

For purposes of this *Section 18*, the term "**Commencement Date**" shall mean the commencement date of the Prior Licenses.

19. INSURANCE.

19.1. Required Insurance Coverage. Tenant, at its sole cost and expense, shall maintain, or cause to be maintained, throughout the Term, starting on the earlier of Tenant's occupancy under this Lease or the Commencement Date, the following insurance:

(a) **Builders Risk Insurance.** At all times during construction before Completion of the Initial Improvements, and during any period of Subsequent Alteration costing more than Five Hundred Thousand Dollars (\$500,000) (increased annually by three percent (3%)), Tenant shall maintain, or require to be maintained, on a form reasonably approved by Port, builders risk insurance (or its equivalent for any Subsequent Alteration, which may include coverage under a property insurance program as referenced under *Section 19.1(b)*) in the amount equal to the 100% replacement cost value of any existing structures being Rehabilitated or Restored, and 100% of all new construction, including all materials and equipment to be used/incorporated on or about the Premises, and in transit or storage off-site, against all risk or "special form" hazards, and earthquake and flood insurance (subject to *Section 19.1(b)*) including risks from any and all testing of any equipment, including as named insureds, Port and Tenant, with any deductible not to exceed Two Hundred Fifty Thousand (\$250,000) (except as to earthquake and flood insurance for which the deductible will be in accordance with the requirements of *Section 19.1(b)*). Such builders risk insurance also shall extend to cover soft costs and loss of business income for any delayed completion period as caused by any of the perils or hazards set forth in and required to be insured pursuant to *Section 19.1(a)*, for a delay period of not less than two (2) years with a limit of not less than One Million Dollars (\$1,000,000). If available at commercially reasonable rates, such builders risk insurance also shall extend to cover the peril of terrorism.

(b) Property Insurance; Earthquake and Flood Insurance.

(1) Upon Completion of the Initial Improvements, and upon Completion of Subsequent Alteration of any additional Improvements, Tenant will maintain all risk property insurance policies, in an amount not less than 100% of the then-current full replacement cost of the Premises, including the Building and any Improvements thereon, foundations, pilings, excavations, and footings, including soft costs and increased cost of construction and demolition of damaged and undamaged structures due to the enforcement of Laws, (with any deductible not to exceed Two Hundred Fifty Thousand Dollars (\$250,000). Such property insurance shall name Port as loss payee as its interest may appear. If available at commercially reasonable rates, such insurance shall extend to cover the peril of terrorism.

(2) Earthquake Insurance.

(A) During construction of the Initial Improvements, earthquake insurance will be in an amount equal to at least the lesser of (i) the Probable Maximum Loss to the Initial Improvements or, (ii) the maximum amount that is available at commercially reasonable rates from recognized insurance carriers (with a deductible of up to but not to exceed ten percent (10%) of the then-current, full replacement cost of the Initial Improvements without sublimits for excavations and footings; provided that earthquake coverage is available at commercially reasonable rates, except that a greater deductible will be permitted to the extent that such coverage is not available from recognized insurance carriers or at commercially

reasonable rates). “**Probable Maximum Loss**” means the scenario upper loss (SUL) estimate of damage that may occur to the structures with a ninety percent (90%) confidence of non-exceedance as a result of an earthquake with a return period of 224 years as determined before Completion of the Initial Improvements and thereafter not less frequently than every ten (10) years by a consultant chosen and paid for by Tenant who is reasonably satisfactory to Port; and

(B) From and after the issuance of a Certificate of Final Completion and Occupancy for the Building, earthquake insurance will be in an amount equal to at least the lesser of (i) the Probable Maximum Loss to the Improvements, or (ii) the amount that is available at commercially reasonable rates from recognized insurance carriers, in each case, with a deductible of up to but not to exceed an amount that is necessary to make such earthquake insurance available at a commercially reasonable rate.

(3) Flood Insurance.

(A) During construction of the Initial Improvements, flood insurance will be in an amount, to the extent available at commercially reasonable rates from recognized insurance carriers (or through the NFIP if available) equal to the maximum amount of the then-current, full replacement cost of the Initial Improvements (including building code upgrade coverage and without any deduction being made for depreciation), with a deductible of up to but not to exceed ten percent (10%), except that a greater deductible will be permitted to the extent that flood coverage is not available from recognized insurance carriers (or through the NFIP) at commercially reasonable rates; and

(B) From and after the issuance of a Certificate of Final Completion and Occupancy for the Building, flood insurance will be in an amount equal to at least the amount available at commercially reasonable rates from recognized insurance carriers or through the NFIP, with a deductible of up to but not to exceed an amount that is necessary to make flood insurance available at commercially reasonable rates.

(4) Exceptions for Earthquake and Flood Insurance. If Tenant determines that earthquake or flood insurance should not be carried on the Improvements because it is not (or no longer) available at commercially reasonable rates (or through the NFIP for flood insurance) or, in Tenant’s reasonable business judgment, is imprudent, then Tenant will request in writing Port’s consent to the absence or deletion thereof. Any request for Port’s consent required under this Section will include with such request evidence supporting Tenant’s determination of commercial unreasonableness or imprudence as to the applicable coverage. Such evidence may include quotes, declinations, and notices of cancellation or non-renewal from leading insurance companies for the required coverage, percentage of overall operating expenses attributable thereto, and then current industry practice for comparable mixed-use/retail/office projects in San Francisco. Port will approve or disapprove the absence or deletion of earthquake or flood insurance within forty-five (45) days after Tenant’s request. If Port disapproves such request, Port will state the basis for its disapproval. If Tenant elects not to carry or to discontinue such coverage with Port’s approval, and Port later determines that due to changes in the industry or other changed circumstances, earthquake insurance or flood insurance, as applicable, has become commercially available at reasonable rates, then Port may notify Tenant thereof, and Tenant will add such coverage to its policy as soon as reasonably practicable thereafter.

(c) Commercial General Liability Insurance. Tenant will maintain, or require to be maintained “**Commercial General Liability**” insurance with coverage at least as broad as Insurance Services Office form CG 00 01 10 93 (or its replacement) insuring against claims for bodily injury (including death), property damage, personal injury and advertising injury, including coverage for premises operations, blanket contractual liability (to the extent possible under the above-referenced policy form or under a separate policy form) that includes coverage extending to the Indemnity in **Section 22**, broad form property damage, explosion, collapse and underground hazards, independent contractors, products and completed operations, with such

insurance to afford protection in an amount not less than Ten Million Dollars (\$10,000,000) per occurrence and annual aggregate, and Ten Million Dollars (\$10,000,000) products and completed operations aggregate, and deleting any exclusions for care, custody and control of real property. In addition, if Tenant has (or is required under Laws to have) a liquor license and is selling or distributing alcoholic beverages on the Premises, then Tenant will maintain or require to be maintained liquor liability coverage with limits not less than Three Million Dollars (\$3,000,000) and Tenant will require any Subtenant or operator who has (or is required under Laws to have) a liquor license and who is selling or distributing alcoholic beverages on the Premises, to maintain such coverage. If applicable, then comprehensive or commercial general liability insurance must include Food Products Liability Insurance with limits not less than One Million Dollars (\$1,000,000) each occurrence.

(d) Workers' Compensation Insurance. During any period in which Tenant has employees, as defined in the California Labor Code, Tenant will maintain or require to be maintained policies of workers' compensation insurance providing statutory limits, including employer's liability coverage with limits not less than One Million Dollars (\$1,000,000) each accident, disease or illness.

(e) Personal Property Insurance. Tenant, at its sole cost and expense, shall procure and maintain on all of Tenant's Property and Alterations, in, on, or about the Premises, and shall require each of its Subtenants to procure and maintain, personal property insurance on an all risk form, excluding earthquake and flood, in an amount not less than full replacement value or a stated value, at Tenant's sole discretion, for the replacement of Tenant's Property/Subtenant's Property. In addition to the foregoing, Port may, in its sole discretion, insure any personal property leased to Tenant by Port pursuant to this Lease in such amounts as Port deems reasonably appropriate and Tenant shall have no interest in the proceeds of such personal property insurance. Port shall have no responsibility or obligation to maintain insurance or replace Tenant's Property or Subtenant's Property, Alterations, or any Improvements regardless of cause of loss.

(f) Boiler and Machinery Insurance. Tenant will maintain, or require to be maintained, boiler and machinery insurance covering damage to or loss or destruction of machinery and equipment, whether integrated into or independent from the structure, located in, on, under, around, or about the Premises that is used by Tenant for heating, ventilating, air-conditioning, power generation and similar purposes, in an amount not less than one hundred percent (100%) of the actual replacement value of such machinery and equipment.

(g) Business Automobile Insurance. Tenant will maintain, or require to be maintained, policies of business automobile liability insurance covering all owned, non-owned or hired motor vehicles (including electric carts) to be used by Tenant and its Agents in connection with Tenant's use and occupancy of the Premises, affording protection for bodily injury (including death) and property damage in the form of Combined Single Limit Bodily Injury and Property Damage policy with limits of not less than Five Million Dollars (\$5,000,000) per accident and annual aggregate.

(h) Business Income Insurance. From and after the issuance of a Certificate of Final Completion and Occupancy, Tenant will maintain business income insurance, including loss of rents and extra expense caused by any of the perils or hazards set forth in and required to be insured pursuant to **Section 19.1(b)** covering an interruption period of not less than two (2) years, with a limit of not less than twenty-four (24) months' of Gross Revenues.

(i) Contractor's Pollution Legal Liability Insurance. Tenant will cause to be maintained during the period of construction of the Initial Improvements and during any periods of Subsequent Alteration, Contractor's Pollution Legal Liability Insurance for any and all Claims caused by pollution conditions, that are sudden, accidental or gradual, resulting from the contractor's operations, or for which contractor is legally liable, in connection with the construction of the Initial Improvements or Subsequent Alteration, whether such operations be

by Tenant or Tenant's contractors, subcontractors, consultants or suppliers of the contractor. The foregoing policy will contain minimum liability limits of Five Million Dollars (\$5,000,000) per occurrence and Five Million Dollars (\$5,000,000) in the aggregate with a deductible not to exceed Two Hundred Fifty Thousand Dollars (\$250,000). The foregoing policy will at a minimum contain coverage for or be specifically endorsed to include coverage for pollution conditions resulting in, arising from or in connection with: (i) bodily injury (including death), property damage and environmental cleanup costs (on-site and off-site) resulting from construction of the Initial Improvements or any Subsequent Alteration; (ii) the use or operation of motor vehicles (whether owned, non-owned or leased) in connection with construction of the Initial Improvements or any Subsequent Alteration, including transportation of any Hazardous Materials to or from the project site, including any interim or temporary storage or transfer sites (such transportation coverage will also include loading/unloading of materials); (iii) claims by third parties (other than a disposal site owner) for bodily injury or property damage arising from any disposal location or facility, both final and temporary, to which any waste that is generated in connection with the construction of the Initial Improvements or any Subsequent Alteration under this Lease or in connection with any Remediation obligation of Tenant pursuant to **Section 18** is delivered; all such disposal locations/facilities, both final and temporary, will be scheduled to the foregoing policy as Non-Owned Disposal Sites for coverage under such policy. The foregoing policy will be written on an occurrence form and be in effect during the construction periods described above, or, if not available on an occurrence form, then on a claims-made form. If the foregoing policy is written on a claims made form, then the foregoing policy will be maintained for, or contain an extended reporting period of, at least five (5) years. The foregoing policy definition of "Covered Operations" or any other such designation of services or operations performed by Tenant's contractors must include all work or services performed by Tenant's contractors and their respective subcontractors, consultants, or suppliers.

(j) **Professional Liability.** Tenant will maintain or require to be maintained, professional liability (errors and omissions) insurance, with limits not less than Five Million Dollars (\$5,000,000) each claim and annual aggregate, with respect to all professional services, including architectural, engineering, geotechnical, and environmental, reasonably necessary or incidental to the construction of the Initial Improvements and any Subsequent Alteration with any deductible not to exceed Fifty Thousand Dollars (\$50,000) each claim (the "lead policy"). Notwithstanding the foregoing, however, Tenant may elect, instead of obtaining the foregoing coverages in this **Section 19.1(j)**, to require that any architects, contractors and sub-contractors performing professional services in connection with the Initial Improvements or any Subsequent Alteration carry professional liability insurance (errors and omissions) in an amount not less than Five Million Dollars (\$5,000,000) each claim and annual aggregate with any deductible not to exceed Fifty Thousand Dollars (\$50,000). Such insurance will provide coverage during the period when such professional services are performed and for a period of (A) three (3) years after issuance of a Certificate of Final Completion and Occupancy for the Initial Improvements and (B) five (5) years for any Subsequent Alteration. With respect to Subsequent Alteration, Tenant will require that any architect, contractor or subcontractor performing professional services in connection with such Subsequent Alteration, carry professional liability insurance (errors and omissions) in an amount not less than One Million Dollars (\$1,000,000) each claim and annual aggregate with any deductible not to exceed Twenty Five Thousand Dollars (\$25,000).

(k) **Crime policy.** Crime policy or fidelity bond covering Tenant's officers and employees against dishonesty with respect to funds provided by Port, in the amount of Seventy Five Thousand Dollars (\$75,000) each loss, with any deductible not to exceed Fifty Thousand Dollars (\$50,000) each loss.

(l) **Special Events/Participants.** Tenant, at its sole cost and expense, shall procure and maintain Special Events/Participants Liability (GL) coverage insurance acceptable to Port, with limits not less than One Million Dollars (\$1,000,000.00).

(m) **Abuse and Molestation.** Abuse and molestation coverage with minimum limits of \$2,000,000 per occurrence and \$4,000,000 in the aggregate. Coverage may be held as a separate policy or included by endorsement in the Commercial General Liability or Errors and Omissions policy.

(n) **Other Coverage.** Not more often than every year and upon not less than sixty (60) days prior written notice, Port may require Tenant to increase the insurance limits set forth above or to provide other coverage and/or different coverage amounts as may be required by Law, the City's Risk Manager or as is generally required by commercial owners of buildings similar in size, character, age and location as the Premises with respect to risks comparable to those associated with the use of the Premises.

19.2. Claims-Made Policies. If any of the insurance required in *Section 19.1 above* is provided under a claims-made form of policy, Tenant shall maintain such coverage continuously throughout the Term and without lapse for a period of three (3) years beyond the termination of this Lease, to the effect that should occurrences during the Term give rise to claims made after termination of this Lease, such claims shall be covered by such claims-made policies.

19.3. Annual Aggregate Limits. If any of the insurance required in *Section 19.1 above* is provided under a form of coverage which includes an annual aggregate limit or provides that claims investigation or legal defense costs be included in such annual aggregate limit, such annual aggregate limit shall be double the occurrence limits specified herein.

19.4. Payment of Premiums. Tenant shall pay the premiums for maintaining all required insurance.

19.5. Waiver of Subrogation Rights. Notwithstanding anything to the contrary contained herein, Port and Tenant (each a "**Waiving Party**") each hereby waives any right of recovery against the other party for any loss or damage sustained by such other party with respect to the Premises or any portion thereof or the contents of the same or any operation therein, whether or not such loss is caused by the fault or negligence of such other party, to the extent such loss or damage is covered by insurance which is required to be purchased by the Waiving Party under this Lease or is actually covered by insurance obtained by the Waiving Party. Each Waiving Party agrees to cause its insurers to issue appropriate waiver of subrogation rights endorsements to all policies relating to the Premises; provided, the failure to obtain any such endorsement shall not affect the above waiver.

19.6. General Insurance Matters.

(a) All liability insurance policies required to be maintained by Tenant hereunder shall contain a cross-liability clause, shall name as additional insureds by written endorsement the "**CITY AND COUNTY OF SAN FRANCISCO AND THE SAN FRANCISCO PORT COMMISSION AND THEIR COMMISSIONERS, OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS,**" shall be primary and non-contributory to any other insurance available to the additional insureds with respect to claims arising under this Lease, and shall provide that such insurance applies separately to each insured against whom complaint is made or suit is brought except with respect to the limits of the company's liability.

(b) Tenant may satisfy the limits set forth in *Section 19.1* by any combination of primary and excess insurance policies. All insurance policies required to be maintained by Tenant hereunder shall be issued by an insurance company or companies reasonably acceptable to Port with an AM Best rating of not less than A-VIII and authorized to do business in the State of California. Tenant's compliance with this Section shall in no way relieve or decrease Tenant's liability under this Lease.

(c) Tenant shall provide thirty (30) days prior written notice of cancellation for any reason, intended non-renewal, or reduction in coverage to Port.

(d) Tenant shall deliver to Port certificates of insurance, additional insured policy endorsements and waiver of subrogation endorsements in a form satisfactory to and at the direction of Port, such as hard copy documentation or use of an internet-based insurance compliance tracking systems such as EXIGIS, evidencing the coverages required herein, together with evidence of payment of premiums, on or before the Commencement Date, and upon renewal of each policy not less than thirty (30) days before expiration of the term of the policy. If Port is using an internet-based insurance compliance tracking system, Tenant's broker shall complete the insurance questionnaire and submit all required documentation. Tenant shall, upon Port's request, promptly furnish Port with a complete copy of any insurance policy required hereunder.

20. DAMAGE OR DESTRUCTION

20.1. *General; Notice; Waiver.*

(a) **General.** If at any time during the Term any damage or destruction occurs to all or any portion of the Premises from fire or other casualty (each a "**Casualty**"), the rights and obligations of the Parties shall be as set forth in this **Section 20**.

(b) **Notice.** If there is any Casualty (i) which would materially impair use or operation of any material portion of the Improvements for their intended purpose for a period of thirty (30) days or longer, or (ii) the repair of which would exceed in an individual instance the amount of One Hundred Thousand Dollars (\$100,000) (increased annually by three percent (3%)), or aggregate amount of Two Hundred Fifty Thousand Dollars (\$250,000) (which amount includes both hard and soft costs of a Restoration, increased annually by three percent (3%)), Tenant shall promptly, but not more than ten (10) days after the occurrence of any such Casualty, give written notice thereof to Port describing with as much specificity as is reasonable, the nature and extent of the damage from such Casualty ("**Casualty Notice**").

(c) **Waiver.** The Parties intend that this Lease fully govern all of their rights and obligations in the event of any Casualty. Accordingly, Port and Tenant each hereby waive the provisions of Sections 1932(2), 1933(4), 1941 and 1942 of the California Civil Code, as such sections may from time to time be amended, replaced, or restated.

20.2. No Release of Tenant's Obligations. Except as set forth in **Section 20.4**, no damage to or destruction of the Premises or any part thereof from any Casualty event shall permit Tenant to surrender this Lease or relieve Tenant from any obligations, including the obligation to pay Rent. In the event of any damage or destruction to the Improvements that does not result in a termination of this Lease, and at all times before completion of Restoration, Tenant shall pay to Port all Rent at the times and in the manner described in this Lease. If this Lease shall not terminate pursuant to this **Section 20**, proceeds of rental interruption or business interruption insurance shall be applied first to unpaid Rent due or coming due before completion of the Restoration and then to costs of Restoring the Premises with any remaining balance to be retained by Tenant. If this Lease shall terminate pursuant to this **Section 20**, proceeds of rental interruption or business interruption insurance shall be applied first to unpaid Rent coming due before termination of this Lease and then such proceeds shall be distributed pursuant to **Section 20.4(b)**.

20.3. Tenant's Obligation to Restore. Except in the event of an Uninsured Casualty or Major Casualty for which Tenant elects to terminate this Lease, under **Section 20.4**, if all or any portion of the Improvements are damaged or destroyed by Casualty, Tenant shall promptly (allowing for securing necessary Regulatory Approvals), commence and diligently Restore the Improvements to the condition they were in immediately before such Casualty in accordance with then applicable Laws (including any required code upgrades, the Secretary's Standards and Port's Sign Guidelines), without regard to the amount or availability of insurance proceeds, subject to Force Majeure. All Restoration shall be performed in accordance with the procedures set forth in **Section 14** relating to Alterations and shall be at Tenant's sole expense. In

connection with any Restoration, the Improvements may be redesigned, made larger or smaller, reconfigured, or otherwise modified, provided that the Improvements as so redesigned (i) are at least equivalent in quality, appearance, public safety, and durability to and in all respects consistent with the Building as improved with the Initial Improvements and any Subsequent Alterations prior to the Casualty subject to the Permitted Uses and (ii) allow the Permitted Uses to continue without material adverse effect on such uses.

20.4. Major Casualty or Uninsured Casualty.

(a) Tenant's Election to Restore or Terminate. If an event of Major Casualty occurs at any time during the Term, or if a change in Laws has occurred which prohibits the Premises from being rebuilt for the Permitted Uses, or if an event of Uninsured Casualty occurs at any time during the Term (other than as set forth in **Section 20.4(c)**), then within ninety (90) days following Tenant's delivery to Port of the Casualty Notice, Tenant shall notify Port of Tenant's election to: (1) commence and complete Restoration of the Improvements, or (2) terminate this Lease (subject to **Section 20.4(b)**). All Restoration shall be in accordance with the procedures set forth in **Section 14** relating to Alterations and shall be at Tenant's sole expense, except as provided in **Section 20.4(c)**.

“**Major Casualty**” means a Casualty event that (i) would require the expenditure of more than Two Million Dollars (\$2,000,000) (increased annually by three percent (3%)), (ii) would require more than two hundred seventy (270) days inclusive of the time to obtain Regulatory Approvals) for completion of the Restoration, or (iii) would prohibit the Premises from being Restored to a design and condition (a) that is substantially similar to the Building (as improved by the construction of the Initial Improvements and any Subsequent Alterations) or (b) that allows for the Permitted Uses to continue without material adverse effect thereon.

“**Uninsured Casualty**” means any of the following: (i) a Casualty event occurring at any time during the Term for which the costs of Restoration (including the cost of any required code upgrades) are not insured or insurable under the policies of insurance that Tenant is required to carry under **Section 19** and such costs exceed Three Hundred Fifty Thousand Dollars (\$350,000) (increased annually by three percent (3%)); or (ii) a Casualty event occurring at any time during the Term which is covered under Tenant's policies of insurance that Tenant is required to carry under **Section 19** but where the cost of Restoration (including the cost of any required code upgrades) will exceed the sum of (A) the net proceeds of any insurance payable, (B) the amount of any applicable policy deductibles, and (c) Three Hundred Fifty Thousand Dollars (\$350,000) (increased annually by three percent (3%)). Any Casualty event not insured due to Tenant's failure to maintain the requisite insurance policies under **Section 19** shall not be considered an Uninsured Casualty. As to any Casualty caused by earthquake or flood, the amount of such policy deductible shall be deemed to be the lesser of the amount of the policy deductible for non-earthquake or flood damage under Tenant's property insurance policy maintained under **Section 22** as of the date of Casualty, or the actual amount of such policy deductible.

(b) Conditions to Termination. As a condition precedent to Tenant's right to terminate this Lease in accordance with **Section 20.4(a)**, there shall be no uncured Tenant Event of Default and Tenant shall do all of the following:

(i) The Casualty Notice shall include the estimated cost of Restoration and with respect to the Uninsured Casualty only, the amount by which the estimated cost of Restoration (or time needed to Restore) exceeds insurance proceeds payable (or those insurance proceeds which would have been payable but for Tenant's failure to maintain insurance required to be maintained hereunder); and

(ii) Pay or cause to be paid the following amounts from all insurance proceeds arising from each Casualty promptly following receipt of such proceeds, in the following order of priority:

(1) First, to Port (or Tenant, if such work is performed by, or on account of, Tenant at its cost) for the actual costs incurred for any work required to alleviate any conditions caused by such Casualty that could cause an immediate or imminent threat to the public safety and welfare or damage to the environment, including any demolition or hauling of rubble or debris;

(2) Second, to Port, for all accrued and unpaid amounts owed to Port, if any, by Tenant;

(3) Third, to each Permitted Mortgagee, in order of priority, a portion of the remaining casualty insurance proceeds arising out of or in connection with the Casualty causing such Major Damage or Uninsured Casualty in an amount not to exceed the aggregate amounts then owed to each such Permitted Mortgagee; and

(4) Fourth, to Port and Tenant as follows: the balance of the insurance proceeds shall be divided proportionately between Port, for the value of Port's reversionary interest in the Premises and the Improvements (in their condition immediately prior to the Casualty event), as of the date the Term would have expired but for the Casualty, and Tenant, for the value of the Improvements for the remaining unexpired portion of the Term (in their condition immediately prior to the Casualty event); and

(iii) Pay to Port any Rent due and payable as of the proposed termination date (to the extent any Rent due and payable remains unpaid after application of insurance proceeds pursuant to *Section 20.4(b)(ii)(2)*); and

(iv) Upon termination in accordance with this *Section 20*, Tenant shall deliver possession of the Premises to Port and quitclaim to Port all right, title and interest in the Premises and in any remaining Improvements.

(c) Port's Election Upon Notice of Termination. Notwithstanding *Section 20.4(a)*, if Tenant elects to terminate this Lease solely due to an Uninsured Casualty, then within sixty (60) days after Port's receipt of the Casualty Notice, Port may elect by giving written notice to Tenant, to continue this Lease and pay the amount to Tenant by which the cost of Restoration will exceed the net proceeds of any insurance payable under the policies of insurance that Tenant is required to carry under *Section 19* (or which would have been payable but for Tenant's failure to maintain such insurance) by more than Three Hundred Fifty Thousand Dollars (\$350,000) (increased annually by three percent (3%)). If Port elects to continue this Lease as set forth in this *Section 20.4(c)*, then notwithstanding Tenant's election to terminate this Lease, this Lease shall not be terminated and Tenant shall be obligated to Restore the Premises in accordance with *Section 20.3*.

20.5. *Date and Effect of Termination.* If Tenant elects to terminate this Lease under *Section 20.4(a)*, and Port elects not to continue this Lease under *Section 20.4(c)*, then, on the date that Tenant shall have fully complied with all provisions of *Section 20.4(b)* to the reasonable satisfaction of Port, this Lease shall terminate. Upon such termination, the Parties shall be released thereby without further obligations to the other party as of the effective date of such termination; provided, however, that the Indemnification provisions and any other provisions that explicitly state they will survive expiration or earlier termination of this Lease shall survive any such termination. Any rights of Tenant or Port to receive insurance proceeds in accordance with the provisions of this Lease will survive the termination of this Lease.

20.6. *Distribution Upon Lease Termination.* If Tenant is obligated to and fails to Restore the Improvements as provided herein and commits an Event of Default in failing to Restore the Improvements and this Lease is thereafter terminated due to such Event of Default, all insurance proceeds held by Port, Tenant and any Permitted Mortgagee, or not yet collected, shall be paid to and retained by Port, subject to the rights of Permitted Mortgagees, if any.

20.7. Use of Insurance Proceeds. Except in the event of termination of this Lease in accordance with *Section 20.4*, all all-risk coverage insurance proceeds, earthquake and flood proceeds, boiler and machinery insurance proceeds, and any other insurance proceeds paid to Tenant by reason of Casualty (other than business or rental interruption insurance), must be used by Tenant for Restoration of the Premises.

20.8. Arbitration of Disputes.

(a) **Estimators.** In the event Port and Tenant cannot mutually agree upon the cost of Restoration (the “**Disputed Amount**”), such dispute shall be determined in the manner provided in this *Section 20.8*. Either party may invoke the provisions of this *Section 20.8* at any time there is a Disputed Amount by delivering written notice to the other party (“**Arbitration Notice**”). Within twenty (20) days after receipt of the Arbitration Notice, each party shall designate, by written notice to the other party, a professional cost estimator having at least ten (10) years' experience in estimating construction costs of major construction projects in the City, and who is competent, licensed, disinterested and independent (“**Estimator**”). Each Estimator shall make an independent determination of the Disputed Amount, in accordance with the provisions hereof. The Estimators may share and have access to objective information in preparing their estimates, but they will otherwise act independently. Each Estimator shall complete, sign and submit its written estimate of the cost of Restoration (“**Restoration Cost**”) within fifteen (15) days after the appointment of the last Estimator unless the parties agree to permit a longer period of time. If the higher estimate of the Restoration Cost is not more than ten percent (10%) of the lower estimate, the Restoration Cost shall be determined for purposes of this Lease to equal the average of the two (2) determinations. If a party fails to designate an Estimator within the twenty (20) day period, then the determination made by the sole Estimator shall control.

(b) **Arbitration.** If the higher estimate of the Restoration Cost is more than ten percent (10%) of the lower estimate, the parties shall agree upon and appoint a third Estimator (the “**Arbitrator**”) within thirty (30) days after the first two (2) determinations have been submitted to the parties. The Arbitrator shall have the minimum qualifications set forth in *Section 20.8(a)*, and also shall have experience acting as an arbitrator of disputes involving construction costs or construction disputes. If the parties do not appoint the Arbitrator within such thirty (30) day period, then 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 arbitrator meeting the foregoing qualifications. The Arbitrator shall consider the estimates submitted by the Estimators as well as any other relevant written evidence that the parties may choose to submit. If a party chooses to submit any such evidence, it shall deliver a complete and accurate copy to the other party at the same time it submits the same to the Arbitrator. Neither party shall conduct ex parte communications with the Arbitrator regarding the subject matter of the Arbitration. Within fifteen (15) business days after his or her appointment, the Arbitrator shall select one of the estimates as the more accurate estimate of the Restoration Cost. The determination of the Arbitrator shall be limited solely to the issue of deciding which of the estimates is closest to the actual Restoration Cost. The Arbitrator shall have no right to propose a middle ground or to modify either of the two (2) estimates.

(c) **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 by the Estimators, or if applicable, the Arbitrator shall be conclusive, final and binding on the Parties. Neither the Estimators, or if applicable, the Arbitrator shall have any power to modify any of the provisions of this Lease. Subject to the provisions of this *Section 20.8*, the parties will cooperate to provide all appropriate information to the Estimators and if applicable, the Arbitrator. The Estimators, and if applicable, the Arbitrator will each report their respective determinations in writing, supported by the reasons for the determination.

(d) Conduct of Arbitration Proceeding. Any arbitration proceeding conducted pursuant to this *Section 20.8* shall be subject to California Code of Civil Procedure Sections 1280 to 1294.2 (but excluding Section 1283.05 with respect to discovery), or successor Laws then in effect relating to arbitration generally. Any such proceeding shall be conducted in the City.

(e) Fees and Costs; Waiver. Each party shall bear the fees, costs and expenses of the Estimator it selects. The parties shall share the fees, costs and expenses of the Arbitrator and the costs and expenses of the arbitration proceeding equally. The parties waive any claims against the Estimator appointed by the other party, and against the Arbitrator, for negligence, malpractice, or similar claims in the performance of the estimates or arbitration contemplated by this *Section 20.8*.

(f) Arbitration of Disputes. With respect to the arbitration provided for in this *Section 20.8*, the Parties agree as follows:

NOTICE: BY INITIALING IN THE SPACE BELOW YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISIONS IN THIS LEASE DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR BY JURY TRIAL. BY INITIALING IN THE SPACE BELOW YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY.

WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT TO NEUTRAL ARBITRATION DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION.

Port's Initials

Tenant's Initials

Any judgment upon the award rendered by the arbitration may be entered in any court having jurisdiction of such arbitration in accordance with the terms of this Lease. This arbitration provision does not affect the rights of either party to seek confirmation, correction or vacation of the arbitration award pursuant to California Code of Civil Procedure Sections 1285 et seq.

21. CONDEMNATION.

21.1. General; Notice; Waiver.

(a) General. If, at any time during the Term, there is any Condemnation of all or any part of the Premises, the rights and obligations of the Parties shall be determined pursuant to this *Section 21*.

(b) Notice. In case of the commencement of any proceedings or negotiations which might result in a Condemnation of all or any portion of the Premises during the Term, the party learning of such proceedings shall promptly give written notice of such proceedings or negotiations to the other party. Such notice shall describe with as much specificity as is reasonable, the nature and extent of such Condemnation or the nature of such proceedings or negotiations and of the Condemnation that might result therefrom, as the case may be.

(c) Waiver. Except as otherwise provided in this *Section 21*, the Parties intend that the provisions of this Lease shall govern their respective rights and obligations in the event

of a Condemnation. Accordingly, but without limiting any right to terminate this Lease in accordance with this **Section 21**, Tenant waives any right to terminate this Lease upon the occurrence of a Partial Condemnation under Sections 1265.120 and 1265.130 of the California Code of Civil Procedure, as such sections may from time to time be amended, replaced or restated.

21.2. Total Condemnation. If there is a Condemnation of the entire Premises or Tenant's leasehold interest therein (a "**Total Condemnation**"), this Lease shall terminate as of the Condemnation Date. Upon such termination, except as otherwise set forth in this Lease, the Parties shall be released without further obligations to the other party as of the Condemnation Date, subject to the payment to Port of accrued and unpaid Rent, up to the Condemnation Date.

21.3. Substantial Condemnation; Partial Condemnation; Rent Abatement. If there is a Condemnation of any portion but less than all of the Premises, the rights and obligations of the Parties shall be as follows:

(a) Substantial Condemnation. If there is a Substantial Condemnation, this Lease shall terminate at Tenant's option (which shall be exercised, if at all, at any time within ninety (90) days after the Condemnation Date by delivering written notice of termination to Port) in accordance with this **Section 21.3(a)**. "**Substantial Condemnation**" means a Condemnation of (A) less than the entire Premises which renders the Premises untenable, unsuitable or economically unfeasible for the Permitted Uses as reasonably determined by Tenant or (B) property located outside the Premises that substantially and materially eliminates access to the Premises where no alternative access can be constructed or made available, as reasonable determined by Port. Notwithstanding the foregoing, Tenant shall have no right to terminate this Lease under this **Section 21.3(a)** if (1) the Condemnation is for less than one year (unless such Condemnation occurs during the last five (5) years of the Term), or (2) Tenant reasonably anticipates (i) based upon a schedule of performance for such Restoration prepared by Tenant in consultation with a licensed general construction contractor that at the time of completion of the Restoration, less than five (5) years would remain in the Term) and (ii) the cost of such Restoration is more than at least Three Hundred Fifty Thousand Dollars (\$350,000) (increased annually by three percent (3%)), unless Port (in its sole and absolute discretion and without any obligation to do so) gives written notice to Tenant within thirty (30) days (subject to extension as provided below) after receipt of Tenant's termination notice that Port agrees, at its cost and expense, to pay any amount by which the cost of such Restoration exceeds by at least Three Hundred Fifty Thousand Dollars (\$350,000) (increased annually by three percent (3%)). In either such case, this Lease shall not terminate, and, upon a determination that this Lease shall continue based on amount of the Award, Tenant shall perform such Restoration, subject to the provisions of **Section 14**. Port's right to exercise the option described in clause (2) above shall be conditioned upon Port and Tenant reaching an agreement, with respect to the schedule for performance of required work, on the timing of payments of Port's contribution to the costs of such work (to the extent not available from Port's share of the Award), and any other related issues which may be necessary or appropriate for resolution in connection with such work and the payment for such work. If no satisfactory agreement is reached within such period, Port shall have no right to exercise such right, and such Condemnation shall be deemed a Substantial Condemnation for which Tenant may terminate this Lease.

(b) Partial Condemnation. If there is a Condemnation of any portion of the Premises which does not result in a termination of this Lease under **Sections 21.2** or **21.3(a)** (a "**Partial Condemnation**"), this Lease shall terminate only as to the portion of the Premises taken in such Partial Condemnation effective as of the Condemnation Date and this Lease shall remain in full force and effect as to the portion of the Premises remaining immediately after such Condemnation. Tenant shall promptly commence and complete any necessary Restoration of the remaining portion of the Premises, at no cost to Port. Any such Restoration shall be performed in accordance with the provisions of **Section 14**.

(c) **Rent Abatement.** In the case of a Partial Condemnation, or in the case of a Substantial Condemnation which does not result in a termination of this Lease, the Base Rent payable from the Condemnation Date shall be equitably reduced in the proportion that the gross square footage of the Premises which is taken in such Partial or Substantial Condemnation, as applicable, bears to the aggregate gross square footage of the Premises immediately prior to such Partial or Substantial Condemnation, as applicable.

21.4. Awards. Except as provided in *Sections 21.5* and *21.6*, Awards and other payments to either Port or Tenant on account of a Condemnation, less costs, fees and expenses of either Port or Tenant (including reasonable Attorneys' Fees and Costs) incurred in the collection thereof ("**Net Awards and Payments**") shall be allocated between Port and Tenant as follows:

(a) In the event of a Partial Condemnation, first, to pay costs of Restoration, in which case, the portion of the Net Awards and Payments allocable to Restoration shall be payable to Tenant and any Permitted Mortgagee;

(b) Second, to Port for the value of the condemned land only, subject to the particular uses of the Premises existing immediately prior to the Condemnation Date, and without reference to, or inclusion of, Port's reversionary interest in the value of the Improvements (the "**Condemned Land Value**");

(c) Third, to Port for any accrued and unpaid Rent owed by Tenant to Port for periods prior to the Condemnation Date;

(d) Fourth, to each Permitted Mortgagee, if any, in order of priority, for payment of all outstanding amounts of the loan secured by such mortgage, together with its reasonable out of pocket expenses and charges in collecting the Net Awards and Payments, including without limitation, its reasonable attorneys' fees incurred in the Condemnation;

(e) Fifth, to Tenant in an amount equal to the value of Tenant's leasehold interest in this Lease, not including the value of the Improvements on the Premises, for the remaining unexpired portion of the Term; and

(f) Sixth, the balance of the Net Awards and Payment shall be divided proportionately between Port, for the value of Port's reversionary interest in the Improvements (based on the date the Term would have expired but for the event of Condemnation), and Tenant, for the value of the Improvements for the remaining unexpired portion of the Term.

(g) Notwithstanding anything to the contrary set forth in this *Section 21.4*, any portion of the Net Awards and Payments which has been specifically designated by the condemning authority or in the judgment of any court to be payable to Port or Tenant on account of any interest in the Premises or the Improvements separate and apart from the Condemned Land Value, the value of Port's reversionary interest in the Improvements, Tenant's leasehold interest in this Lease, or the value of the Improvements on the Premises for the remaining unexpired portion of the Term, shall be paid to Port or Tenant, as applicable, as so designated by the condemning authority or judgment.

21.5. Temporary Condemnation. If there is a Condemnation of all or any portion of the Premises for a temporary period lasting less than the remaining Term, other than in connection with a Substantial Condemnation, this Lease shall remain in full force and effect, there shall be no abatement of Rent, and the entire Award shall be payable to Tenant.

21.6. Relocation Benefits, Personal Property. Notwithstanding *Section 21.4*, Port shall not be entitled to any portion of any Net Awards and Payments payable in connection with the Condemnation of the personal property of Tenant or any of its Subtenants.

22. INDEMNITY AND EXCULPATION.

22.1. General Indemnity. Tenant shall Indemnify Port, City, including, but not limited to, all of their respective boards, commissions, departments, agencies, and other subdivisions,

and their respective Agents (collectively, “**Indemnified Parties**”) from, and shall defend them, without cost to the Indemnified Parties, against any and all Claims arising directly or indirectly out of: (a) any accident, injury to or death of any person, including any Agents and/or Invitees of Tenant, or loss or damage to or destruction of any property occurring in, on or about the Premises, or any other Port property, from any cause whatsoever, or (b) any default by Tenant in the observance or performance of any of the terms, covenants or conditions of this Lease, including the provisions of **Section 23**, or (c) the use, occupancy, manner of use or occupancy, or condition of the Premises or the activities therein by Tenant, its Agents, or Invitees, or (d) any construction or other work undertaken by Tenant on the Premises whether before or during the Term, or (e) any acts, omissions or negligence of Tenant, its Agents or Invitees, in, on or about the Premises, or any other Port property.

22.2. Hazardous Materials Indemnity.

(a) In addition to its obligations under **Section 22.1**, subject to **Section 22.2(b)**, Tenant, for itself and on behalf of its Agents and Invitees, agrees to Indemnify the Indemnified Parties from any and all Hazardous Material Claims that arise as a result of: (i) any Hazardous Material Condition, and (ii) Tenant’s Exacerbation of any Hazardous Material Condition.

(b) Unless Tenant or its Agents or Invitees Exacerbate a Hazardous Material Condition, Tenant’s Indemnity obligations under this Lease do not include any Hazardous Material Claims that arise as a result of a Hazardous Material Condition: (i) caused solely by City, Port, or their Agents during Tenant’s its Agents or Invitees occupancy of the Premises; (ii) arising before the Commencement Date or the date of Tenant’s first use of the Premises under the Prior Licenses, whichever is earlier; (3) caused by Tenant’s Agent’s acts, omissions or negligence on other Port Property (in other words, on Port property other than the Premises), unless such Agent was performing work on Tenant’s behalf or otherwise acting on Tenant’s behalf in furtherance of the Permitted Uses under this Lease; or (4) caused by Tenant’s Invitee’s acts, omissions or negligence on other Port Property (in other words, on Port property other than the Premises).

(c) Tenant’s obligation to Indemnify the Indemnified Parties includes: (i) costs incurred in connection with any Investigation or Remediation requested by Port or required by any Environmental Regulatory Agency and to restore the affected area to its condition before the Release; (ii) damages for diminution in the value of the Premises; (iii) damages for the loss or restriction on use of rentable or usable space or of any amenity of the Premises; (iv) damages arising from any adverse impact on marketing the space; (v) sums paid in settlement of Claims, Hazardous Material Claims, Environmental Regulatory Actions, including fines and penalties; (vi) natural resource damages; and (vii) attorneys’ fees, consultant fees, expert fees, court costs, and all other litigation, administrative or other judicial or quasi-judicial proceeding expenses. If Port pays any costs within the scope of this section, Tenant must reimburse Port for Port’s costs, plus interest at the Interest Rate from the date Port incurs each cost until paid, within three (3) business days after Port’s payment demand. Tenant’s obligations hereunder shall survive the expiration or earlier termination of this Lease.

22.3. Scope of Indemnities. The Indemnification obligations of Tenant set forth in this Lease shall be enforceable regardless of the joint or concurrent, active or passive negligence of the Indemnified Parties, and regardless of whether liability without fault is imposed or sought to be imposed on the Indemnified Parties. The Indemnification obligations of Tenant set forth in this Lease shall be enforceable except to the extent that such Indemnity is void or otherwise unenforceable under applicable Law in effect on, or validly retroactive to, the date of this Lease. Except as specifically provided otherwise, the Indemnification obligations of Tenant set forth in this Lease shall exclude Claims resulting solely from the willful misconduct or gross negligence of the Indemnified Parties.

In addition to Tenant’s obligation to Indemnify the Indemnified Parties, Tenant specifically acknowledges and agrees that it has an immediate and independent obligation to

defend the Indemnified Parties from any Claim which actually or potentially falls within the Indemnification obligations of Tenant set forth in this Lease, even if the allegations are or may be groundless, false or fraudulent. This Indemnification by Tenant shall begin from the first notice that any claim or demand is or may be made and shall continue at all times thereafter.

Port agrees that Tenant's Indemnity for Claims that arise out of any Tenant's Invitee's acts, omissions or negligence on "other Port property" as set forth above in **Section 22.1** applies only if such Claims (i) arise directly or indirectly out of Tenant's Invitee's acts, omissions or negligence, and (ii) such act, omission or negligence occurred in, on, under, or about the Premises.

Port agrees that Tenant's Indemnity for Claims that arise out of any Tenant's Agent's acts, omissions or negligence on "other Port property" as set forth above in **Section 22.1** applies only if such Claims (i) arise directly or indirectly out of Tenant's Agent's acts, omissions or negligence, and (ii) such act, omission or negligence occurred while such Agent was performing work on Tenant's behalf or otherwise acting on Tenant's behalf in furtherance of the Permitted Uses under this Lease.

22.4. Exculpation and Waiver. To the fullest extent permitted by law, Tenant, as a material part of the consideration to be rendered to Port, hereby waives any and all Claims, including without limitation all Claims arising from the joint or concurrent, active or passive, negligence of the Indemnified Parties, but excluding any Claims caused solely by the Indemnified Parties' willful misconduct or gross negligence. The Indemnified Parties shall not be responsible for or liable to Tenant, and Tenant hereby assumes the risk of, and waives and releases the Indemnified Parties from all Claims, whether direct or indirect, known or unknown, foreseen or unforeseen, for any injury, loss or damage to any person or property in or about the Premises by or from any cause whatsoever including, without limitation, (i) any act or omission of persons occupying adjoining premises or any part of the adjacent to or connected with the Premises, (ii) theft, (iii) explosion, fire, steam, oil, electricity, water, gas or rain, pollution or contamination, (iv) stopped, leaking or defective Building Systems, (v) Building defects, (vi) damages to goods, wares, goodwill, merchandise, equipment or business opportunities, (vii) Claims by persons in, upon or about the Premises, or any other Port property for any cause arising at any time, (viii) alleged facts or circumstances of the process or negotiations leading to this Lease prior to the Commencement Date, (ix) inability to use all or any portion of the Premises due to sea level rise, and (x) any other acts, omissions or causes to the fullest extent permitted by law.

Tenant understands and expressly accepts and assumes the risk that any facts concerning the Claims released in this Lease might be found later to be other than or different from the facts now believed to be true, and agrees that the releases in this Lease shall remain effective. Therefore, with respect to the Claims released in this Lease, Tenant waives any rights or benefits provided by Section 1542 of the Civil Code, which reads as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Tenant's Initials

Tenant's Initials

Tenant specifically acknowledges and confirms the validity of the release made above and the fact that Tenant was represented by counsel who explained the consequences of the release at the time this Lease was made, or that Tenant had the opportunity to consult with counsel, but declined to do so.

22.5. *Survival.* The provisions of this Section shall survive the expiration or earlier termination of this Lease.

23. TRANSFERS AND SUBLEASING.

23.1. *Financing.* Except with Port's express prior written consent, in its reasonable discretion, Tenant shall not (i) engage in any Financing or other transaction creating any mortgage, deed of trust or similar security instrument upon Tenant's leasehold interest in the Premises or Tenant's interest in the Improvements under this Lease; or (ii) place or suffer to be placed upon Tenant's leasehold interest in the Premises or interest in the Improvements any lien or other encumbrance. Under no circumstance whatsoever shall Tenant place or suffer to be placed any lien or encumbrance on Port's fee interest in the land in connection with any Financing permitted hereunder, or otherwise. Port shall not subordinate its interest in the Premises, nor its right to receive Rent, to any Permitted Mortgagee of Tenant. Any mortgage, deed of trust, or similar security instrument, encumbrance or lien not permitted by Port shall be deemed to be a violation of this covenant on the date of its execution or filing of record regardless of whether or when it is foreclosed or otherwise enforced.

23.2. *Transfer.*

(a) Tenant must obtain Port's prior written consent to any Transfer, which Port will not withhold unreasonably.

(i) Tenant agrees that any of the following will be a reasonable basis for Port to withhold its consent: (1) at the time Tenant requests Port's consent, an Event of Default, or an event that with notice or the passage of time or both would constitute an Event of Default if not cured, has occurred and remains uncured; (2) the Transfer is by a Transferee of Tenant; (3) the Transferee's financial condition is or may become insufficient to support all of the then-remaining financial and other obligations of this Lease; (4) the Transferee's intended use of the Premises is inconsistent with this Lease or otherwise will affect any City or Port interest materially and adversely; (5) the nature of the Transferee's use of the Premises would involve a materially increased risk of the Handling or Release of Hazardous Materials or of fire or other casualty; (6) the business reputation or character of the Transferee is not reasonably acceptable to Port; (7) the Transferee is not likely to conduct a business in the Premises of a quality substantially equal to Tenant's or otherwise reasonably acceptable to Port; or (8) the Transfer does not reflect an arm's length transaction.

(ii) Tenant also agrees that Port will have the right to impose reasonable conditions to a requested consent to a Transfer, which may include: (1) requiring the Transferee to assume all of Tenant's obligations under this Lease; and (2) giving Port the right to terminate without notice all of Tenant's then-existing Subleases if this Lease is terminated before the existing Subleases expire.

(b) At least one hundred twenty (120) days before any Transfer, Tenant must give Port a Transfer Notice and the following: (i) Certified financial statements for the three (3) years before the Transfer Date (or each year of the proposed Transferee's existence, if shorter) for the Transferee and for any other Person who will be liable for Tenant's obligations under this Lease; (ii) Tenant's current Certified financial statements; (iii) a copy of the proposed Transfer Agreement; and (iii) the Transferee's completed pre-screening and leasing application. In addition, Tenant must provide: (1) any other information, documentation, or evidence that Port reasonably requests to enable Port to evaluate the Transfer and the Transferee; and (2) if any of the Transfer Terms are modified before the Transfer Date, a new Transfer Notice and all relevant

documentation for any modified Transfer Terms. Tenant's Transfer Notice will not be complete until Tenant has provided Port with all information required under this Subsection.

For up to thirty (30) days after receipt of the complete Transfer Notice, Port will have the right to take an assignment from Tenant of the interest that Tenant proposes to Transfer on the same terms and conditions as stated in the Transfer Agreement, and, if exercised, Tenant shall be released from all further obligations under this Lease with respect to such interest (except for obligations that survive lease expiration).

(c) Unless the Transfer requires Port Commission and/or Board of Supervisors review and/or approval (as determined by Port in its sole discretion), Port will use commercially reasonable efforts to respond to the Transfer request no later than sixty (60) days after receipt of Tenant's complete Transfer Notice. If the Transfer requires Port Commission and/or Board of Supervisors review and/or approval, Port will use commercially reasonable efforts to respond to the Transfer request no later than ninety (90) days after receipt of Tenant's complete Transfer Notice. Port's failure to respond within the applicable period shall constitute Port's denial of consent. If Port does not consent to the Transfer, Port shall set forth its reasons for withholding consent upon Tenant's request. If Port consents to the Transfer, Tenant must close the Transfer on the Transfer Terms stated in the Transfer Notice within ninety (90) days after Port notifies Tenant of Port's consent. If the Transfer Agreement does not close within the 90-day period, then Port's consent will expire, unless Tenant gives Port a new Transfer Notice, in which case Port again will be entitled to exercise any of the options under this Section.

(d) Any Transfer that does not comply with this Section fully will constitute an incurable Event of Default and will be void as to Port and this Lease. Port's consent to one Transfer will have no effect with respect to any other Transfer.

(e) Transfer Agreement Requirements. Any Transfer Agreement must include the provisions set forth below.

(i) The Transferee's express assumption of, and acknowledgement and agreement that the Transferee will be jointly and severally liable for, all of Tenant's obligations under this Lease, subject to any agreement between Port and Tenant to release Tenant from any obligations and liabilities accruing after the effective date of the Transfer;

(ii) The Indemnification clause and waiver of claims provisions in **Section 22** (Indemnity and Exculpation);

(iii) Insurance provisions requiring that all of the Transferee's liability and other insurance policies name "*The City and County of San Francisco, the San Francisco Port Commission, and their commissioners, officers, agents, employees, and representatives*" as additional insureds and acknowledging Port's right to demand increased coverage to amounts customarily required by other San Francisco landlords for premises where business activities similar to the Transferee's are conducted;

(iv) A provision stating that if this Lease is terminated for any reason, the Transferee's right to possession under the Transfer Agreement will terminate;

(v) A provision under which the Transferee expressly waives any and all relocation assistance and benefits in connection with this Lease to the extent permitted by applicable Laws; and

(vi) A provision under which the Transferee expressly agrees to report the transfer to the County Assessor in accordance with **Section 8.1** of this Lease.

23.3. Port's Participation in Sale Proceeds. In addition to all requirements of **Section 23.2**, the following provisions apply to any Sale.

(a) Tenant and all subsequent assignees must pay to Port twelve percent (12%) of Tenant's Net Sale Proceeds from each Sale as Port's Sale Participation, concurrently with and as a condition to the Sale Closing.

(b) As soon as available after Port consents to a Sale, Tenant must deliver to Port an estimated closing statement that includes Tenant's best estimate of: (i) Gross Sale Proceeds; (ii) Costs of Sale; (iii) Net Sale Proceeds; and (iv) Port's Sale Participation. The closing statement must be updated and delivered to Port the business day before the Sale Closing. If an escrow account is not established for the Sale, the final closing statement must be Certified and state any variances from the estimated closing statement in form and content reasonably acceptable to Port. If escrow is opened for the Sale, Port's Sale Participation will be distributed through escrow. If no escrow is opened for the Sale, Port's Sale Participation will be paid upon the Sale Closing. Within forty-five (45) days after any Sale Closing such Sale, transferor Tenant will submit to Port a Certified statement prepared by a financial officer or other accountant employed or retained by transferor Tenant in accordance with sound accounting principles consistently applied, confirming the actual amounts under (i) – (iv). At Port's option, any overpayments may be either refunded to transferor Tenant or applied to any other amount then due and unpaid or credited against Rent due. The statements delivered to Port under this Section are subject to the audit provisions of *Section 23.7* for determination of the accuracy of Tenant's reporting of the Port's share of Sale Proceeds.

(c) Port may reference in any estoppel certificate or other representation requested from Port that payment to Port of Port's Sale Participation is a material obligation under the Lease, due and owing upon the closing of any Sale hereunder, provided, however, failure to reference such obligation will in no way negate Tenant's obligation to pay, and Port's right to receive, Port's Sale Participation.

(d) Tenant's obligation to pay Port's Sale Participation will survive the Sale Closing and the expiration or termination of this Lease.

(e) If Tenant Completed the Initial Improvements or any Subsequent Alterations that constitute capital improvements, Net Sale Proceeds will be reduced by Tenant's Adjusted Basis, but only if Port previously approved Tenant's Certified Construction Costs as follows. Within ninety (90) days after Completion of the Initial Improvements or any Subsequent Alterations, Tenant must deliver to Port a Certified Construction Costs Report in form and content acceptable to Port in its reasonable discretion. If Port requests, the report must be accompanied by a CPA's agreed-upon procedures report prepared in accordance with AICPA standards for compliance attestation specifying Port as an intended user, in which case Tenant shall have until the date that is one hundred twenty (120) days after the end of Tenant's fiscal year to provide the Construction Costs Report. Port will notify Tenant in writing whether Port agrees or disagrees with Tenant's Construction Costs Report (including whether Port agrees that Subsequent Alterations constitute capital improvements) within ninety (90) days after receiving it. Port will have the right to inspect Tenant's Books and Records for the Construction Costs Report. Tenant must keep accurate Books and Records of all Construction until the later of two (2) years after Tenant's submission of any Construction Costs Report or six (6) months after any dispute regarding the Construction Costs has been resolved. Tenant's failure to submit a Construction Costs Report as and when required under this Section will be deemed a waiver of its right to make a reduction to Net Sale Proceeds.

The following example is provided for illustrative purposes only:

Gross Sale Proceeds:	\$7,000,000
Costs of Sale:	\$(500,000)
Tenant's Adjusted Basis	\$(5,000,000)
Net Sale Proceeds before distribution:	\$1,500,000
Port's Sale Participation @ 12% of adjusted Net Sale Proceeds:	\$180,000

23.4. Port's Participation in Financing Proceeds. In addition to all requirements of *Section 23.1*, the following provisions apply to any Financing.

(a) Tenant and all subsequent assignees must pay to Port twelve percent (12%) of Tenant's Net Financing Proceeds from each Financing as Port's Financing Participation, concurrently with and as a condition to the Financing Closing.

(b) As soon as available after Port consents to a Financing, Tenant must deliver to Port an estimated closing statement that includes Tenant's best estimate of: (i) Gross Financing Proceeds; (ii) Net Financing Proceeds; and (iii) Port's Financing Participation. The closing statement must be updated and delivered to Port the business day before the Financing Closing. If an escrow account is not established for the Financing, the final closing statement must be Certified by a financial officer or other accountant employed or retained by Tenant and state any variances from the estimated closing statement in form and content reasonably acceptable to Port. If escrow is opened for the Financing, Port's Financing Participation will be distributed through escrow. If no escrow is opened for the Financing, Port's Financing Participation will be paid upon the Financing Closing. Within forty-five (45) days after any Financing Closing such Financing, Tenant will submit to Port a Certified statement prepared by a financial officer or other accountant employed or retained by Tenant in accordance with sound accounting principles consistently applied, confirming the actual amounts under (i) – (iii). At Port's option, any overpayments may be either refunded to Tenant or applied to any other amount then due and unpaid or credited against Rent due. The statements delivered to Port under this Section are subject to the audit provisions of *Section 23.7* for determination of the accuracy of Tenant's reporting of the Port's share of Financing Proceeds.

(c) Port may reference in any estoppel certificate or other representation requested from Port that payment to Port of Port's Financing Participation is a material obligation under the Lease, due and owing upon the closing of any Financing hereunder, provided, however, failure to reference such obligation will in no way negate Tenant's obligation to pay, and Port's right to receive, Port's Financing Participation.

(d) Tenant's obligation to pay Port's Financing Participation will survive the Financing Closing and the expiration or termination of this Lease.

The following example is provided for illustrative purposes only:

Gross Financing Proceeds:	\$7,000,000)
Financing Costs:	\$(500,000)
Amount of outstanding indebtedness repaid:	\$0
Cost of Improvements not financed	\$(5,500,000)
Financing Reinvestment:	\$(750,000)
Net Financing Proceeds retained by Tenant:	\$250,000
Port's Financing Participation @ 12%:	\$30,000

23.5. Subleasing by Tenant.

(a) Subleases. Tenant will not Sublease any portion of the Premises without the prior written consent of Port which will not be unreasonably withheld. All Subleases must be in full compliance with all of the terms and provisions of this *Section 23.5*. A Sublease without Port's consent will be voidable by Port, in its sole discretion. Nothing in this Lease is intended to restrict or prohibit Tenant and its Subtenants from allocating costs associated with this Lease in any manner they see fit; provided however, that unless explicitly authorized under this Lease, such allocations to do not affect the amount of Rent due to Port.

(b) Request for Sublease. Tenant must give Port as much prior written notice as reasonably possible, but not less than thirty (30) days before it intends to enter into a proposed Sublease (herein “**Notice of Request to Sublease**”) and provide Port with the following information in writing: (a) the name, address, legal composition and ownership of the proposed Subtenant, (b) reasonably adequate evidence that the proposed Subtenant’s financial condition and prospects are sufficient to support all of the financial and other obligations of the proposed Sublease, (c) a full description of the terms and conditions of the proposed Sublease, including the proposed commencement date, a description of the proposed use and the material terms, including all payments to be made or other consideration to be given in connection with the Sublease, and copies of any and all proposed agreements concerning the proposed Sublease, and (d) a list of any Regulatory Approvals needed and the status of such Regulatory Approvals. Until such time as Tenant has provided to Port all information set forth hereinabove, Tenant’s Notice of Request to Sublease will not be deemed to have been given. Tenant will immediately notify Port of any modifications to the proposed terms of the Sublease. Port will use reasonable efforts to respond to the Transfer request no later than thirty (30) days after receipt of Tenant’s complete Transfer Notice.

(c) Port’s Options. Upon receiving a Notice of Request to Sublease, Port will have the right to either **(A)** consent to the proposed Sublease, which consent shall not be unreasonably withheld, subject to any reasonable conditions upon such Sublease or **(B)** deny its consent to the proposed Sublease on the following reasonable grounds: (1) at the time Tenant requests Port’s consent, an Event of Default, or an event that with notice or the passage of time or both would constitute an Event of Default if not cured, has occurred and remains uncured; (2) that the proposed Subtenant’s financial condition and prospects are or could become insufficient to support all of the financial and other obligations of the proposed Sublease; (3) that the use to which the Premises will be put by the proposed Subtenant is inconsistent with the terms of this Lease or otherwise will affect any City or Port interest materially and adversely; (4) the business reputation or character of the proposed Subtenant is not reasonably acceptable to Port or the proposed Subtenant is not likely to conduct a business in the Premises of a quality substantially equal to Tenant’s (or a prior Subtenant’s) or otherwise reasonably acceptable to Port; (5) that the nature of the proposed Subtenant’s intended or likely use of the Premises would involve an unmitigated risk of the Handling, Release or mishandling of Hazardous Materials and Port reasonably believes that the measures proposed by Subtenant are insufficient to mitigate the risk of Handling or Release of Hazardous Materials by Subtenant, or otherwise materially increase the risk of fire or other casualty; (6) that the Sublease rental rate does not reflect an arm’s length transaction; (7) failure of the Sublease to contain provisions specified in this Lease.

(d) Required Provisions in Subleases. Each and every Sublease must contain all the following provisions:

- (i)** the Sublease is subject to and subordinate to this Lease;
- (ii)** the Indemnification clause and waiver of claims provisions in *Section 22* (Indemnity and Exculpation) as to the subleased premises and Subtenant’s activities;
- (iii)** insurance provisions requiring that all of the Subtenant’s liability and other insurance policies name “*The City and County of San Francisco, the San Francisco Port Commission, and their commissioners, officers, agents, employees, and representatives*” as additional insureds and acknowledging Port’s right to demand increased coverage to amounts customarily required by other San Francisco landlords for premises where business activities similar to the Subtenant’s are conducted;
- (iv)** an express waiver of any and all relocation assistance and benefits in connection with this Lease to the extent permitted by applicable Laws;

(v) a requirement that the Subtenant must pay the rent and other sums due under the Sublease directly to Port upon receiving Port's written notice that an Event of Default has occurred, a copy of which Port will deliver to Tenant;

(vi) a prohibition on assignment or further subleasing, in whole or in part, without Port's consent, which may be given or withheld in Port's sole discretion;

(vii) a provision similar to *Section 29* (Port's Entry) requiring Subtenant to permit Port to enter its subleased space for the purposes specified in that Section; and

(viii) a provision similar to *Section 38* (Tenant Estoppel) requiring Subtenant, from time to time, to provide Port an estoppel certificate substantially similar to the form attached hereto as *Exhibit J*.

(e) Any Sublease that does not comply with this Section fully including without limitation Tenant's failure to seek or obtain Port's consent when such consent is required, will constitute an incurable Event of Default and will be void as to Port and this Lease. Port's consent to one Sublease will have no effect with respect to any other Sublease.

(f) Copy of Executed Sublease. Tenant shall provide Port a true and complete copy of each executed Sublease within thirty (30) days after the execution thereof. Each executed Sublease must contain substantially the same (or more favorable to the landlord) business terms as set forth in the applicable Notice of Request to Sublease.

23.6. Notice to Port. In addition to the obligations under *Section 8.1*, within thirty (30) days of entering into any agreement under which Tenant grants any person the right to occupy or use any portion of the Premises for any period of time, (other than pursuant to a membership agreement or day use pass or as a patron of Tenant or any Subtenant), including without limitation, any assignment, sublease, license, permit, concession or vendor agreement or other agreement or renewal thereof, Tenant shall provide written notice to Port and Assessor and a copy of such agreement, regardless of whether Port consent is required under this Lease for such agreement. Tenant agrees to provide such further information as may be requested by City or Port to enable compliance with reporting obligations under state Law and San Francisco Administration Code Sections 23.38 and 23.39 (or any successor ordinance).

23.7. Audit. Tenant agrees to make its Books and Records available to, and cooperate with, any Port representative for the purpose of conducting an audit of the accuracy of Tenant's financial reporting on a Transfer or Sublease until the later of (i) four (4) years after the end of each Lease Year to which such records apply or, (ii) if an audit is commenced or if a controversy should arise between the parties as to the accuracy of Tenant's financial reporting on the Transfer or Sublease, until such audit or controversy is concluded. If an audit reveals that Tenant has overstated any costs in connection with a Transfer, Tenant must pay Port promptly upon demand the difference between the amount Tenant deducted and the amount it should have deducted, plus interest at the Interest Rate from the Transfer Date until paid.

23.8. Acknowledgement. Tenant acknowledges and agrees that Port's rights with respect to Transfers and Subleasing are reasonable limitations for purposes of California Civil Code Section 1951.4 and waives any Claims arising from Port's actions under this *Section 23*.

24. APPROVALS BY PORT; FEES FOR REVIEW.

24.1. Approvals by Port. Port's Executive Director, or his or her designee, is authorized to execute on behalf of Port any closing or similar documents and any contracts, agreements, memoranda, or similar documents with State, regional, or local authorities or other Persons that are necessary or proper to achieve the purposes and objectives of this Lease and that do not materially increase the obligations of Port under this Lease, if the Executive Director determines, after consultation with, and approval as to form by, the City Attorney, that the document is necessary or proper and in Port's best interests. The Executive Director's signature

on any such documents will be conclusive evidence of such a determination by him or her. Wherever this Lease requires or permits the giving by Port of its consent or approval, or whenever an amendment, waiver, notice, or other instrument or document is to be executed by or on behalf of Port, the Executive Director, or his or her designee, will be authorized to execute such instrument on behalf of Port, except as otherwise provided by applicable Law, including the City's Charter.

24.2. Fees for Review. Within ten (10) days after Port's written request, Tenant will pay Port, as Additional Rent, Port's reasonable costs, including Attorneys' Fees and Costs, consultant's costs, and costs for Port staff time, incurred in connection with the review, investigation, processing, documentation, and/or approval of any proposed Transfer, Sublease, non-disturbance agreement, mortgage confirmation statement, mortgage, refinancing certificate, or Subsequent Alteration. Tenant will pay such costs regardless of whether or not Port consents to such proposal.

25. NO MERGER OF TITLE.

There will be no merger of the Leasehold Estate with the fee estate in the Premises by reason of the fact that the same Person may own or hold (a) the Leasehold Estate or any interest in such Leasehold Estate, and (b) any interest in such fee estate. No such merger will occur unless and until all Persons having any interest in the Leasehold Estate and the fee estate in the Premises will join in and record a written instrument effecting such merger.

26. DEFAULT BY TENANT.

Any of the following shall constitute an event of default (the "Event of Default") by Tenant hereunder:

(a) failure to pay to Port any Rent or other sum payable hereunder when due, and such default continues for a period of three (3) days following written notice from Port. Notwithstanding the foregoing, (i) Port shall not be required to provide such notice more than twice during any 12-month period, and any such failure by Tenant after Tenant has received two (2) such notices in such 12-month period shall constitute an Event of Default by Tenant hereunder without any further action by Port or opportunity of Tenant to cure except as may be required by Section 1161 of the California Code of Civil Procedure, and (ii) Tenant shall not be in default for failure to pay any Percentage Rent if such failure is solely due to the applicable Subtenant's failure to pay such amount to Tenant or provide the information necessary to calculate the Percentage Rent, provided that, in each case: (A) failure to pay Percentage Rent and failure to provide the information necessary for Tenant to calculate Percentage Rent is a default of the relevant Sublease; (B) Tenant is using demonstrable, commercially reasonable efforts to enforce the Subtenant's performance of such obligations including but not limited to enforcing the Sublease through notices of default and termination; and (C) the subject Percentage Rent is paid no later than ninety (90) days from the original due date; or

(b) failure by Tenant to deliver the Quarterly Percentage Rent Statement or Annual Statement when due and such default continues for a period of thirty (30) days following written notice from Port. Notwithstanding the foregoing, (i) Port shall not be required to provide such notice more than twice during any twelve (12) month period, and any such failure by Tenant after Tenant has received two (2) such notices in such twelve (12) month period shall, at the option of Port, constitute an Event of Default by Tenant hereunder without any further action by Port (including, but not limited to, notice to Tenant of such failure) or opportunity of Tenant to cure except as may be required by Section 1161 of the California Code of Civil Procedure and (ii) Tenant shall not be in default for failure to deliver the Quarterly Percentage Rent Statement or Annual Statement when due if such failure is solely due to the applicable Subtenant's failure to deliver the Quarterly Percentage Rent Statement or Annual Statement when due or provide the information necessary to prepare the applicable statements, provided that, in each case: (A) failure to deliver the statements is solely due to the applicable Subtenant's failure to deliver

the relevant statement or to provide the information necessary to prepare the applicable statements; (B) Tenant is using demonstrable, commercially reasonable efforts to enforce the Subtenant's performance of such obligations including but not limited to enforcing the Sublease through notices of default and termination; and (C) the subject statements are submitted no later than one hundred twenty(120) days from the original due date; or

(c) a second understatement by Tenant of Gross Revenues for any audit period by five percent (5%) or more within any three (3) Lease Year period of the first such understatement; or

(d) failure to comply with Tenant's covenants set forth in **Section 6.2** (Continuous Operations), as determined by Port in its reasonable discretion and such failure continues for a period of fifteen (15) days following written notice from Port; or

(e) abandonment or vacation of the Premises by Tenant; or

(f) failure to use the Premises solely for the Permitted Use, failure to comply with the provisions of **Section 18** (Hazardous Materials) or failure to comply with the provisions of the Operations Plan, in each case in a manner that presents a health, safety, welfare or environmental risk or hazard, as determined by Port in its sole and absolute discretion and such failure continues for a period of twenty-four (24) hours following written notice from Port; in all other circumstances, such failure shall be cured within ten (10) days following written notice from Port; or

(g) failure by Tenant to execute and deliver to Port an estoppel certificate within the time period and in the manner required by **Section 38 below**, and Tenant's failure to cure the foregoing default within five (5) business days following written notice from Port; or

(h) a Transfer or Sublease, or attempted Transfer or Sublease, of this Lease or the Premises by Tenant contrary to the provisions of **Section 23 above**; or

(i) failure by Tenant or Tenant's broker as applicable to provide evidence of insurance coverage complying with the provisions of **Section 19 above**, failure to maintain any insurance required to be maintained by Tenant pursuant to this Lease, or if any such insurance shall be canceled or terminated or shall expire or be reduced or materially changed, except as permitted in this Lease, and Tenant's or Tenant's broker's failure to deliver evidence of such coverage or failure to reinstate such coverage, all within five (5) business days following written notice from Port; or

(j) failure by Tenant to discharge any lien or encumbrance placed on the Premises or any part thereof in violation of this Lease within ten (10) days after the date such lien or encumbrance is filed or recorded against the Premises or any part thereof, or if Tenant has no knowledge of such lien, then Tenant shall discharge such lien or encumbrance within fifteen (15) days following Tenant's knowledge of such lien or encumbrance; or

(k) failure by Tenant to observe, keep or perform any of the other terms, covenants, agreements or conditions contained in this Lease and required to be observed or performed by Tenant and not specifically enumerated in this **Section 26**, and such failure continues for a period of fifteen (15) days after written notice by Port, provided that if such default is not capable of cure within such fifteen (15) day period, Tenant shall have a reasonable period to complete such cure if Tenant promptly undertakes action to cure such default within such fifteen (15) day period and thereafter diligently prosecutes the same to Completion within sixty (60) days after the receipt of notice of default from Port. Port shall not be required to provide such notice more than twice in any twelve (12) month period with respect to any material non-monetary defaults and after the second notice in any calendar year, any subsequent failure by Tenant during such twelve (12) month period shall automatically constitute an Event of Default hereunder; or

(l) Tenant shall become bankrupt or insolvent or make a transfer in fraud of creditors, or make an assignment for the benefit of creditors, or bring or have brought against Tenant any action or proceedings of any kind under any provision of the U.S. Bankruptcy Code or under any other insolvency, bankruptcy or reorganization act and, in the event such proceedings are involuntary, Tenant is not discharged from the same within sixty (60) days thereafter; or

(m) a receiver is appointed for a substantial part of the assets of Tenant and such receiver is not discharged within sixty (60) days; or

(n) this Lease or any estate of Tenant under this Lease shall be levied upon by any attachment or execution and such attachment is not stayed or lifted within sixty (60) days; or

(o) An uncured default by Tenant under the terms of the License; or

(p) without limiting the provisions of *Subsection 26(f)* or lengthening the cure period under that subsection, failure by Tenant to comply with Laws and Tenant's failure to cure the foregoing default within forty-eight (48) hours following written notice from Port.

27. PORT'S REMEDIES.

27.1. *Port's Remedies Generally.* Upon the occurrence and during the continuance of an Event of Default (but without obligation on the part of Port following the occurrence of an Event of Default to accept a cure of such Event of Default other than as required by Law or by this Lease), Port has all rights and remedies provided in this Lease or available at Law or in equity (including the right to seek injunctive relief or an order for specific performance, where appropriate). All of Port's rights and remedies are cumulative, and except as may be otherwise provided by applicable Law, the exercise of any one or more rights will not preclude the exercise of any other.

27.2. *Right to Keep Lease in Effect.*

(a) Continuation of Lease. Port has the remedy described in California Civil Code Section 1951.4 (lessor may continue lease in effect after lessee's breach and abandonment and recover rent as it becomes due, if lessee has right to sublet or assign, subject only to reasonable limitations) under which Port may continue this Lease in full force and effect. In the event Port elects this remedy, Port has the right to enforce by suit or otherwise, all covenants and conditions hereof to be performed or complied with by Tenant and exercise all of Port's rights, including the right to collect Rent when due. Tenant will be liable immediately to Port for all reasonable costs Port incurs exercising its remedies under this *Section 27*, including reasonable Attorneys' Fees and Costs, brokers' fees or commissions, expenses of remodeling the Premises required by the reletting and similar costs.

(b) No Termination Without Notice. No act by Port allowed by this *Section 27.2*, nor any appointment of a receiver upon Port's initiative to protect its interest under this Lease, nor any withholding of consent to a Transfer or termination of a Transfer in accordance herewith, will terminate this Lease, unless and until Port notifies Tenant in writing that Port elects to terminate this Lease.

27.3. *Right to Terminate Lease.* Port may terminate this Lease at any time after the occurrence of (and during the continuation of) an Event of a Default by giving written notice of such termination. Termination of this Lease will occur on the date set forth in such notice. Acts of maintenance or preservation, and any appointment of a receiver upon Port's initiative to protect its interest hereunder will not in any such instance constitute a termination of Tenant's right to possession. No act by Port other than giving notice of termination to Tenant in writing will terminate this Lease. Upon termination of this Lease, Port has the right to recover from Tenant all sums allowed under California Civil Code Section 1951.2, including the following:

(a) The worth at the time of award of the unpaid Rent that had been earned at the time of termination of this Lease; plus

(b) The worth at the time of award of the amount by which the unpaid Rent which would have been earned after the date of termination of this Lease until the time of award exceeds the amount of the loss of Rent that Tenant proves could have been reasonably avoided; plus

(c) The worth at the time of award of the amount by which the unpaid Rent for the balance of the Term after the time of award exceeds the amount of the loss of Rent that Tenant proves could have been reasonably avoided; plus

(d) Any other amount necessary to compensate Port for all detriment proximately caused by the Event of Default, or which in the ordinary course of things would be likely to result therefrom.

“The worth at the time of award” as used in *Sections 27.3(a)* and *27.3(b)* will be computed by allowing interest at a rate per annum equal to the Interest Rate. “The worth at the time of award” as used in *Section 27.3(c)* will be computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of the award, plus one percent (1%).

27.4. Interest. Rent not paid when due will bear interest at the Interest Rate from the date due until paid.

27.5. Continuation of Subleases and Other Agreements. Port has the right, at its sole option, to assume any and all Subleases and agreements by Tenant for the maintenance or operation of the Premises. Tenant hereby further covenants that, upon request of Port following an Event of Default and termination of Tenant’s interest in this Lease, Tenant will execute, acknowledge, and deliver to Port such further instruments as may be necessary or desirable to vest or confirm or ratify vesting in Port the then existing Subleases and other agreements then in force, as above specified.

27.6. Appointment of Receiver. From and after an Event of Default, Port has the right to have a receiver appointed to collect Rent and conduct Tenant’s business. Neither the filing of a petition for the appointment of a receiver nor the appointment itself will constitute an election by Port to terminate this Lease.

27.7. Waiver of Redemption. Tenant hereby waives, for itself and all Persons claiming by and under Tenant, redemption or relief from forfeiture under California Code of Civil Procedure Sections 1174 and 1179, or under any other pertinent present or future Law, in the event Tenant is evicted or Port takes possession of the Premises by reason of any Event of Default.

27.8. No Accord and Satisfaction. No payment by Tenant or receipt by Port of an amount less than the Rent due under this Lease shall be deemed to be other than “on account” of the earliest Rent due; nor shall any endorsement or statement on any check or payment, or letter accompanying such check or payment, be deemed an accord and satisfaction. Port may accept any such partial payment or tender without prejudice to its right to recover the balance of any amount due and to pursue any other remedy herein provided at Law or in equity.

27.9. Port’s Right to Cure Tenant’s Default. Port, at any time after the occurrence of an Event of Default may, at its sole option, cure the default at Tenant’s cost. If Port undertakes any act to cure or attempt to cure such default that requires the payment of any sums, or otherwise incurs any costs, damages, or liabilities (including without limitation, attorneys’ fees), all such sums, costs, damages or liabilities paid by Port shall be due immediately from Tenant to Port at the time the sum is paid, and if paid by Tenant at a later date shall bear interest at the lesser of the Interest Rate or the maximum non-usurious rate Port is permitted by Law to charge from the date such sum is paid by Port until Port is reimbursed by Tenant.

27.10. Remedies Not Exclusive. The remedies set forth in this Section are not exclusive; they are cumulative and in addition to any and all other rights or remedies of Port now or later allowed by other terms and provisions of this Lease, Law or in equity. Tenant's obligations under this Section will survive any termination of this Lease.

28. LITIGATION EXPENSES; ATTORNEYS' FEES.

28.1. Litigation Expenses. The Prevailing party in any action or proceeding (including any cross-complaint, counterclaim, or bankruptcy proceeding) against the other party by reason of a claimed default, or otherwise arising out of a party's performance or alleged non-performance under this Lease, shall be entitled to recover from the other party its costs and expenses of suit, including but not limited to reasonable attorneys' fees, which shall be payable whether or not such action is prosecuted to judgment. "**Prevailing party**" within the meaning of this Section shall include, without limitation, a party who substantially obtains or defeats, as the case may be, the relief sought in the action, whether by compromise, settlement, judgment or the abandonment by the other party of its claim or defense.

28.2. Appeals. Attorneys' fees under this Section shall include attorneys' fees and all other reasonable costs and expenses incurred in connection with any appeal.

28.3. City Attorney. For purposes of this Lease, reasonable fees of attorneys of the City's Office of the City Attorney shall be based on the fees regularly charged by private attorneys with an equivalent number of years of professional experience (calculated by reference to earliest year of admission to the Bar of any State) who practice in San Francisco in law firms with approximately the same number of attorneys as employed by the Office of the City Attorney.

29. PORT'S ENTRY ON PREMISES.

29.1. Entry for Inspection. Port and its authorized Agents shall have the right to enter the Premises upon reasonable prior notice at any time during normal business hours of generally recognized business days, provided that Tenant or Tenant's Agents are present on the Premises (except in the event of an emergency), for the purpose of inspecting the Premises to determine whether the Premises is in good condition and whether Tenant is complying with its obligations under this Lease.

29.2. General Entry. In addition to its rights pursuant to *Section 29.1*, Port and its authorized Agents shall have the right to enter the Premises at all reasonable times and upon reasonable notice for any of the following purposes:

(a) To perform any necessary maintenance, repairs or restoration to the Premises, or to perform any services that Port has the right or obligation to perform;

(b) To serve, post, or keep posted any notices required or allowed under the provisions of this Lease;

(c) To post "**For Sale**" signs at any time during the Term; to post "**For Lease**" signs during the last six (6) months of the Term or during any period in which there is an Event of Default;

(d) On an occasional basis, at all reasonable times after giving Tenant reasonable advance written or oral notice, to show the Premises to prospective tenants or other interested parties;

(e) If any excavation or other construction is undertaken or is about to be undertaken on any property or street adjacent to the Premises, to shore the foundations, footings or walls of the Premises and to erect scaffolding and protective barricades around and about the Premises as reasonably necessary in connection with such activities (but not so as to prevent or unreasonably restrict entry to the Premises), and to do any other act or thing necessary for the safety or preservation of the Premises during such excavation or other construction; or

(f) To obtain environmental samples and perform equipment and facility testing.

29.3. *Emergency Entry.* Port may enter the Premises at any time, without notice, in the event of an emergency. Port shall have the right to use any and all means which Port may deem proper in such an emergency in order to obtain entry to the Premises. Entry to the Premises by these means, or otherwise, shall not under any circumstances be construed or deemed to be a forcible or unlawful entry into, or a detainer of, the Premises, or an eviction of Tenant from the Premises or any portion of the Premises.

29.4. *No Liability.* Port shall not be liable in any manner, and Tenant hereby waives any Claim for damages, for any inconvenience, disturbance, loss of business, nuisance, or other damage, including without limitation any abatement or reduction in Rent, arising out of Port's entry onto the Premises as provided in this Section or performance of any necessary or required work on the Premises, or on account of bringing necessary materials, supplies and equipment into or through the Premises during the course thereof, except damage resulting solely from the willful misconduct or gross negligence of Port or its authorized representatives.

29.5. *Nondisturbance.* Port shall comply with Tenant's reasonable security measures and shall use commercially reasonable efforts to conduct its activities on the Premises as allowed in this Section in a manner which, to the extent reasonably practicable, will minimize annoyance or disturbance to Tenant.

30. SURRENDER AND QUITCLAIM.

30.1. *Surrender.* Upon expiration or earlier termination of this Lease, Tenant shall surrender to Port the Premises in good order, condition, and repair (except for ordinary wear and tear occurring after the last necessary maintenance made by Tenant and except for destruction or condemnation as described in *Sections 20 and 21* hereof). Ordinary wear and tear shall not include any damage or deterioration that would have been prevented by proper maintenance by Tenant, or Tenant otherwise performing all of its obligations under this Lease. On or before the expiration or earlier termination of this Lease, Tenant at its sole cost shall remove from the Premises, and repair any damage caused by removal of, Tenant's Property, including any signage, and all Alterations and Improvements required to be removed as provided in *Section 14.8*. The Premises shall be surrendered clean, free of debris, waste, and Hazardous Materials that Tenant is required to remove under this Lease, and free and clear of all liens and encumbrances other than liens and encumbrances existing as of the date of this Lease and any other encumbrances created by Port. Except for those Alterations and Improvements required to be removed as provided in *Section 14.8*, Alterations and Improvements shall remain in the Premises as Port property.

If the Premises is not surrendered at the end of the Term or sooner termination of this Lease and in accordance with the provisions of this *Section 30* and *Section 14.8*, Tenant shall continue to be responsible for the payment of Rent (as the same may be increased pursuant to *Section 31.2 or 31.3 below* as applicable) until the Premises is surrendered in accordance with these Sections, and Tenant shall Indemnify Port from and against any and all loss or liability resulting from delay by Tenant in so surrendering the Premises including, without limitation, any costs of Port to obtain possession of the Premises; any loss or liability resulting from any Claim against Port made by any succeeding tenant or prospective tenant founded on or resulting from such delay and losses to Port due to lost opportunities to lease any portion of the Premises to any such succeeding tenant or prospective tenant, together with, in each instance, reasonable attorneys' fees and costs.

No act or conduct of Port, including, but not limited to, the acceptance of the keys to the Premises, shall constitute an acceptance of the surrender of the Premises by Tenant before the expiration of the Term. Only a written notice from Port to Tenant confirming termination of this Lease and surrender of the Premises by Tenant shall constitute acceptance of the surrender of the Premises and accomplish a termination of this Lease.

30.2. *Abandoned Property.* Any items, including Tenant's Property, not removed by Tenant as required herein shall be deemed abandoned. Port may retain, store, remove, and sell or otherwise dispose of abandoned Tenant's Property, and Tenant, on its own behalf and for any Subtenant, waives all Claims against Port for any damages resulting from Port's retention, removal and disposition of such property; provided, however, that Tenant shall be liable to Port for all costs incurred in storing, removing and disposing of abandoned Tenant's Property and repairing any damage to the Premises resulting from such removal. Tenant agrees that Port may elect to sell abandoned Tenant's Property and offset against the sales proceeds Port's storage, removal, and disposition costs without notice to Tenant or otherwise according to the procedures set forth in California Civil Code Section 1993 et seq., the benefits of which Tenant waives.

30.3. *Quitclaim.* Upon the expiration or earlier termination of this Lease, the Premises shall automatically, and without further act or conveyance on the part of Tenant or Port, become the property of Port, free and clear of all liens and without payment therefore by Port and shall be surrendered to Port upon such date. Upon or at any time after the expiration or earlier termination of this Lease, if requested by Port, Tenant shall promptly deliver to Port, without charge, a quitclaim deed to the Premises and any other instrument reasonably requested by Port to evidence or otherwise effect the termination of Tenant's leasehold interest hereunder and to effect such transfer or vesting of title to the Premises or any portion that Port agrees are to remain part of the Premises.

30.4. *Survival.* Tenant's obligation under this *Section 30* shall survive the expiration or earlier termination of this Lease.

31. HOLDING OVER.

31.1. *Terms of Holdover Tenancy.* Any holding over after the expiration of the Term shall not constitute a renewal of this Lease, but shall be deemed a month-to-month tenancy upon the terms, conditions, and covenants of this Lease, except as provided in this Section. Either party may cancel the month-to-month tenancy upon thirty (30) days written notice to the other party. Tenant shall Indemnify Port from and against any and all loss or liability resulting from Tenant's delay in surrendering the Premises including, without limitation, any loss or liability resulting from any claim against Port made by any succeeding tenant or prospective tenant founded on or resulting from such delay and losses to Port due to lost opportunities to lease any portion of the Premises to any such succeeding tenant or prospective tenant, together with, in each case, actual attorneys' fees and costs.

31.2. *With Consent.* If Tenant holds over with the prior written consent of Port, monthly Base Rent shall be equal to one hundred fifty percent (150%) of the monthly Base Rent payable in the month immediately preceding the expiration of this Lease; provided that if both Tenant and Port desire to enter into a new lease or extend the existing term of this Lease but have not yet executed such new lease or extension solely due to Port's delay to produce such document, then the monthly Base Rent during such holdover period shall be equal to the greater of: (a) the Base Rent payable in the month immediately preceding the expiration of this Lease, or (b) the then current rate for the Premises approved by the Port Commission, together with any monthly charge of Additional Rent payable under this Lease.

31.3. *Without Consent.* If Tenant holds over without the prior written consent of Port, monthly Base Rent shall equal two hundred percent (200%) of the monthly Base Rent payable in the month immediately preceding the expiration of this Lease.

32. REPRESENTATIONS AND WARRANTIES.

Tenant represents, warrants and covenants to Port as follows, as of the Effective Date and as of the Commencement Date:

(a) Valid Existence; Good Standing. Tenant is a non-profit public benefit corporation duly incorporated and validly existing under the laws of the State of California.

Tenant has the requisite power and authority to own its property and conduct its business as presently conducted. Tenant is in good standing in the State of California.

(b) Authority. Tenant has the requisite power and authority to execute and deliver this Lease and the agreements contemplated hereby and to carry out and perform all of the terms and covenants of this Lease and the agreements contemplated to be performed by Tenant.

(c) No Limitation on Ability to Perform. Neither Tenant's articles of organization or operating agreement, nor any applicable Law, prohibit Tenant's entry into this Lease or its performance under this Lease. No consent, authorization, or approval of, and no notice to or filing with, any governmental authority, Regulatory Agency or other Person is required for the due execution and delivery of this Lease by Tenant and Tenant's performance hereunder, except for consents, authorizations, and approvals that have already been obtained, notices that have already been given, and filings that have already been made. There are no undischarged judgments pending against Tenant, and Tenant has not received notice of the filing of any pending suit or proceedings against Tenant before any court, Regulatory Agency, or arbitrator, that might materially adversely affect the enforceability of this Lease or the business, operations, assets, or condition of Tenant.

(d) Valid Execution. The execution and delivery of this Lease and the performance by Tenant under this Lease have been duly and validly authorized. When executed and delivered by Port and Tenant, this Lease will be a legal, valid, and binding obligation of Tenant.

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

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

Tenant's representations and warranties in this Lease will survive any termination of this Lease.

33. MINERAL RESERVATION.

The State of California ("State"), pursuant to Section 2 of Chapter 1333 of the Statutes of 1968, as amended, has reserved all subsurface mineral deposits, including oil and gas deposits, on or underlying the Premises and Tenant acknowledges such reserved rights including necessary ingress and egress rights. In no event shall Port be liable to Tenant for any Claims arising from the State's exercise of its rights nor shall such action entitle Tenant to any abatement or diminution of Rent or otherwise relieve Tenant from any of its obligations under this Lease.

34. CITY AND PORT REQUIREMENTS.

The San Francisco Municipal Codes (available at www.sfgov.org) and City and Port policies described or referenced in this Lease are incorporated by reference as though fully set forth in this Lease. The descriptions below are not comprehensive but are provided for notice purposes only; Tenant is charged with full knowledge of each such ordinance and policy and any

related implementing regulations as they may be amended from time to time. Tenant understands and agrees that its failure to comply with any provision of this Lease relating to any such code provision shall be deemed a material breach of this Lease and may give rise to penalties under the applicable ordinance. Capitalized or highlighted terms used in this Section and not defined in this Lease shall have the meanings ascribed to them in the cited ordinance.

34.1. Nondiscrimination.

(a) **Covenant Not to Discriminate.** In the performance of this Lease, Tenant covenants and agrees not to discriminate on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), weight, height, association with members of classes protected under Chapter 12B or 12C of the San Francisco Administrative Code or in retaliation for opposition to any practices forbidden under Chapter 12B or 12C of the Administrative Code against any employee of Tenant, any City and County employee working with Tenant, any applicant for employment with Tenant, or any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by Tenant in the City and County of San Francisco.

(b) **Subleases and Other Contracts.** Tenant shall include in all subleases and other contracts relating to the Premises a non-discrimination clause applicable to such subtenant or other contractor in substantially the form of *Section 34.1(a)*. In addition, Tenant shall incorporate by reference in all subleases and other contracts the provisions of Sections 12B.2 (a), 12B.2 (c)-(k) and 12C.3 of the Administrative Code and shall require all subtenants and other contractors to comply with such provisions.

(c) **Nondiscrimination in Benefits.** Tenant does not as of the date of this Lease and will not during the Term, in any of its operations in San Francisco or where the work is being performed for the City, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits (collectively "**Core Benefits**") as well as any benefits other than the Core Benefits between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local Law authorizing such registration, subject to the conditions set forth in Section 12B.2 of the Administrative Code.

(d) **CMD Form.** On or prior to the Lease Effective Date, Tenant shall execute and deliver to Port the "Nondiscrimination in Contracts and Benefits" form approved by the CMD.

(e) **Penalties.** Tenant understands that pursuant to Section 12B.2(h) of the Administrative Code, a penalty of \$50.00 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Lease may be assessed against Tenant and/or deducted from any payments due Tenant.

34.2. Requiring Health Benefits for Covered Employees. Unless exempt, Tenant agrees to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance (HCAO), as set forth in Administrative Code Chapter 12Q (Chapter 12Q).

(a) For each Covered Employee Tenant shall provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO.

(b) Notwithstanding the above, if Tenant meets the requirements of a "small business" by the City pursuant to Section 12Q.3(e) of the HCAO, it shall have no obligation to comply with this Section.

(c) If, within 30 days after receiving written notice of a breach of this Lease for violating the HCAO, Tenant fails to cure such breach or, if such breach cannot reasonably be cured within such 30-day period, Tenant fails to commence efforts to cure within such period, or thereafter fails to diligently pursue such cure to Completion, Port shall have the remedies set forth in Section 12Q.5(f). Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to Port.

(d) Any Sublease or Contract regarding services to be performed on the Premises entered into by Tenant shall require the Subtenant or Contractor and Subcontractors, as applicable, to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in Chapter 12Q of the Administrative Code. Tenant shall notify the Office of Labor Standards Enforcement (“OLSE”) when it enters into such a Sublease or Contract and shall certify to OLSE that it has notified the Subtenant or Contractor of the obligations under the HCAO and has imposed the requirements of the HCAO on the Subtenant or Contractor through written agreement with such Subtenant or Contractor. Tenant shall be responsible for ensuring compliance with the HCAO for each Subtenant, Contractor and Subcontractor performing services on the Premises. If any Subtenant, Contractor or Subcontractor fails to comply, the City may pursue the remedies set forth in Section 12Q.5 of the Administrative Code against Tenant based on the Subtenant’s, Contractor’s, or Subcontractor’s failure to comply, provided that OLSE has first provided Tenant with notice and an opportunity to cure the violation.

(e) Tenant shall not discharge, reprimand, penalize, reduce the compensation of, or otherwise discriminate against, any employee for notifying the City of any issue relating to the HCAO, for opposing any practice proscribed by the HCAO, for participating in any proceedings related to the HCAO, or for seeking to assert or enforce any rights under the HCAO by any lawful means.

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

(g) Tenant shall keep itself informed of the requirements of the HCAO, as they may change from time to time.

(h) Upon request, Tenant shall provide reports to the City in accordance with any reporting standards promulgated by the City under the HCAO, including reports on Subtenants, Contractors, and Subcontractors.

(i) Within ten (10) business days of any request, Tenant shall provide the City with access to pertinent records relating to any Tenant’s compliance with the HCAO. In addition, the City and its agents may conduct random audits of Tenant at any time during the Term. Tenant agrees to cooperate with City in connection with any such audit.

(j) If a Contractor or Subcontractor is exempt from the HCAO because the amount payable to such Contractor or Subcontractor under all of its contracts with the City or relating to City-owned property is less than \$25,000.00 (or \$50,000.00 for nonprofits) in that fiscal year, but such Contractor or Subcontractor later enters into one or more agreements with the City or relating to City-owned property that cause the payments to such Contractor or Subcontractor to equal or exceed \$75,000.00 in that fiscal year, then all of the Contractor’s or Subcontractor’s contracts with the City and relating to City-owned property shall be thereafter subject to the HCAO. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements to equal or exceed \$75,000.00 in the fiscal year.

34.3. First Source Hiring. The City has adopted a First Source Hiring Program (San Francisco Administrative Code Sections 83.1 et seq.) which establishes specific requirements, procedures and monitoring for first source hiring of qualified economically disadvantaged individuals for entry-level positions as those terms are defined by the ordinance. Tenant acknowledges receiving and reviewing the First Source Hiring Program materials and

requirements and agrees to comply with all requirements of the ordinance as implemented by Port and/or City, including without limitation, notification of vacancies throughout the Term and entering into a First Source Hiring Agreement, if applicable. Tenant acknowledges and agrees that it may be subject to monetary penalties for failure to comply with the ordinance or a First Source Hiring Agreement and that such non-compliance shall be a default of this Lease.

34.4. *Local Business Enterprises.* The Port Commission encourages the participation of local business enterprises (“LBEs”) in Tenant’s operations. Tenant agrees to consult with CMD to determine appropriate methods for promoting participation by LBEs. Architecture, Engineering, Laboratory Services (Materials Testing), Trucking and Hauling, and Security Guard Services are categories of services that may provide opportunities for certified LBE participation. City maintains a list of certified LBEs at: <https://sfgov.org/cmd/LBE-certification-0>.

34.5. *Indoor Air Quality.* Tenant agrees to comply with Section 711(g) of the Environment Code and any additional regulations adopted by the Director of the Department of the Environment pursuant to Environment Code Section 703(b) relating to construction and maintenance protocols to address indoor air quality.

34.6. *Prohibition Against Tobacco Advertising; Prohibition Against Tobacco Product Sales, Manufacture, and Distribution.* Tenant acknowledges and agrees that no advertising of cigarettes or tobacco products is allowed on the Premises. This advertising prohibition includes the placement of the name of a company producing cigarettes or tobacco products or the name of any cigarette or tobacco product in any promotion of any event or product. In addition, Tenant acknowledges and agrees that no Sales, Manufacture, or Distribution of Tobacco Products (as such capitalized terms are defined in Health Code Section 19K.1) is allowed on the Premises and such prohibition must be included in all subleases or other agreements allowing use of the Premises. The prohibition against Sales, Manufacture, or Distribution of Tobacco Products does not apply to persons who are affiliated with an accredited academic institution where the Sale, Manufacture, and/or Distribution of Tobacco Products is conducted as part of academic research.

34.7. *Prohibition of Alcoholic Beverages Advertising.* Tenant acknowledges and agrees that no advertising of alcoholic beverages is allowed on the Premises. For purposes of this section, “alcoholic beverage” shall be defined as set forth in California Business and Professions Code Section 23004, and shall not include cleaning solutions, medical supplies and other products and substances not intended for drinking. This advertising prohibition includes the placement of the name of a company producing, selling or distributing alcoholic beverages or the name of any alcoholic beverage in any promotion of any event or product. This advertising prohibition does not apply to any advertisement sponsored by a state, local, nonprofit or other entity designed to (i) communicate the health hazards of alcoholic beverages, (ii) encourage people not to drink alcohol or to stop drinking alcohol, or (iii) provide or publicize drug or alcohol treatment or rehabilitation services.

34.8. *Graffiti Removal.* Tenant agrees to remove all graffiti from the Premises, including from the exterior of the Premises if included within the Premises, within forty-eight (48) hours of the earlier of Tenant’s: (a) discovery or notification of the graffiti or (b) receipt of notification of the graffiti from the Department of Public Works. This section is not intended to require a tenant to breach any lease or other agreement that it may have concerning its use of the real property. “Graffiti” means any inscription, word, figure, marking or design that is affixed, marked, etched, scratched, drawn or painted on any building, structure, fixture or other improvement, whether permanent or temporary, including signs, banners, billboards and fencing surrounding construction sites, whether public or private, without the consent of the owner of the property or the owner’s authorized agent, and that is visible from the public right-of-way, but does not include: (1) any sign or banner that is authorized by, and in compliance with, the applicable requirements of this Lease or the Port Building Code; or (2) any mural or other painting or marking on the property that is protected as a work of fine art under the California

Art Preservation Act (Calif. Civil Code §§ 987 et seq.) or as a work of visual art under the Federal Visual Artists Rights Act of 1990 (17 U.S.C. §§ 101 et seq.).

34.9. *Restrictions on the Use of Pesticides.* Chapter 3 of the San Francisco Environment Code (the Integrated Pest Management Program Ordinance or “**IPM Ordinance**”) describes an integrated pest management (“**IPM**”) policy to be implemented by all City departments. Tenant shall not use or apply or allow the use or application of any pesticides on the Premises, and shall not contract with any party to provide pest abatement or control services to the Premises, without first receiving City’s written approval of an integrated pest management plan that (i) lists, to the extent reasonably possible, the types and estimated quantities of pesticides that Tenant may need to apply to the Premises during the term of this Lease, (ii) describes the steps Tenant will take to meet the City’s IPM Policy described in Section 300 of the IPM Ordinance and (iii) identifies, by name, title, address and telephone number, an individual to act as the Tenant’s primary IPM contact person with the City. Tenant shall comply, and shall require all of Tenant’s contractors to comply, with the IPM plan approved by the City and shall comply with the requirements of Sections 300(d), 302, 304, 305(f), 305(g), and 306 of the IPM Ordinance, as if Tenant were a City department. Among other matters, such provisions of the IPM Ordinance: (a) provide for the use of pesticides only as a last resort, (b) prohibit the use or application of pesticides on property owned by the City, except for pesticides granted an exemption under Section 303 of the IPM Ordinance (including pesticides included on the most current Reduced Risk Pesticide List compiled by City’s Department of the Environment), (c) impose certain notice requirements, and (d) require Tenant to keep certain records and to report to City all pesticide use by Tenant’s staff or contractors. If Tenant or Tenant’s contractor will apply pesticides to outdoor areas, Tenant must first obtain a written recommendation from a person holding a valid Agricultural Pest Control Advisor license issued by the California Department of Pesticide Regulation and any such pesticide application shall be made only by or under the supervision of a person holding a valid Qualified Applicator certificate or Qualified Applicator license under state law. City’s current Reduced Risk Pesticide List and additional details about pest management on City property can be found at the San Francisco Department of the Environment website, <http://sfenvironment.org/ipm>.

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

34.11. *Tropical Hardwood and Virgin Redwood Ban.* Port and the City urge Tenant not to import, purchase, obtain or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood product. Except as expressly permitted by the application of Sections 802(b) and 803(b) of the Environment Code, Tenant shall not provide any items to the construction of Alterations, or otherwise in the performance of this Lease which are tropical hardwoods, tropical hardwood wood products, virgin redwood, or virgin redwood wood products. In the event Tenant fails to comply in good faith with any of the provisions of Chapter 8 of the Environment Code, Tenant shall be liable for liquidated damages for each violation in any amount equal to the contractor’s net profit on the contract, or five percent (5%) of the total amount of the contract dollars, whichever is greater.

34.12. *Preservative-Treated Wood Containing Arsenic.* Tenant may not purchase preservative-treated wood products containing arsenic in the performance of this Lease unless an exemption from the requirements of Environment Code Chapter 13 is obtained from the Department of Environment under Section 1304 of the Environment Code. The term “preservative-treated wood containing arsenic” shall mean wood treated with a preservative that contains arsenic, elemental arsenic, or an arsenic copper combination, including, but not limited to, chromated copper arsenate preservative, ammoniac copper zinc arsenate preservative, or ammoniacal copper arsenate preservative. Tenant may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared and adopted by the

Department of Environment. This provision does not preclude Tenant from purchasing preservative-treated wood containing arsenic for saltwater immersion. The term “saltwater immersion” shall mean a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

34.13. Notification of Limitations on Contributions. If this Lease is subject to the approval by City’s Board of Supervisors, Mayor, or other elected official, the provisions of this Section shall apply. Through its execution of this Lease, Tenant acknowledges its obligations under Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the selling or leasing of any land or building to or from 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 (a) the City elective officer, (b) a candidate for the office held by such individual, or (c) a committee controlled by such individual or candidate, at any time from the submission of a proposal for the contract until the later of either the termination of negotiations for such contract or twelve (12) months after the date the contract is approved. Tenant acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of one hundred thousand dollars (\$100,000) or more. Tenant further acknowledges that, if applicable, (i) the prohibition on contributions applies to each Tenant; each member of Tenant’s board of directors, and Tenant’s principal officers, including its chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than ten (10%) percent in Tenant; and any subcontractor listed in the Tenant’s bid or contract; and (ii) within thirty (30) days of the submission of a proposal for the contract, the Port is obligated to submit to the Ethics Commission the parties to the Lease and any subtenant(s). Additionally, Tenant certifies that if this *Section 34.13* applies, Tenant has informed each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126 by the time it submitted a proposal for the contract and has provided to City the names of the persons required to be informed.

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

34.15. Conflicts of Interest. Through its execution of this Lease, Tenant acknowledges that it is familiar with the provisions of Article III, Chapter 2 of Campaign and Governmental Conduct Code, and Sections 87100 et seq. and Sections 1090 et seq. of the California Government Code, and certifies that it does not know of any facts which would constitute a violation of these provisions, and agrees that if Tenant becomes aware of any such fact during the Term, Tenant shall immediately notify the Port.

34.16. Drug-Free Workplace. Tenant acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1988 (41 U.S.C. §§ 8101 et seq.), the unlawful manufacture, distribution, possession or use of a controlled substance is prohibited on City or Port premises.

34.17. Prevailing Wages and Working Conditions. Tenant shall comply with all applicable prevailing wage requirements, including but not limited to any such requirements in the California Labor Code, the City and County of San Francisco Charter or the City and County of San Francisco Municipal Code. Any undefined, initially-capitalized term used in this Section shall have the meaning given to such term in San Francisco Administrative Code Section 23.61.

Tenant shall require its contractors and subcontractors performing (i) labor in connection with a “public work” as defined under California Labor Code Section 1720 et seq. (which includes certain construction, alteration, maintenance, demolition, installation, repair, carpet laying, or refuse hauling work if paid for in whole or part out of public funds) or (ii) Covered Construction to: (A) pay workers performing such work not less than the highest prevailing rate of wages, (B) provide the same hours, working conditions and benefits as in each case are provided for similar work performed in San Francisco County, and (C) employ apprentices in accordance with San Francisco Administrative Code Section 23.61 (collectively, “**Prevailing Wage Requirements**”). Tenant agrees to cooperate with the City in any action or proceeding against a contractor or subcontractor that fails to comply with the Prevailing Wage Requirements.

Tenant shall include and shall require its subtenants, and contractors and subcontractors (regardless of tier), to include the Prevailing Wage Requirements and the agreement to cooperate in City enforcement actions in any Construction Contract with specific reference to San Francisco Administrative Code Section 23.61. Each such Construction Contract shall name the City and County of San Francisco, affected workers, and employee organizations formally representing affected workers as third party beneficiaries for the limited purpose of enforcing the Prevailing Wage Requirements, including the right to file charges and seek penalties against any contractor or subcontractor in accordance with San Francisco Administrative Code Section 23.61. Tenant’s failure to comply with its obligations under this Section shall constitute a material breach of this Lease. A contractor’s or subcontractor’s failure to comply with this Section will enable the City to seek any remedy provided by Law, including those specified in San Francisco Administrative Code Section 23.61 against the breaching party.

Tenant shall also pay, and shall require its subtenants, and contractors and subcontractors (regardless of tier) to pay, the Prevailing Rate of Wage for the following activities on the Premises as set forth in and to the extent required by San Francisco Administrative Code Chapter 21C: a Public Off-Street Parking Lot, Garage or Automobile Storage Facility (as defined in Section 21C.3), a Show (as defined in Section 21C.4), a Special Event (as defined in Section 21C.8), Broadcast Services (as defined in Section 21C.9), Commercial Vehicles, Loading and Unloading for Shows and Special Events (as defined in Section 21C.10), and Security Guard Services for Events (as defined in Section 21C.11).

34.18. Local Hire. Any undefined, initially-capitalized term used in this Section shall have the meaning given to such term in San Francisco Administrative Code Section 23.62 (the “**Local Hiring Requirements**”). Tenant Improvements and Alterations under this Lease are subject to the Local Hiring Requirements unless the cost for such work is (i) estimated to be less than \$750,000 per building permit; (ii) is in connection with the set-up, execution and strike of special events of three (3) or fewer days costing in excess of the Threshold Amount; or (iii) meets any of the other exemptions in the Local Hiring Requirements. For Covered Projects estimated to cost more than \$1,000,000, the Prime Contractor shall prepare and submit to Port and OEWD for approval a local hiring plan (“**Local Hiring Plan**”). The Local Hiring Plan is attached hereto as **Exhibit K**. The Local Hiring Plan shall be a written plan for implementation of the Local Hiring Requirements, including an approximate time frame for hiring decisions of Subcontractors, a description of the hiring processes to be utilized by Subcontractors, an estimate of numbers of Targeted Workers needed from various referral sources, qualifications needed for such Targeted Workers, and a recruitment plan detailing an outreach strategy for candidates representative of local demographics. Tenant agrees that it will comply with the Local Hiring Requirements to the extent applicable. Before starting any Tenant Improvements or Alterations, Tenant shall contact OEWD to determine whether the work is a Covered Project subject to the Local Hiring Requirements.

Tenant shall include, and shall require its subtenants to include, a requirement to comply with the Local Hiring Requirements in any contract for a Covered Project with specific reference to San Francisco Administrative Code Section 23.62. Each such contract shall name the City and County of San Francisco as a third party beneficiary for the limited purpose of enforcing the

Local Hiring Requirements, including the right to file charges and seek penalties. Tenant shall cooperate, and require its subtenants to cooperate, with the City in any action or proceeding against a contractor or subcontractor that fails to comply with the Local Hiring Requirements when required. Tenant's failure to comply with its obligations under this Section shall constitute a material breach of this Lease. A contractor's or subcontractor's failure to comply with this Section will enable the City to seek the remedies specified in San Francisco Administrative Code Section 23.62 against the breaching party.

34.19. *Public Transit Information.* Tenant shall establish and carry on during the Term a program to encourage maximum use of public transportation by personnel of Tenant employed on the Premises, including, without limitation, the distribution to such employees of written materials explaining the convenience and availability of public transportation facilities adjacent or proximate to the Premises and encouraging use of such facilities, all at Tenant's sole expense.

34.20. *Food Service and Packaging Waste Reduction Ordinance.* Tenant agrees to comply fully with and be bound by all of the provisions of the Food Service and Packaging Waste Reduction Ordinance, as set forth in Environment Code Chapter 16, including the remedies provided, and implementing guidelines and rules. By entering into this Lease, Tenant agrees that if it breaches this provision, City will suffer actual damages that will be impractical or extremely difficult to determine; further, Tenant agrees that the sum of one hundred dollars (\$100.00) liquidated damages for the first breach, two hundred dollars (\$200.00) liquidated damages for the second breach in the same year, and five hundred dollars (\$500.00) liquidated damages for subsequent breaches in the same year is a reasonable estimate of the damage that City will incur based on the violation, established in light of the circumstances existing at the time this Lease was made. Such amounts shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Tenant's failure to comply with this provision.

34.21. *San Francisco Bottled Water Ordinance.* Tenant is subject to all applicable provisions of Environment Code Chapter 24 (which are hereby incorporated) prohibiting the sale or distribution of drinking water specified containers at City-permitted events held on the Premises with attendance of more than 100 people, except as otherwise set forth in Environmental Code Chapter 24.

34.22. *Consideration Of Criminal History In Hiring And Employment Decisions.*

(a) Tenant agrees to comply with and be bound by all of the provisions of San Francisco Administrative Code Chapter 12T (Criminal History in Hiring and Employment Decisions; "**Chapter 12T**"), which are hereby incorporated, including the remedies and implementing regulations as may be amended from time to time, with respect to applicants and employees of Tenant who would be or are performing work at the Premises.

(b) Tenant shall incorporate by reference the provisions of Chapter 12T in all subleases of some or all of the Premises, and shall require all subtenants to comply with such provisions. Tenant's failure to comply with the obligations in this subsection shall constitute a material breach of this Lease.

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

(d) Tenant and subtenants shall not inquire about or require applicants, potential applicants for employment, or employees to disclose on any employment application the facts or

details of any conviction history, unresolved arrest, or any matter identified in subsection (c) above. Tenant and subtenants shall not require such disclosure or make such inquiry until either after the first live interview with the person, or after a conditional offer of employment.

(e) Tenant and subtenants shall state in all solicitations or advertisements for employees that are reasonably likely to reach persons who are reasonably likely to seek employment with Tenant or subtenant at the Premises, that the Tenant or subtenant will consider for employment qualified applicants with criminal histories in a manner consistent with the requirements of Chapter 12T.

(f) Tenant and subtenants shall post the notice prepared by OLSE, available on OLSE's website, in a conspicuous place at the Premises and at other workplaces within San Francisco where interviews for job opportunities at the Premises occur. The notice shall be posted in English, Spanish, Chinese, and any language spoken by at least 5% of the employees at the Premises or other workplace at which it is posted.

(g) Tenant and subtenants understand and agree that upon any failure to comply with the requirements of Chapter 12T, the City shall have the right to pursue any rights or remedies available under Chapter 12T or this Lease, including but not limited to a penalty of \$50 for a second violation and \$100 for a subsequent violation for each employee, applicant or other person as to whom a violation occurred or continued, termination or suspension in whole or in part of this Lease.

(h) If Tenant has any questions about the applicability of Chapter 12T, it may contact Port for additional information. Port may consult with the Director of the City's Office of Contract Administration who may also grant a waiver, as set forth in Section 12T.8.

34.23. Working with Minors. In accordance with California Public Resources Code Section 5164, if Tenant, or any Subtenant, is providing services at a City park, playground, recreational center or beach, Tenant shall not hire, and shall prevent its Subtenants from hiring, any person for employment or a volunteer position in a position having supervisory or disciplinary authority over a minor if that person has been convicted of any offense listed in Public Resources Code Section 5164. In addition, if Tenant, or any Subtenant, is providing services to the City involving the supervision or discipline of minors or where Tenant, or any Subtenant, will be working with minors in an unaccompanied setting on more than an incidental or occasional basis, Tenant and any Subtenant shall comply with any and all applicable requirements under federal or state law mandating criminal history screening for such positions and/or prohibiting employment of certain persons including but not limited to California Penal Code Section 290.95. In the event of a conflict between this Section and **Section 34.22** (Consideration of Criminal History in Hiring and Employment Decisions) of this Lease, this Section shall control.

34.24. Southern Waterfront Community Benefits and Beautification Policy. The Port's "Policy for Southern Waterfront Community Benefits and Beautification" identifies beautification and related projects in the Southern Waterfront (from Mariposa Street in the north to India Basin) that require funding. Under this policy, Tenant shall provide community benefits and beautification measures in consideration for the use of the Premises. Examples of desired benefits include: (i) beautification, greening and maintenance of any outer edges of and entrances to the Premises; (ii) creation and implementation of a Community Outreach and Good Neighbor Policy to guide Tenant's interaction with Port, neighbors, visitors and users; (iii) use or support of job training and placement organizations serving southeast San Francisco; (iv) commitment to engage in operational practices that are sensitive to the environment and the neighboring community by reducing engine emissions consistent with the City's Clean Air Program, and use of machines at the Premises that are low-emission diesel equipment and utilize biodiesel or other reduced particulate emission fuels; (v) commitment to use low impact design and other "green" strategies when installing or replacing stormwater infrastructure; (vi) employment at the Premises of a large percentage of managers and other staff who live in the local neighborhood or

community; (vii) use of truckers that are certified by the CMD as “**Local Business Enterprises**” under the City’s Local Business Enterprise and Non-Discrimination Ordinance (SF Administrative Code Chapter 14B, as amended); and (viii) use of businesses that are located within the Potrero Hill and Bayview Hunters Point neighborhoods. Tenant agrees to provide Port with documents and records regarding these activities upon Port’s request.

34.25. Vending Machines; Nutritional Standards and Calorie Labeling Requirements; Offerings. Tenant shall not install or permit any vending machine on the Premises without the prior written consent of Port. Any permitted vending machine must comply with the food and beverage nutritional standards and calorie labeling requirements set forth in San Francisco Administrative Code section 4.9- 1(c), as may be amended from time to time (the “**Nutritional Standards Requirements**”). Tenant agrees to incorporate the Nutritional Standards Requirements into any contract for the installation of a vending machine on the Premises or for the supply of food and beverages to that vending machine. Failure to comply with the Nutritional Standards Requirements or to otherwise comply with this Section shall be deemed a material breach of this Lease. Without limiting Port’s other rights and remedies under this Lease, Port shall have the right to require the immediate removal of any vending machine on the Premises that is not permitted or that violates the Nutritional Standards Requirements. In addition, any Restaurant including any employee eating establishment located on the Premises is encouraged to ensure that at least twenty-five percent (25%) of Meals (as capitalized terms are defined in San Francisco Administrative Code section 4.9-1) offered on the menu meet the nutritional standards set forth in San Francisco Administrative Code section 4.9-1(e), as may be amended.

34.26. Tenant’s Compliance with City Business and Tax Regulations Code. Tenant acknowledges that under Section 6.10-2 of the San Francisco Business and Tax Regulations Code, the City Treasurer and Tax Collector may require the withholding of payments to any vendor that is delinquent in the payment of any amounts that the vendor is required to pay the City under the San Francisco Business and Tax Regulations Code. If, under that authority, any payment Port is required to make to Tenant under this Lease is withheld, then Port will not be in breach or default under this Lease, and the Treasurer and Tax Collector will authorize release of any payments withheld under this **Section 34.26** to Tenant, without interest, late fees, penalties, or other charges, upon Tenant coming back into compliance with its San Francisco Business and Tax Regulations Code obligations.

34.27. Consideration of Salary History. Tenant shall comply with San Francisco Administrative Code Chapter 12K, the Consideration of Salary History Ordinance or “Pay Parity Act.” For each employment application to Tenant for work that relates to this Lease or for work to be performed in the City or on City property, Tenant is prohibited from considering current or past salary of an applicant in determining whether to hire the applicant or what salary to offer the applicant. Tenant shall not (1) ask such applicants about their current or past salary or (2) disclose a current or former employee’s salary history without that employee’s authorization unless the salary history is publicly available. Tenant is subject to the enforcement and penalty provisions in Chapter 12K. Information about Chapter 12K is available on the web at <https://sfgov.org/olse/consideration-salary-history>.

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

35. NOTICES.

Except as otherwise expressly provided in this Lease or by Law, all notices (including notice of consent or non-consent) required or permitted by this Lease or by Law must be in writing and be delivered by: (a) hand delivery; (b) first class United States mail, postage prepaid; or (c) overnight delivery by a nationally recognized courier or the United State Postal Service, delivery charges prepaid. Notices to a party must be delivered to that party's mailing address in the Basic Lease Information, unless superseded by a notice of a change in that party's mailing address for notices, given to the other party in the manner provided above, or by information provided by Tenant in Tenant's written response to Port's written request for such information.

All notices under this Lease shall be deemed to be duly delivered: (a) on the date personal delivery actually occurs; (b) if mailed, on the business day following the business day deposited in the United States mail or, if mailed return receipt requested, on the date of delivery or on which delivery is refused as shown on the return receipt; or (c) the business day after the business day deposited for overnight delivery.

Notices may not be given by facsimile or electronic mail, but either party may deliver a courtesy copy of a notice by facsimile or electronic mail.

36. MISCELLANEOUS PROVISIONS.

36.1. California Law; Venue. This Lease is governed by, and shall be construed and interpreted in accordance with, the Laws of the State of California and City's Charter. Any legal suit, action, or proceeding arising out of or relating to this Lease shall be instituted in the Superior Court for the City and County of San Francisco, and each party agrees to the exclusive jurisdiction of such court in any such suit, action, or proceeding (excluding bankruptcy matters). The parties irrevocably and unconditionally waive any objection to the laying of venue of any suit, action, or proceeding in such court and irrevocably waive and agree not to plead or claim that any suit, action, or proceeding brought in San Francisco Superior Court relating to this Lease has been brought in an inconvenient forum. The parties also unconditionally and irrevocably waive any right to remove any such suit, action, or proceeding to federal court.

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

36.3. Amendments. No amendment of this Lease or any part thereof shall be valid unless it is in writing and signed by all of the parties hereto.

36.4. Severability. If any provision of this Lease or the application thereof to any person, entity or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such provision to persons, entities or circumstances other than those as to which is invalid or unenforceable, shall not be affected thereby, and each other provision of this Lease shall be valid and be enforceable to the fullest extent permitted by law.

36.5. Interpretation of Lease.

(a) References in this Lease to Tenant's acts or omissions will mean acts or omissions by Tenant and its Agents and Invitees unless the context requires or specifically stated otherwise.

(b) Whenever an exhibit or schedule is referenced, it means an attachment to this Lease unless otherwise specifically identified. All exhibits and schedules are incorporated in this Lease by reference.

(c) Whenever a section, article or paragraph is referenced, it refers to this Lease unless otherwise specifically provided. The captions preceding the articles and sections of this Lease and in the table of contents have been inserted for convenience of reference only and must be disregarded in the construction and interpretation of this Lease. Wherever reference is made to any provision, term, or matter “in this Lease,” “herein” or “hereof” or words of similar import, the reference will be deemed to refer to any reasonably related provisions of this Lease in the context of the reference, unless the reference refers solely to a specific numbered or lettered article, section, subdivision, or paragraph of this Lease.

(d) References to all Laws, including specific statutes, relating to the rights and obligations of either party mean the Laws in effect on the effective date of this Lease and as they are amended, replaced, supplemented, clarified, corrected, or superseded at any time during the Term or while any obligations under this Lease are outstanding, whether or not foreseen or contemplated by the parties. References to specific code sections mean San Francisco ordinances unless otherwise specified.

(e) The terms “include,” “included,” “including” and “such as” or words of similar import when following any general term, statement, or matter may not be construed to limit the term, statement, or matter to the specific items or matters, whether or not language of non-limitation is used, but will be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of the term, statement, or matter, and will be deemed to be followed by the phrase “without limitation” or “but not limited to.”

(f) This Lease has been negotiated at arm’s length between persons sophisticated and knowledgeable in the matters addressed. In addition, each party has been represented by experienced and knowledgeable legal counsel, or has had the opportunity to consult with counsel. Accordingly, the provisions of this Lease must be construed as a whole according to their common meaning in order to achieve the intents and purposes of the parties, without any presumption (including a presumption under California Civil Code § 1654) against the party responsible for drafting any part of this Lease.

(g) The party on which any obligation is imposed in this Lease will be solely responsible for paying all costs and expenses incurred in performing the obligation, unless the provision imposing the obligation specifically provides otherwise.

(h) Whenever required by the context, the singular includes the plural and vice versa, the masculine gender includes the feminine or neuter genders and vice versa, and defined terms encompass all correlating forms of the terms (e.g., the definition of “waive” applies to “waiver,” “waivers,” “waived,” “waiving,” etc.).

(i) References to days mean calendar days unless otherwise specified, provided that if the last day on which a party must give notice, respond to a notice, or take any other action under this Lease occurs on a day that is not a business day, the date by which the act must be performed will be extended to the next business day.

36.6. *Successors.* The terms, covenants, agreements and conditions set forth in this Lease shall bind and inure to the benefit of Port and Tenant and, except as otherwise provided herein, their personal representatives and successors and assigns.

36.7. *Real Estate Broker’s Fees.* Port will not pay, nor will Port be liable or responsible for, any finder’s or broker’s fee in connection with this Lease. Tenant agrees to Indemnify Port from any Claims, including attorneys’ fees, incurred by Port in connection with any such Claim or Claims of any person(s), finder(s), or broker(s) to a commission in connection with this Lease.

36.8. *Counterparts.* For convenience, the signatures of the parties to this Lease may be executed and acknowledged on separate pages which, when attached to this Lease, shall constitute one complete Lease. This Lease may be executed in any number of counterparts each

of which shall be deemed to be an original and all of which shall constitute one and the same Lease.

36.9. Authority. If Tenant signs as a corporation or a partnership, each of the persons executing this Lease on behalf of Tenant does hereby covenant and warrant that Tenant is at the time of execution and at all times while this Lease is in effect will continue to be: (1) a duly authorized and existing entity, (2) qualified to do business in California; and that Tenant has full right and authority to enter into this Lease, and that each and all of the persons signing on behalf of Tenant are authorized to do so. Upon Port's request, Tenant shall provide Port with evidence reasonably satisfactory to Port confirming the foregoing representations and warranties, and covenants.

36.10. No Implied Waiver. No failure by either party to insist upon the strict performance of any obligation of the other party under this Lease or to exercise any right, power or remedy under this Lease, irrespective of the length of time for which such failure continues (including Port's acceptance of full or partial Rent from Tenant) shall constitute a waiver of any breach or of either party's rights to demand strict compliance with any Lease term, covenant or condition. Port's consent to or approval of any act by Tenant requiring Port's consent or approval shall not be deemed to waive or render unnecessary Port's consent to or approval of any subsequent act by Tenant. Any waiver by either party must be in writing and shall not be a waiver of any other default (including any future default) concerning the same or any other provision of this Lease.

36.11. Time is of Essence. Time is of the essence with respect to all provisions of this Lease in which a definite time for performance is specified.

36.12. Cumulative Remedies. All rights and remedies of either party hereto set forth in this Lease shall be cumulative, except as may otherwise be provided herein.

36.13. Survival of Indemnities. Termination or expiration of this Lease shall not affect the right of either party to enforce any and all indemnities and representations and warranties given or made to the other party under this Lease, the ability to collect any sums due, nor shall it affect any provision of this Lease that expressly states it shall survive termination or expiration hereof.

36.14. Relationship of the Parties. Port is not, and none of the provisions in this Lease shall be deemed to render Port, a partner in Tenant's business, or joint venturer or member in any joint enterprise with Tenant. Neither party shall act as the agent of the other party in any respect hereunder. This Lease is not intended nor shall it be construed to create any third party beneficiary rights in any third party, unless otherwise expressly provided.

36.15. No Recording. Tenant shall not record this Lease or any memorandum hereof in the Official Records.

36.16. Additional Written Agreement Required. Tenant expressly agrees and acknowledges that no officer, director, or employee of Port or City is authorized to offer or promise, nor is Port or the City required to honor, any offered or promised rent credit, concession, abatement, or any other form of monetary consideration (individually and collectively, "Concession") without a written agreement executed by the Executive Director of Port or his or her designee authorizing such Concession and, if applicable, certification of the Concession from the City's Controller.

36.17. Force Majeure. Except as specified in this *Section 36.17*, for all purposes of this Lease, a party whose performance of its obligations hereunder is hindered or affected by events of Force Majeure shall not be considered in breach of or in default of its obligations hereunder resulting from Force Majeure effective upon the other party's receipt of written notice describing with reasonable particularity the facts and circumstances constituting Force Majeure and citing this *Section 36.17*, and performance of the Lease obligation shall be extended on a day for day

basis (unless the parties mutually agree to a longer time frame in writing) during the Force Majeure event. The provisions of this *Section 36.17* shall not apply to Tenant's obligation to pay Rent and shall not extend the Initial Improvements Completion Date.

37. LIMITATION ON DAMAGES.

37.1. *No Recourse Beyond Value of Premises.* Notwithstanding anything to the contrary contained in this Lease, Tenant agrees that Tenant will have no recourse with respect to, and Port shall not be liable for, any obligation of Port under this Lease, or for any claim based upon this Lease, except to the extent of the fair market value of Port's fee interest in the Premises (as encumbered by this Lease). Tenant shall look solely to the fair market value of Port's fee interest in the Premises for the recovery of any judgment or award. By Tenant's execution and delivery hereof and as part of the consideration for Port's obligations hereunder, Tenant expressly waives all other liability. Before filing suit for an alleged default by Port, Tenant shall give Port notice and reasonable time to cure the alleged default.

37.2. *Non-Liability of City Officials, Employees and Agents.* No elective or appointive board, commission, member, officer, employee or other Agent of City and/or Port shall be personally liable to Tenant, its successors and assigns, in the event of any default or breach by City and/or Port or for any amount which may become due to Tenant, its successors and assigns, or for any obligation of City and/or Port under this Lease. Under no circumstances shall Port, City, or their respective Agents be liable under any circumstances for any consequential, incidental or punitive damages.

37.3. *Limitation on Port's Liability Upon Transfer.* In the event of any transfer of Port's interest in and to the Premises, Port (and in case of any subsequent transfers, the then transferor), subject to the provisions hereof, will be automatically relieved from and after the date of such transfer of all liability with regard to the performance of any covenants or obligations contained in this Lease thereafter to be performed on the part of Port, but not from liability incurred by Port (or such transferor, as the case may be) on account of covenants or obligations to be performed by Port (or such transferor, as the case may be) hereunder before the date of such transfer.

38. TENANT ESTOPPEL CERTIFICATES.

Tenant, at any time and from time to time upon not less than ten (10) days' prior notice from Port, shall execute and deliver to Port or to any party designated by Port a certificate in substantially the same form as that attached to this Lease as *Exhibit J*. Upon Tenant's request, Port shall execute and deliver to Tenant or to any party designated by Tenant a certificate stating to Port's actual knowledge (a) that this Lease is modified or unmodified and in full force and effect, (b) the dates, if any, to which Rent and other sums payable hereunder have been paid, (c) whether or not, without investigation, there are then existing any defaults under this Lease (and if so, specifying the same) and (d) any other matter actually known to Port, directly related to this Lease and reasonably requested by the requesting party. In addition, if requested, Port shall attach to such certificate a copy of this Lease and any amendments thereto, and include in such certificate a statement by Port that, to the best of its knowledge, such attachment is a true, correct and complete copy of this Lease, including all modifications thereto.

39. APPROVAL OF BOARD OF SUPERVISORS.

Notwithstanding anything to the contrary contained in this Lease, Tenant acknowledges and agrees that no officer or employee of City has authority to commit City to this Lease unless and until City's Board of Supervisors shall have duly adopted a resolution approving this Lease and authorizing the transactions contemplated hereby. Therefore, any obligations or liabilities of City hereunder are contingent upon adoption of such a resolution, and this Lease shall be null and void if City's mayor and the Board of Supervisors do not approve this Lease, in their respective sole discretion. Approval of this Lease by any department, commission or agency of

City shall not be deemed to imply that such resolution will be enacted, nor will any such approval create any binding obligations on City.

IN WITNESS WHEREOF, PORT and TENANT execute this Lease as of the last date set forth below.

PORT: **CITY AND COUNTY OF SAN FRANCISCO,**
a municipal corporation, operating by and through the
SAN FRANCISCO PORT COMMISSION

By: _____
Rebecca Benassini
Deputy Director, Real Estate and Development

Date Signed: _____

TENANT: **YOUNG MEN’S CHRISTIAN ASSOCIATION OF SAN**
FRANCISCO, A CALIFORNIA NONPROFIT PUBLIC BENEFIT
CORPORATION

By: _____
Name: _____
Title: _____

Date Signed: _____

By: _____
Name: _____
Title: _____

Date Signed: _____

APPROVED AS TO FORM:
DAVID CHIU, City Attorney

By: _____
Name: _____
Deputy City Attorney

Lease Prepared By: James Hurley, Development Project Manager Initials: _____

Port Commission Resolution:
Board of Supervisors Resolution:

EXHIBIT A

DESCRIPTION OF PREMISES

[Attachment on following page]

[PAGE INTENTIONALLY LEFT BLANK]

EXHIBIT B

EFFECTIVE DATE; COMMENCEMENT DATE; RENT COMMENCEMENT DATE; UPSET DATE AND EXPIRATION DATE MEMORANDUM

Landlord: **CITY AND COUNTY OF SAN FRANCISCO**, a municipal corporation, operating by and through the **SAN FRANCISCO PORT COMMISSION**

Tenant:

Lease Number:

Lease Date:

Premises: [_____, Suite ____]
San Francisco, California

The Effective Date of the Lease is _____, 2023. The Commencement Date of the Lease is hereby established as _____, 20___, the Rent Commencement Date of the Lease is hereby established as _____, 20___; the Upset Date is hereby established as _____, 20___, the Anniversary Date is hereby established as _____, 20___; and the Expiration Date as _____, 20___.

PORT: **CITY AND COUNTY OF SAN FRANCISCO**, a municipal corporation, operating by and through the **SAN FRANCISCO PORT COMMISSION**

By: _____
Rebecca Benassini
Deputy Director, Real Estate and Development

Date Signed: _____

Tenant:

By: _____
Name: _____
Title: _____

Date Signed: _____

EXHIBIT C

DOGPATCH PADDLE CONSENT TO SUBLEASE

This Consent to Sublease and Sublicense (this “**Consent**”) is made as of _____, 2023, by and among the **CITY AND COUNTY OF SAN FRANCISCO**, a municipal corporation (the “**City**”) operating by and through the **SAN FRANCISCO PORT COMMISSION** (“**Port**”), **YOUNG MEN’S CHRISTIAN ASSOCIATION OF SAN FRANCISCO, A CALIFORNIA NONPROFIT PUBLIC BENEFIT CORPORATION** (“**Master Tenant**”) and **DOGPATCH PADDLE, LLC, A CALIFORNIA LIMITED LIABILITY COMPANY** (“**Subtenant**”).

RECITALS

A. On October 26, 2021, the Port Commission authorized lease negotiations with Master Tenant who was the highest scoring respondent to the Port’s Building 49 Request for Proposals (see Port Commission Resolution 21-46). Master Tenant’s proposal included Subtenant, a human powered boating business/club as a partner. Port and Master Tenant entered into that certain Lease No. L-16997 dated as of _____ for reference purposes (the “**Master Lease**”) for Building 49 located within Crane Cove Park in San Francisco, California (“**Existing Premises**”), as more particularly described in the Master Lease (see Port Commission Resolution xx-xx; Board of Supervisors Resolution xx-xx). Port and Master Tenant concurrently entered into Port License 17011 to allow related uses in Crane Cove Park (“**License**”).

B. Master Tenant desires to sublease a portion of the Existing Premises, known as Sublease Premises A, as further described in *Exhibit 1* attached hereto (the “**Subleased Premises**”) to Subtenant and Subtenant desires to sublease from Master Tenant the Subleased Premises (the “**Sublease**”). In addition, Master Tenant desires to grant Subtenant a sublicense to use the License Area as defined in the License (“**Sublicense**”). Subtenant has provided Port an estoppel certificate in the form attached to the Master Lease.

C. Master Tenant has requested that Port consent to the Sublease and Sublicense, and Port has agreed to consent to the Sublease and Sublicense to be concurrent with the Master Lease and License, on the terms and conditions set forth herein. Port’s consent to the Sublease and Sublicense includes Port’s consent to Subtenant’s Operations Plan, if any, which shall be incorporated into Tenant’s Operations Plan under the Master Lease for the duration of the Sublease and Sublicense for the convenience of Port, Master Tenant and Subtenant.

D. NOW, THEREFORE, in consideration of the foregoing, and in consideration of the mutual agreements and covenants hereinafter set forth, Port, Master Tenant and Subtenant agree as follows:

1. Master Lease and License.

The Sublease and Sublicense shall be subject and subordinate to the Master Lease and License and to all of their respective terms, covenants, conditions, provisions and agreements. Master Tenant and Subtenant represent and warrant to Port that (a) the copy of the Sublease and Sublicense attached hereto as *Exhibit 2* are true, complete and correct and constitute the entire agreement between the parties, and (b) neither the Sublease nor the Sublicense shall be modified, terminated or amended without prior thirty (30) days written notice to Port. The Subtenant shall be bound by all of the terms, covenants, conditions, provisions and agreements of the Master Lease and License. None of Sublease, Sublicense or this Consent shall be construed to modify, waive or affect any of the terms, covenants, conditions, provisions or agreements of the Master Lease or License.

2. Automatic Termination.

The term of the Sublease and Sublicense shall automatically terminate upon the termination of the Master Lease for any reason whatsoever, including, without limitation, the termination of the Master Lease prior to the expiration of the term thereof pursuant to a written agreement between Port and Master Tenant.

3. No Release or Waiver.

None of the Sublease, the Sublicense or this Consent shall: (a) release or discharge the Master Tenant from any liability, whether past, present or future, under the Master Lease or License; or (b) be construed to waive any breach by Master Tenant of the Master Lease or License, or any of Port's rights as the landlord thereunder, or to enlarge or increase Port's obligations thereunder. Master Tenant and Subtenant shall be and continue to be liable for the payment of all bills rendered by Port, if any, for charges incurred by the Subtenant for services and materials supplied to the Subleased Premises or License Area.

4. No Further Consent.

None of the Sublease, the Sublicense or this Consent shall: (a) operate as a consent or approval by Port to any of the terms, covenants, conditions, provisions or agreements of the Sublease or License, and Port shall not be bound thereby, or (b) be construed as a consent by Port to any further subletting or sublicensing either by Master Tenant or by the Subtenant or to any assignment by Master Tenant of the Master Lease or License, or assignment by the Subtenant of the Sublease or Sublicense, it being clearly understood that this Consent shall not in any way be construed to relieve Master Tenant or Subtenant of the obligation to obtain Port's prior written consent to any further subletting or assignment.

5. Assignment of Rent.

In the event of an Event of Default by Master Tenant under the Master Lease, the rent due from the Subtenant under the Sublease shall be deemed assigned to Port, and Port shall have the right, at any time, upon such Event of Default at Port's option, to give notice of such assignment to the Subtenant, whereupon Subtenant shall pay all rent thereafter becoming due and payable directly to Port. Port shall credit Master Tenant with any rent received by Port, but the acceptance of any payment on account of rent from the Subtenant shall not release Master Tenant from any liability under the Master Lease. Any payment of rent from the Subtenant directly to Port, or any other action by Subtenant, regardless of the circumstances or reasons therefor, shall in no manner whatsoever be deemed an attornment by the Subtenant to Port in the absence of a specific written agreement signed by Port to such effect. Port in its sole and absolute discretion may at any time after an Event of Default by Master Tenant under the Master Lease, elect to have Subtenant either attorn to Port or vacate the Subleased Premises, by giving written notice to Subtenant. If Port elects to have Subtenant attorn to Port, such notice shall state that Port is assuming Master Tenant's position under the Sublease and that Subtenant shall attorn to Port and be bound to Port under all the terms, covenants and conditions of the Sublease for the balance of the Sublease term and any extensions or renewals thereof which may then or later be in effect, all with the same force and effect as if Subtenant had been the original tenant for the Subleased Premises under the Master Lease. Any attornment shall be effective and self-operative without the execution of any further instruments. Master Tenant waives and releases any claim in the event that Subtenant makes payment directly to Port and shall hold Subtenant harmless therefor.

6. Rent.

Port's consent to the Sublease is conditioned on Master Tenant paying Percentage Rent to Port as defined and in the manner described in the Master Lease.

7. No Representation or Warranty by Port.

Nothing contained herein shall operate as a representation or warranty by Port of any nature whatsoever.

8. Indemnity and Exculpation.

Notwithstanding any provision to the contrary in the Sublease or License, as between Port and Subtenant, Subtenant agrees and acknowledges to be bound by the indemnification and exculpation provisions of the Master Lease and License, all with the same force and effect as if Subtenant had been the original tenant for the Subleased Premises under the Master Lease and the original licensee under the License. The obligation of Subtenant under this *Section 8* shall survive any termination or expiration of the Sublease, Sublicense, Master Lease or License.

9. Waiver of Relocation.

To the extent allowed by applicable Law, Master Tenant and Subtenant hereby waive any and all rights, benefits or privileges of the California Relocation Assistance Law, California Government Code §§ 7260 et seq., or under any similar law, statute or ordinance now or hereafter in effect.

10. Insurance.

Notwithstanding any provision to the contrary in the Sublease, Subtenant shall, at Subtenant's expense, with respect to the Subleased Premises and License Area secure and keep in force during the term of the Sublease and Sublicense such insurance as required by the Sublease or Sublicense. Such liability policy or policies of insurance shall name as additional insureds by written endorsement "**THE CITY AND COUNTY OF SAN FRANCISCO, THE SAN FRANCISCO PORT COMMISSION AND THEIR OFFICERS, AGENTS, EMPLOYEES, AND REPRESENTATIVES.**" A certificate evidencing such insurance shall be delivered to Port promptly after the date hereof. Subtenant additionally acknowledges Port's absolute right to demand increased coverage to amounts consistent with the type of Subtenant's business activities on the Subleased Premises or License Area.

11. Miscellaneous.

(a) This Consent may be executed in counterparts.

(b) This Consent shall be governed by and construed in accordance with the laws of the State of California. In the event of a conflict between the terms and provisions of this Consent and the Sublease or the License, this Consent shall control. Terms not defined in this Consent shall have the same meanings as in the Master Lease or License as the case may be.

(c) The terms and provisions of this Consent shall bind and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

(d) If any one or more provisions in this Consent shall be invalid, illegal or unenforceable for any reason, the remaining provisions contained herein shall not in any way be affected or impaired thereby.

(e) This Consent may not be modified or amended except by a writing executed by all parties to the Consent.

(f) Port and Subtenant hereby mutually waive any claim against the other and its agents for any loss or damage to any of their property located on or about the Subleased Premises, the Building or the License Area that is caused by or results from perils covered by property insurance carried by the respective parties, to the extent of the proceeds of such insurance actually received with respect to such loss or damage, whether due to the negligence of the other party or its agent(s). Each party shall immediately notify its insurer, in writing, of these mutual waivers and have their insurance policies endorsed to prevent the invalidation of the insurance coverage because of these waivers.

12. Effective Date.

The Effective Date of this Consent is the Effective Date of the Master Lease.

[REMAINDER OF THIS PAGE LEFT INTENTIONALLY BLANK]

The execution of this Consent by Master Tenant and Subtenant shall evidence Master Tenant's and Subtenant's joint and several confirmation of the foregoing conditions, and of their agreement to be bound thereby and shall constitute Subtenant's acknowledgement that it has received a copy of the Master Lease.

Landlord: CITY AND COUNTY OF SAN FRANCISCO
operating by and through the
SAN FRANCISCO PORT COMMISSION

By: _____
Name: _____
Title: _____

MASTER TENANT: YOUNG MEN'S CHRISTIAN ASSOCIATION OF SAN FRANCISCO, A
CALIFORNIA NONPROFIT PUBLIC BENEFIT CORPORATION

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

Subtenant: DOGPATCH PADDLE, LLC, A CALIFORNIA LIMITED LIABILITY
COMPANY,

By: _____
Name: _____
Title: _____

APPROVED AS TO FORM:
DAVID CHIU, City Attorney

By: _____
_____, Deputy City Attorney

Prepared By: James Hurley, Development Project Manager Initials: _____

EXHIBIT 1
DOGPATCH PADDLE
DESCRIPTION OF SUBLEASED PREMISES

EXHIBIT 2
COPY OF DOGPATCH PADDLE SUBLEASE

EXHIBIT D

DAILY DRIVER CONSENT TO SUBLEASE

This Consent to Sublease (this “**Consent**”) is made as of _____, 2023, by and among the **CITY AND COUNTY OF SAN FRANCISCO**, a municipal corporation (the “**City**”) operating by and through the **SAN FRANCISCO PORT COMMISSION** (“**Port**”), **YOUNG MEN’S CHRISTIAN ASSOCIATION OF SAN FRANCISCO, A CALIFORNIA NONPROFIT PUBLIC BENEFIT CORPORATION** (“**Master Tenant**”) and **DAILY DRIVER LLC, LLC, A CALIFORNIA LIMITED LIABILITY COMPANY** (“**Subtenant**”).

RECITALS

A. On October 26, 2021, the Port Commission authorized lease negotiations with Master Tenant who was the highest scoring respondent to the Port’s Building 49 Request for Proposals (see Port Commission Resolution 21-46). Master Tenant’s proposal included Subtenant, a community-oriented, female-owned food and beverage business specializing in bagels and house-made butter and cream cheese as a partner. Port and Master Tenant entered into that certain Lease No. L-16997 dated as of _____ for reference purposes (the “**Master Lease**”) for Building 49 located within Crane Cove Park in San Francisco, California (“**Existing Premises**”), as more particularly described in the Master Lease (see Port Commission Resolution xx-xx; Board of Supervisors Resolution xx-xx).

B. Master Tenant desires to sublease a portion of the Existing Premises, known as Sublease Premises B, as further described in *Exhibit 1* attached hereto (the “**Subleased Premises**”) to Subtenant and Subtenant desires to sublease from Master Tenant the Subleased Premises (the “**Sublease**”). Subtenant has provided Port an estoppel certificate in the form attached to the Master Lease.

C. Master Tenant has requested that Port consent to the Sublease, and Port has agreed to consent to the Sublease to be concurrent with the Master Lease, on the terms and conditions set forth herein. Port’s consent to the Sublease includes Port’s consent to Subtenant’s Operations Plan, if any, which shall be incorporated into Tenant’s Operations Plan under the Master Lease for the duration of the Sublease for the convenience of Port, Master Tenant and Subtenant.

D. NOW, THEREFORE, in consideration of the foregoing, and in consideration of the mutual agreements and covenants hereinafter set forth, Port, Master Tenant and Subtenant agree as follows:

1. Master Lease.

The Sublease shall be subject and subordinate to the Master Lease and to all of its terms, covenants, conditions, provisions and agreements. Master Tenant and Subtenant represent and warrant to Port that (a) the copy of the Sublease attached hereto as *Exhibit 2* is true, complete and correct and constitutes the entire agreement between the parties, and (b) the Sublease shall not be modified, terminated or amended without prior thirty (30) days written notice to Port. The Subtenant shall be bound by all of the terms, covenants, conditions, provisions and agreements of the Master Lease. Neither the Sublease nor this Consent shall be construed to modify, waive or affect any of the terms, covenants, conditions, provisions or agreements of the Master Lease.

2. Automatic Termination.

The term of the Sublease shall automatically terminate upon the termination of the Master Lease for any reason whatsoever, including, without limitation, the termination of the

Master Lease prior to the expiration of the term thereof pursuant to a written agreement between Port and Master Tenant.

3. No Release or Waiver.

Neither the Sublease nor this Consent shall: (a) release or discharge the Master Tenant from any liability, whether past, present or future, under the Master Lease; or (b) be construed to waive any breach by Master Tenant of the Master Lease, or any of Port's rights as the landlord thereunder, or to enlarge or increase Port's obligations thereunder. Master Tenant and Subtenant shall be and continue to be liable for the payment of all bills rendered by Port, if any, for charges incurred by the Subtenant for services and materials supplied to the Subleased Premises.

4. No Further Consent.

Neither the Sublease nor this Consent shall: (a) operate as a consent or approval by Port to any of the terms, covenants, conditions, provisions or agreements of the Sublease, and Port shall not be bound thereby, or (b) be construed as a consent by Port to any further subletting either by Master Tenant or by the Subtenant or to any assignment by Master Tenant of the Master Lease, or assignment by the Subtenant of the Sublease, it being clearly understood that this Consent shall not in any way be construed to relieve Master Tenant or Subtenant of the obligation to obtain Port's prior written consent to any further subletting or assignment.

5. Assignment of Rent.

In the event of an Event of Default by Master Tenant under the Master Lease, the rent due from the Subtenant under the Sublease shall be deemed assigned to Port, and Port shall have the right, at any time, upon such Event of Default at Port's option, to give notice of such assignment to the Subtenant, whereupon Subtenant shall pay all rent thereafter becoming due and payable directly to Port. Port shall credit Master Tenant with any rent received by Port, but the acceptance of any payment on account of rent from the Subtenant shall not release Master Tenant from any liability under the Master Lease. Any payment of rent from the Subtenant directly to Port, or any other action by Subtenant, regardless of the circumstances or reasons therefor, shall in no manner whatsoever be deemed an attornment by the Subtenant to Port in the absence of a specific written agreement signed by Port to such effect. Port in its sole and absolute discretion may at any time after an Event of Default by Master Tenant under the Master Lease, elect to have Subtenant either attorn to Port or vacate the Subleased Premises, by giving written notice to Subtenant. If Port elects to have Subtenant attorn to Port, such notice shall state that Port is assuming Master Tenant's position under the Sublease and that Subtenant shall attorn to Port and be bound to Port under all the terms, covenants and conditions of the Sublease for the balance of the Sublease term and any extensions or renewals thereof which may then or later be in effect, all with the same force and effect as if Subtenant had been the original tenant for the Subleased Premises under the Master Lease. Any attornment shall be effective and self-operative without the execution of any further instruments. Master Tenant waives and releases any claim in the event that Subtenant makes payment directly to Port and shall hold Subtenant harmless therefor.

6. Rent.

Port's consent to the Sublease is conditioned on Master Tenant paying Percentage Rent to Port as defined and in the manner described in the Master Lease. No Representation or Warranty by Port.

Nothing contained herein shall operate as a representation or warranty by Port of any nature whatsoever.

7. Indemnity and Exculpation.

Notwithstanding any provision to the contrary in the Sublease, as between Port and Subtenant, Subtenant agrees and acknowledges to be bound by the indemnification and exculpation provisions of the Master Lease, all with the same force and effect as if Subtenant had been the original tenant for the Subleased Premises under the Master Lease. The obligation of Subtenant under this **Section 8** shall survive any termination or expiration of the Sublease or the Master Lease.

8. Waiver of Relocation.

To the extent allowed by applicable Law, Master Tenant and Subtenant hereby waive any and all rights, benefits or privileges of the California Relocation Assistance Law, California Government Code §§ 7260 et seq., or under any similar law, statute or ordinance now or hereafter in effect.

9. Insurance.

Notwithstanding any provision to the contrary in the Sublease, Subtenant shall, at Subtenant's expense, with respect to the Subleased Premises, secure and keep in force during the term of the Sublease such insurance as required under the Sublease. Such liability policy or policies of insurance shall name as additional insureds by written endorsement "**THE CITY AND COUNTY OF SAN FRANCISCO, THE SAN FRANCISCO PORT COMMISSION AND THEIR OFFICERS, AGENTS, EMPLOYEES, AND REPRESENTATIVES.**" A certificate evidencing such insurance shall be delivered to Port promptly after the date hereof. Subtenant additionally acknowledges Port's absolute right to demand increased coverage to amounts consistent with the type of Subtenant's business activities on the Subleased Premises.

10. Miscellaneous.

(a) This Consent may be executed in counterparts.

(b) This Consent shall be governed by and construed in accordance with the laws of the State of California. In the event of a conflict between the terms and provisions of this Consent and the Sublease, this Consent shall control. Terms not defined in this Consent shall have the same meanings as in the Master Lease.

(c) The terms and provisions of this Consent shall bind and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

(d) If any one or more provisions in this Consent shall be invalid, illegal or unenforceable for any reason, the remaining provisions contained herein shall not in any way be affected or impaired thereby.

(e) This Consent may not be modified or amended except by a writing executed by all parties to the Consent.

(f) Port and Subtenant hereby mutually waive any claim against the other and its agents for any loss or damage to any of their property located on or about the Subleased Premises and the Building that is caused by or results from perils covered by property insurance carried by the respective parties, to the extent of the proceeds of such insurance actually received with respect to such loss or damage, whether due to the negligence of the other party or its agent(s). Each party shall immediately notify its insurer, in writing, of these mutual waivers and have their insurance policies endorsed to prevent the invalidation of the insurance coverage because of these waivers.

11. Effective Date.

The Effective Date of this Consent is the Effective Date of the Master Lease.

The execution of this Consent by Master Tenant and Subtenant shall evidence Master Tenant's and Subtenant's joint and several confirmation of the foregoing conditions, and of their agreement to be bound thereby and shall constitute Subtenant's acknowledgement that it has received a copy of the Master Lease.

Landlord: CITY AND COUNTY OF SAN FRANCISCO
operating by and through the
SAN FRANCISCO PORT COMMISSION

By: _____
Name: _____
Title: _____

MASTER TENANT: YOUNG MEN'S CHRISTIAN ASSOCIATION OF SAN FRANCISCO, A
CALIFORNIA NONPROFIT PUBLIC BENEFIT CORPORATION

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

Subtenant: DAILY DRIVER LLC, A CALIFORNIA LIMITED LIABILITY COMPANY,

By: _____
Name: _____
Title: _____

APPROVED AS TO FORM:
DAVID CHIU, City Attorney

By: _____
_____, Deputy City Attorney

Prepared By: James Hurley, Development Project Manager Initials: _____

EXHIBIT 1

**DOGPATCH PADDLE
DESCRIPTION OF SUBLEASED PREMISES**

EXHIBIT 2
COPY OF DOGPATCH PADDLE SUBLEASE

EXHIBIT E
WORK LETTER

This Work Letter sets forth Tenant's obligation to construct the Initial Improvements and shall be deemed part of the Lease. The Initial Improvements" include the Initial Tenant Improvements and the Seismic Project and are described in the Basic Lease Information and associated Port Building Permits and any amendments thereto.

1. General Terms

1.1. Definitions. Initially capitalized terms used in this Work Letter have the meanings given them when first defined. Any initially capitalized words or acronyms used but not defined in this Work Letter shall have the same meanings as in the Lease.

1.2. Relationship between Work Letter and the Lease. This Work Letter governs Tenant's obligations to construct the Initial Improvements. This Work Letter addresses, among other matters, the scope of Tenant's obligations to design and construct the Initial Improvements, Tenant's obligations to obtain final approvals for the Initial Improvements, and the Schedule of Performance. Before the termination of this Work Letter, this Work Letter shall control in the event of any inconsistency between this Work Letter and the Lease. Upon expiry of this Work Letter, the Lease alone will govern the rights and obligations of the parties with respect to use and occupancy of the Premises.

1.3. Term. This Work Letter shall commence and become effective as of the Lease Effective Date and shall expire on the date Port issues a Certificate of Final Completion and Occupancy for the Initial Improvements, regardless of whether such date is before or after the Initial Improvements Completion Date as defined below.

1.4. Lease Provisions. The provisions of the Lease, except where clearly inconsistent or inapplicable to this Work Letter, are incorporated into this Work Letter.

1.5. Extensions by Port. Upon the request of Tenant, Port's Executive Director may, by written instrument, extend the time for Tenant's performance of any term, covenant or condition of this Work Letter or permit the curing of any default of this Work Letter upon such terms and conditions as she or he determines appropriate, including but not limited to the time within which Tenant must perform such terms and/or conditions, provided, however, that any such extension or permissive curing of any particular default will not operate to relieve Tenant of its obligations to pay Rent or release any of Tenant's obligations nor constitute a waiver of Port's rights with respect to any other term, covenant or condition of this Work Letter or the Lease or any other default in, or breach of, the Work Letter or the Lease or otherwise effect the time with respect to the extended date or other dates for performance hereunder.

2. Construction Of The Initial Improvements

2.1. Tenant's Construction Obligations.

(a) Project Requirements. Tenant hereby agrees for itself, successors, and assignees, to Complete the construction of the Initial Improvements. Tenant shall Complete said construction free of claims, demands, actions and liens for labor, materials or equipment furnished for the construction, and in accordance with applicable requirements of (i) all Laws; (ii) this Work Letter, including the Scope of Development and Schematic Drawings; (iii) the Port Building Code as applicable; (iv) required Regulatory Approvals; (v) the Waterfront Land Use Plan or successor plan; (vi) the design approved by the Port and, if required, the Planning Commission, pursuant to Section 240 of the Planning Code; and (vii) the Lease. All such requirements are sometimes referred to collectively as the "**Project Requirements.**"

(b) Scope of Development; Schedule of Performance. Tenant shall use commercially reasonable efforts to construct or cause to be constructed the Initial Improvements on the Premises within the times and in the manner set forth in this Work Letter and the scope of development comprised of the Schematic Drawings, the Schedule of Performance, the preliminary plans and any narrative description (collectively, the “**Scope of Development**”) attached hereto as **Attachment 1**. All construction with respect to the Initial Improvements shall be accomplished expeditiously, diligently and in accordance with good construction and engineering practices and applicable Laws. Tenant shall undertake commercially reasonable measures to minimize damage, disruption or inconvenience caused by such work and make adequate provision for the safety and convenience of all persons affected by such work. Tenant, while performing any construction with respect to the Initial Improvements, shall undertake commercially reasonable measures in accordance with good construction practices to minimize the risk of injury or damage to adjoining tenants, properties and improvements, or the risk of injury to members of the public, caused by or resulting from the performance of such construction.

(c) Costs; Private Development. Tenant shall bear all of the cost of construction of all Initial Improvements. Without limiting the foregoing, Tenant shall be responsible for performing all Premises preparation work necessary for construction of the Initial Improvements. Such preparation of the Premises shall include, among other things, asbestos and lead abatement investigation required for development or operation of the Initial Improvements, all structure and substructure work, disabled access improvements and public access improvements and tenant improvements.

2.2. Utilities. Subject to the terms in the Basic Lease Information regarding the Interim Power Line and the Capacity Charges, Tenant, at its sole expense, shall arrange for the provision and construction of all on-Premises utilities necessary to use the Premises for the Permitted Use. Tenant and Port shall coordinate, if necessary, with respect to installation of any off-Premises utility infrastructure and design of the Initial Improvements, including providing advance notice of trenching requirements, and coordinate any modification of utilities to any adjacent Port tenants or uses.

2.3. Submittals after Completion. Tenant shall furnish Port both design/permit drawings in their finalized form and “As-Built” Drawings, specifications and surveys with respect to the Premises (core and shell, and tenant improvements) within sixty (60) days after Completion of the Initial Improvements. If Tenant fails to provide such surveys and as-built plans and specifications to Port within such period of time, Port after giving notice to Tenant shall have the right, but not the obligation, to cause the preparation by an architect of Port’s choice of final surveys and as-built plans and specifications, at Tenant’s sole cost, to be paid by Tenant to Port within thirty (30) days after Port’s request therefor.

2.4. Insurance.

(a) At all times during the construction of the Initial Improvements, in addition to the insurance required to be maintained by Tenant under **Section 19** of the Lease, Tenant shall require Tenant’s contractor to maintain (a) commercial general liability insurance with limits of not less than Three Million Dollars (\$3,000,000) combined single limit for bodily injury and property damage (including personal injury and death), and contractor’s protective liability; and products and completed operations coverage in an amount not less than Five Hundred Thousand Dollars (\$500,000) per incident, One Million Dollars (\$1,000,000) in the aggregate; (b) comprehensive automobile liability insurance with a policy limit of not less than One Million Dollars (\$1,000,000) each accident for bodily injury and property damage, providing coverage at least as broad as the Insurance Services Office (ISO) Business Auto Coverage form covering Automobile Liability, “**any auto**”, and insuring against all loss in connection with the ownership, maintenance and operation of automotive equipment that is owned, hired or non-owned; (c) workers’ compensation with statutory limits and employer’s liability insurance with limits of

not less than One Hundred Thousand Dollars (\$100,000) per accident, Five Hundred Thousand Dollars (\$500,000) aggregate disease coverage and One Hundred Thousand Dollars (\$100,000) disease coverage per employee. Tenant shall cause Tenant's Agents (other than Tenant's contractor) to carry such insurance as shall be reasonably approved by Port taking into account the nature and scope of the work and industry custom and practice.

(b) In addition, Tenant shall carry "**Builder's All Risk**" insurance covering the construction of the Initial Improvements as set forth in **Section 19** of the Lease. The liability insurance shall be written on an "**occurrence**" basis and shall name Port as additional insureds (by endorsement reasonably acceptable to Port). Subject to Port's consent in its reasonable discretion, Tenant may elect to require that any architects, contractors and sub-contractors performing services in connection with the Initial Improvements, carry Builders Risk Insurance in the amounts and types of coverage stated herein and with the additional insureds named as required herein.

(c) All of the insurance required to be carried by Tenant or Tenant's Agents hereunder shall provide that it is primary insurance, and not excess over or contributory with any other valid, existing, and applicable insurance in force for or on behalf of Port, shall provide that Port shall receive thirty (30) days' written notice from the insurer prior to any cancellation or change of coverage, and shall be placed with companies which are rated A-VIII or better by Best's Insurance Guide and licensed to business in the State of California. All deductibles and self-insured retentions under Tenant's policies are subject to Port's reasonable approval, and all insurance, except workers' compensation, maintained by Tenant's Agents shall preclude subrogation claims by the insurer against anyone insured thereunder. Tenant's compliance with the provisions of this **Section 2.4** shall in no way limit Tenant's liability under any of the other provisions of this Work Letter or the Lease.

2.5. Performance Bond. At least five (5) business days prior the start of construction, Tenant shall provide Port, at Tenant's sole cost and expense, (i) a corporate surety payment bond and a performance bond substantially in the form attached hereto as **Attachment 2** obtained by each of Tenant's contractors performing work on the Initial Improvements or, (ii) a financial guaranty, in a form approved by Port in its sole discretion, from a third party with liquid assets in an amount of no less than One Hundred Ten (110%) of the cost of the Initial Improvements. Each bond shall be in an amount equal to one hundred percent (110%) of the estimated costs of such work on the Initial Improvements. Each performance bond shall guarantee the contractor's faithful performance of its contract(s) with Tenant. Each payment bond shall guarantee the Contractor's payment of labor, materials, supplies and equipment used in the performance of its contract(s) with Tenant. The bonds are intended to help protect the Port against any liability for mechanics' and materialmen's liens, stop notices and to ensure completion of the work. Corporate sureties issuing these bonds shall be legally authorized to engage in the business of furnishing surety bonds in the State of California. All sureties shall have a current A.M. Best Rating not less than A-, VIII. Each corporate surety bond shall obligate the surety to Tenant and the City and County of San Francisco as co-obligees.

2.6. Compliance with Laws. At its sole cost and expense, Tenant shall comply (taking into account any variances or other deviations properly approved) with: (i) all Laws; (ii) all Regulatory Approvals which place requirements on the Initial Improvements; (iii) all requirements of all policies of insurance which may be applicable to the Premises as to the Initial Improvements or Tenant's Property; and (iv) all other applicable Project Requirements. It is expressly understood and agreed that the performance required of Tenant by the preceding sentence shall include the obligation to make, at Tenant's sole cost and expense, all additions to, modifications of, and installations on the Premises which may be required by any Laws regulating the Premises or any insurance policies covering the Premises as to the Initial Improvements or Tenant's Property. Tenant shall, promptly upon request, provide Port with reasonable evidence of compliance with Tenant's obligations under this Section.

2.7. Port and Other Governmental Permits. Tenant has the sole responsibility, at its sole cost and expense, for obtaining all necessary permits for the Initial Improvements and shall make application for such permits directly to the applicable Regulatory Agency; provided, however, that where Port is required to act as a co-permittee for any permit Tenant shall apply for such permit in accordance with *Section 12*.

2.8. Port Rights of Access. Without limiting the rights of Port in its regulatory capacity, Port and its Agents will have the right of access to the Premises to the extent reasonably necessary to carry out the purposes of this Work Letter, including, but not limited to, the inspection of the work being performed in constructing the Initial Improvements upon reasonable prior written notice to Tenant during regular business hours; provided, however, Port shall take such reasonable action necessary to minimize any interference with Tenant's construction activities. Port will provide Tenant promptly upon request with a copy of any written reports prepared by Port or its Agents with respect to the Initial Improvements under any such inspection, subject to withholding documents otherwise privileged or confidential. Port disclaims any warranties, representations and statements made in any such reports, will have no liability or responsibility with respect to any such warranties, representations and statements, and will not be estopped from taking any action (including, but not limited to, later claiming that the construction of the Initial Improvements is defective, unauthorized or incomplete) nor be required to take any action as a result of any such inspection.

2.9. Construction Signs and Barriers. Tenant shall provide appropriate construction barriers, construction signs and a project sign or banner, and shall post the signs on the Premises during the period of construction. Tenant will obtain a building permit from Port before the placement of any construction fencing, signage and/or barriers.

3. Preparation And Approval Of Plans

3.1. The Construction Documents.

(a) Definition of Construction Documents. The Construction Documents shall be as follows:

(i) "Schematic Drawings" for the Initial Improvements which shall generally include, without limitation, the following:

(1) Perspective drawings sufficient to illustrate the Initial Improvements.

(2) A site plan at appropriate scale showing relationships of the Initial Improvements with their respective uses, designating Public Access Areas, open spaces, walkways, buildings, loading areas, streets, parking, and adjacent uses. Adjacent existing and proposed streets, piers, arcades and structures should also be shown.

(3) Building plans, floor plans and elevations sufficient to describe the development proposal, the general architectural character, and the location and size of uses.

(4) Building sections showing height relationships of those areas noted above.

(ii) "Preliminary Construction Documents" in sufficient detail and completeness to show that the Initial Improvements and the construction thereof shall comply with the Project Requirements, and which shall generally include, without limitation:

(1) Premises plan(s) at appropriate scale showing the buildings, streets, boat docks, walkways, and other open spaces. All land uses shall be designated. All Premises development details and bounding streets, points of vehicular and pedestrian access shall be shown.

- appropriate scale.
- (2) All building plans and elevations at appropriate scale.
 - (3) Building sections showing all typical cross sections at appropriate scale.
 - (4) Floor plans.
 - (5) Preliminary interior improvement plans.
 - (6) Plans for proposed Public Access Areas showing details including but not limited to, walls, fences, railings, benches, bicycle racks, street furniture, markers, plaques, models, paving, exterior lighting, signs, and trash containers.
 - (7) Outline specifications for materials, finishes and methods of construction.
 - (8) Interior and Exterior Signage Plans.
 - (9) Exterior lighting plans.
 - (10) Material and color samples.
 - (11) Roof plans showing all mechanical and other equipment.

(iii) “**Final Construction Documents**” which shall include all plans and specifications required under applicable codes to be submitted with an application for a Building Permit for the Initial Improvements.

(b) Exclusion. As used in this Work Letter “**Construction Documents**” do not mean any contracts between Tenant and any contractor, subcontractor, architect, engineer or consultant.

(c) In preparing the Construction Documents, Tenant shall use good faith efforts to include energy conservation and other green building improvement measures including but not limited to solar panels, energy efficient light fixtures; Energy Star appliances; recycling of demolition debris and use of recycled building materials; composting services for customers including in bathrooms (for paper towels).

3.2. Scope of Tenant Submissions of Construction Documents. The following provisions apply to all stages of Tenant’s submission of Construction Documents. Each of the Construction Document stages is intended to constitute a further development and refinement from the previous stage. The elements of the Preliminary Construction Documents requiring Port’s approval shall be in substantial conformance with the Schematic Drawings and the Scope of Development, and shall incorporate conditions, modifications and changes specified by Port or required as a condition of Regulatory Approvals as approved by Port. Preliminary Construction Documents shall be in sufficient detail and completeness to show that the Initial Improvements and the construction of the Initial Improvements will be in compliance with the Project Requirements and matters previously approved. The Final Construction Documents shall be a final development of, and be based upon and conform to, the approved Preliminary Construction Documents. The elements of the Final Construction Documents requiring Port approval shall incorporate conditions, modifications and changes required by Port for the approval of the Preliminary Construction Documents. The Final Construction Documents shall include all drawings, specifications and documents necessary for the Initial Improvements to be constructed and completed in accordance with this Work Letter.

3.3. Construction Document Review Procedures.

(a) Method of Port Action/Prior Approvals. Port shall approve, disapprove or approve conditionally the Construction Documents, in writing, in accordance with the Schedule of Performance, but, in any event, within ninety (90) days after submittal, so long as the applicable Construction Documents are properly submitted in accordance with the Schedule of

Performance. If Port fails to either approve or disapprove within five (5) business days after Tenant's second written request made to Port after such ninety (90) day period, the applicable Construction Documents shall be deemed disapproved.

(b) Timing of Port Disapproval/ Conditional Approval and Tenant Resubmission. If Port disapproves of the Construction Documents in whole or in part, Port in the written disapproval shall state the reason or reasons and may recommend changes and make other recommendations. If Port conditionally approves the Construction Documents in whole or in part, the conditions shall be stated in writing and a time shall be stated for satisfying the conditions. Tenant shall make a resubmittal as expeditiously as possible. Tenant may continue making resubmissions until the approval of the submissions or the time specified in any conditional approval.

3.4.Changes in Construction Documents.

(a) Approval of Changes in Construction Documents. Tenant shall not make or cause to be made any material changes in any Port-approved Construction Documents without Port's express written approval in its reasonable discretion as provided in **Section 3.4(b)** below. Prior to making any changes that Tenant considers to be non-material to any Port-approved Construction Documents, including, without limitation, substituting materials which are the architectural equivalent as to aesthetic appearance, quality, color, design and texture, Tenant shall notify Port in writing. If Port in its reasonable discretion determines that such noticed changes are material, then such changes shall be subject to Port's approval under **Section 3.4(b)**. Port's determination of whether such changes are material will be conclusive. Without otherwise limiting the requirements of this **Section 3.4(a)**, any changes that cost Five Thousand Dollars (\$5,000.00) or less in the aggregate and that would not otherwise affect the structural elements of the Initial Improvements shall be presumed to be non-material changes.

(b) Response. Tenant shall request in writing Port's approval in connection with all material changes to the Construction Documents. Port shall give its approval or disapproval to Tenant in writing within thirty (30) days after receipt of Tenant's request. If Port disapproves, then it shall specify in writing the reasons for its disapproval. If Port fails to approve or disapprove within five (5) business days after Tenant's second written request made to Port after the thirty (30) day period, such changes will be deemed disapproved.

3.5. Progress Meetings/Consultation. During the preparation of Construction Documents, Port staff and Tenant agree to hold regular progress meetings, as appropriate considering Tenant's Construction Document progress, to coordinate the preparation of, submission to, and review of Construction Documents by Port. Port staff and Tenant (and its applicable consultants) agree to communicate and consult informally as frequently as is reasonably necessary to assure that the formal submittal of any Construction Documents to Port can receive prompt and speedy consideration.

4. Completion of Construction

4.1. Completion of Construction. Tenant shall commence, prosecute and use commercially reasonable efforts to Complete the Initial Improvements by the Initial Improvements Completion Date in accordance with the dates set forth in the Schedule of Performance. During construction of the Initial Improvements, Tenant shall submit written progress reports to Port, in form and detail as may be required reasonably by Port, but at least on a monthly basis.

4.2. Port's Remedy for Tenant's Failure to Timely Complete Construction. In the event Tenant fails to complete the Initial Improvements in a manner sufficient to cause Port to determine the Initial Improvements to be Completed by the Initial Improvements Completion Date, Tenant shall pay to Port an amount equaling One Hundred Dollars (\$100.00) per day commencing on the Completion Date and shall continue at such rate until Completion in addition to the Rent that would otherwise be payable for such period.

THE PARTIES HAVE AGREED THAT PORT'S ACTUAL DAMAGES IN THE EVENT OF TENANT'S FAILURE TO COMPLETE CONSTRUCTION OF THE INITIAL IMPROVEMENTS BY THE INITIAL IMPROVEMENTS COMPLETION DATE WOULD BE EXTREMELY DIFFICULT OR IMPRACTICABLE TO DETERMINE. THEREFORE, BY PLACING THEIR INITIALS BELOW, THE PARTIES ACKNOWLEDGE THAT THEY HAVE AGREED UPON THE SUM SPECIFIED ABOVE, AFTER NEGOTIATION, AS THEIR REASONABLE ESTIMATE OF PORT'S DAMAGES IN SUCH EVENT.

TENANT _____

PORT _____

5. Completion

5.1. Completion.

(a) Issuance Process.

(i) Before the Initial Improvements Completion Date, Tenant may not occupy the Premises except for construction purposes under this Work Letter or the Lease, unless Port consents to such use, a Temporary Certificate of Occupancy has been issued allowing such use and Tenant pays rent in the amount required by the then-current Port Commission-adopted parameter rates.

(ii) After the Initial Improvements Completion Date, Tenant may request a written determination of Completion for the Initial Improvements in writing. Port shall issue or provide Tenant with notice of Port's refusal to issue the written determination of Completion for the Initial Improvements within sixty (60) days of receipt of Tenant's request. If Port refuses to issue a determination of Completion, then it shall state the reasons why in its refusal notice.

(iii) Port's determination that the Initial Improvements have been Completed does not relieve Tenant or any other Person from any obligations to secure or comply with any Regulatory Approval of any agency (including Port) that may be required for the occupancy or operation of the Initial Improvements.

(b) **Condition to Approval.** If there remain uncompleted (i) finishing details, minor omissions, decorations and mechanical adjustments of the type normally found on an architectural "punch list", (ii) landscaping, (iii) exterior finishes (to the extent Tenant can demonstrate to Port's reasonable satisfaction that such exterior finishes would be damaged during the course of later construction of Interior Improvements), or (iv) any other item that Port approves in writing in its sole and absolute discretion (collectively "Deferred Items"), Port may reasonably condition approval upon provision of security or other assurances in form, substance and amount satisfactory to Port that all the Deferred Items will be completed in a timely fashion. Such security may include a letter of credit (in a form and issued by an institution acceptable to Port) in the amount of one hundred ten percent (110%) of the cost of Completion of the Deferred Items as reasonably determined by Port. The obligations set forth in this subsection shall survive a termination of the Lease.

(c) **Definition of Completion.** For purposes of this Work Letter and the Initial Improvements, "Completion" means completion by Tenant of all aspects of the Initial Improvements in accordance with the Project Requirements, and in compliance with all Regulatory Approvals needed for the occupancy and development of the Initial Improvements or provision of security reasonably satisfactory to Port for Deferred Items under **Section 5.1(b)**, and issuance of a Certificate of Final Completion and Occupancy. The "Initial Improvements Completion Date" shall mean the earlier of (i) the date of the Certificate of Final Completion and Occupancy for the Initial Improvements or (ii) the date that is twenty-four (24) months after the date on which the Building Permit for the Initial Improvements was Finally Approved; provided, however, that the Port's Executive Director, in her or his reasonable discretion, may extend the 24-month deadline in writing following Tenant's written request and provided that Tenant is

working diligently toward Completion of the Initial Improvements and provided further that any such extension will not operate to relieve Tenant of its obligations to pay Rent or release any of Tenant's obligations nor constitute a waiver of Port's rights with respect to any other term, covenant or condition of this Work Letter or the Lease or any other default in, or breach of, the Work Letter or the Lease or otherwise effect the time with respect to the extended date or other dates for performance hereunder. The Port's Executive Director's failure to issue an extension within ten (10) days after Tenant's notice requesting an extension shall be deemed a denial of the request.

6. Termination Of Lease

6.1. Plans and Data. If the Lease terminates as a result of an Event of Default by Tenant before Completion of the Initial Improvements, Tenant shall assign and deliver to Port (without cost to Port), without any warranty or representation from Tenant and subject to the terms of any design professional's, engineer's, consultant's, or contractors agreement with Tenant, any and all copies of reports in its possession regarding the Premises and all Construction Documents in the possession of or prepared for Tenant, for the contracting of the Initial Improvements within thirty (30) days after written demand from Port. Port may use said reports and Construction Documents for any purpose whatsoever relating to the Premises; provided, however, Port shall release Tenant and Tenant's contractor, architect, engineer, agents, employees and other consultants from any Claims arising out of Port's use of such reports and Construction Documents except to the extent such contractor, architect, engineer, agent, employee or other consultant is retained by Port to complete the Initial Improvements. Tenant shall include in all contracts and authorizations for services pertaining to the planning and design of the Initial Improvements an express agreement by the Person performing such services that Port may use such reports or Construction Documents as provided in this Section 6.1 without compensation or payment from Port in the event such reports or Construction Documents are delivered to Port under the provisions of this **Section 6.1**, provided that Port agrees (i) not to remove the name of the preparer of such reports of Construction Documents without the preparer's written permission or (ii) to remove it at their written request.

6.2. Return of Premises. If the Lease terminates pursuant to this **Section 6**, Tenant shall, at its sole expense and as promptly as practicable, return the Premises to Port in a safe condition, and unless otherwise requested by Port, shall promptly remove all Improvements and Alterations, equipment, loose building materials and debris present at the Premises resulting from Tenant's construction activities. In the event that Tenant is required to return the Premises as aforesaid, Tenant shall obtain those permits customary and necessary to enter upon the Premises in order to complete such work and shall otherwise comply with applicable Law. In such event, Port shall cooperate with Tenant in Tenant's efforts to obtain such permits, provided that Port will not be required to expend any money or undertake any obligations in connection therewith. The provisions of this Section shall survive any termination of the Lease.

ATTACHMENTS

ATTACHMENT 1	SCOPE OF DEVELOPMENT
ATTACHMENT 2	FORM OF PERFORMANCE BOND & PAYMENT (LABOR AND MATERIAL) BOND
ATTACHMENT 3	INITIAL IMPROVEMENTS THAT DO NOT NEED TO BE REMOVED FROM THE PREMISES

ATTACHMENT 1
SCOPE OF DEVELOPMENT

[PAGE INTENTIONALLY LEFT BLANK]

ATTACHMENT 2

**FORM OF PERFORMANCE BOND &
PAYMENT (LABOR AND MATERIAL) BOND**

KNOW ALL MEN BY THESE PRESENTS, that WHEREAS, the Port of San Francisco on behalf of City and County of San Francisco, State of California, has awarded to:

hereinafter designated as the “Principal”, a Lease by Port Commission Resolution No. xx-xx, adopted on xxx, xx, xxxx for:

Lease No. L-16997 (the “Contract”)

WHEREAS, said Principal is required under the terms of said Contract to furnish a Bond for the faithful performance of certain improvements under said Contract; and to furnish a separate Bond for the payment of any materials, provisions, or other supplies, used in, upon, for or about the performance of the Work contracted to be done;

NOW, THEREFORE, we the Principal and

as Surety, are firmly bound unto the City and County of San Francisco in the penal sum of

(PERFORMANCE BOND)

and

(PAYMENT BOND)

lawful money of the United States for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally firmly by these presents for the penal sum for a performance bond and an equal and separate penal sum for a separate payment bond. The conditions of this obligation is such that if the said principal does well and faithfully performs all the conditions and covenants of said Contract, according to the true intent and meaning thereof, upon its part to be kept and performed, then the above obligation is to be null and void, otherwise to remain in full force and effect.

(PERFORMANCE BOND)

THE CONDITION OF THIS OBLIGATION IS SUCH, that if the above bounden Principal, its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions and agreements in the said Contract, including the provisions for liquidated damages in the said Contract, any changes, additions or alterations thereof made as therein provided, on its part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their true intent and meaning, and shall indemnify and save harmless the City and County of San Francisco, its officers and agents, as therein stipulated, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

(PAYMENT BOND)

THE CONDITION OF THIS OBLIGATION IS SUCH, that if said principal, its heirs, executors, administrators, successors or assigns, or its subcontractors, shall fail to pay (i) any of the persons named in California Civil Code Section 9100 for any materials, provisions, or other supplies used in, upon, for or about the performance of work under the Contract, or for any work or labor performed under the Contract; or (ii) amounts due under the California Unemployment Insurance Code with respect to work or labor performed under the Contract; or (iii) for any amounts required to be deducted, withheld, and paid over to the State of California Employment Development Department from the wages of employees of Principal and subcontractors pursuant to Section 13020 of the California Unemployment Insurance Code with respect to such work or labor, that Surety will pay for the same in an amount not exceeding the sum specified in this Bond. In the event that suit is brought upon this Payment Bond, the parties not prevailing in such suit shall pay reasonable attorney's fees and costs incurred by the prevailing parties in such suit.

This Payment Bond shall inure to the benefit of any of the persons named in California Civil Code Section 9100 as to give a right of action to such persons or their assigns in any suit brought against this Bond.

Should the condition of this Payment Bond be fully performed, then this obligation shall become null and void; otherwise, it shall be and remain in full force and effect.

Surety, for value received, hereby expressly agrees that no change, extension of time, modification, alteration or addition to the undertakings, covenants, terms, conditions and agreements of the Contract, or to the work to be performed thereunder, or to the Specifications accompanying the same, and no inadvertent overpayment of progress payments, shall in any way affect its obligations on these Bonds; and it does hereby waive notice of any such change, extension of time, modification, alteration or addition to the undertakings, covenants, terms, conditions and agreements of the Contract, or to the Work to be performed thereunder, or to the Specifications, or of any inadvertent overpayment of progress payments.

IN WITNESS WHEREOF, the above-bounden parties have executed this instrument under their seal this ____ day of _____, 20____, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

Approved as to form:
David Chiu
City Attorney

By: _____
Deputy City Attorney

Principal

By: _____

Surety

By: _____
END OF DOCUMENT

ATTACHMENT 3 INITIAL IMPROVEMENTS THAT DO NOT NEED TO BE REMOVED FROM THE PREMISES

Subject to Section 14.8 of the Lease, the following table lists Initial Improvements that can remain at the Premises or that must be removed (unless otherwise requested by Port) at the end of the lease term.

Area of Improvement	Description (if needed)	Status	
		Can Remain	To be Removed Unless Otherwise Requested by Port
Mechanical Infrastructure and Equipment	The new HVAC systems are connected throughout Building 49 across the tenant spaces. This includes radiant flooring system and electrical heating components.	X	
Electrical Infrastructure and Equipment		X	
Plumbing Infrastructure and Equipment		X	
Seismic Improvements	All new structural improvements to the building envelope including any form of additional bracing, foundations, and interior walls that increase the life safety of the building.	X	
Openings	All new exterior windows, storefronts, and large coiling doors.	X	
Interior Walls	Offices, breakrooms, and miscellaneous interior walls and openings.		X
Interior Structural Walls	Interior structural walls that separate tenant spaces.	X	
Ceilings	Ceilings of tenant spaces. Includes food and beverage tenant area and auxiliary space in master tenant space.	X	
Additional Restrooms	New restroom and water closet facilities.	X	
FFE	All fixtures, furniture, and equipment throughout the building		X
Tile and Flooring	All tile and finished flooring material throughout the tenant spaces	X	
IT Low Voltage	All security and communications equipment.		X

Fire Alarm Systems	All fire systems	X	
Signage	All tenant interior and exterior signage including code compliance signage.		X
Unrentable Space	All infrastructure, equipment, and fixtures including public restroom facilities.	X	
Paint	Tenant-specific painting of interior or exterior walls (e.g. business signage, murals)		X

EXHIBIT F
CRANE COVE PARK LICENSE NO. 17011

[To Be Attached]

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EXHIBIT G
OPERATIONS PLAN

[To Be Attached]

[PAGE INTENTIONALLY LEFT BLANK]

EXHIBIT H
Mitigation Monitoring and Reporting Program

[To Be Attached]

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EXHIBIT I
SUMMARY OF SECRETARY OF THE INTERIOR'S STANDARDS
FOR THE TREATMENT OF HISTORIC PROPERTIES

1. A property will be used as it was historically or be given a new use that requires minimal change to its distinctive materials, features, spaces, and spatial relationships.

2. The historic character of a property will be retained and preserved. The removal of distinctive materials or alteration of features, spaces, and spatial relationships that characterize a property will be avoided.

3. Each property will be recognized as a physical record of its time, place, and use. Changes that create a false sense of historical development, such as adding conjectural features or elements from other historic properties, will not be undertaken.

4. Changes to a property that have acquired historic significance in their own right will be retained and preserved.

5. Distinctive materials, features, finishes, and construction techniques or examples of craftsmanship that characterize a property will be preserved.

6. Deteriorated historic features will be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature will match the old in design, color, texture, and, where possible, materials. Replacement of missing features will be substantiated by documentary and physical evidence.

7. Chemical or physical treatments, if appropriate, will be undertaken using the gentlest means possible. Treatments that cause damage to historic materials will not be used.

8. Archeological resources will be protected and preserved in place. If such resources must be disturbed, mitigation measures will be undertaken.

9. New additions, exterior alterations, or related new construction will not destroy historic materials, features, and spatial relationships that characterize the property. The new work shall be differentiated from the old and will be compatible with the historic materials, features, size, scale and proportion, and massing to protect the integrity of the property and its environment.

10. New additions and adjacent or related new construction will be undertaken in such a manner that, if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.

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EXHIBIT J
TENANT ESTOPPEL CERTIFICATE

The undersigned, _____, is the tenant of a portion of the real property commonly known as [Insert Premises Address] located in San Francisco, California (the “**Property**”), and hereby certifies to **THE CITY AND COUNTY OF SAN FRANCISCO THROUGH THE SAN FRANCISCO PORT COMMISSION (“Port”)** [and to _____ (“**Developer/Lender**”)] the following:

1. That there is presently in full force and effect a lease (as modified, assigned, supplemented and/or amended as set forth in paragraph 2 below, the “Lease”) dated as of _____, 20____, between the undersigned and Port, covering approximately _____ square feet of the Property (the “**Premises**”).
2. That the Lease has not been modified, assigned, supplemented or amended except by:
3. That the Lease represents the entire agreement between Port and the undersigned with respect to the Premises.
4. That the commencement date under the Lease was _____, 20____, the expiration date of said Lease is _____, 20____.
5. That the present minimum monthly Base Rent which the undersigned is paying under the Lease is \$_____.
6. The security deposit held by Port under the terms of the Lease is \$_____ and Port holds no other deposit from Tenant for security or otherwise.
7. That the undersigned has accepted possession of the Premises and that, to the best of the undersigned’s knowledge, any improvements required to be made by Port to the Premises by the terms of the Lease and all other conditions of the Lease to be satisfied by Port have been completed or satisfied to the satisfaction of the undersigned.
8. That, to the best of the undersigned’s knowledge, the undersigned, as of the date set forth below, has no right or claim of deduction, charge, lien or offset against Port under the Lease or otherwise against the rents or other charges due or to become due pursuant to the terms of the Lease.
9. That, to the best of the undersigned’s knowledge, Port is not in default or breach of the Lease, nor has Port committed an act or failed to act in such a manner, which, with the passage of time or notice or both, would result in a default or breach of the Lease by Port.
10. That, to the best of the undersigned’s knowledge, the undersigned is not in default or in breach of the Lease, nor has the undersigned committed an act or failed to act in such a manner which, with the passage of time or notice or both, would result in a default or breach of the Lease by the undersigned.
11. The undersigned is not the subject of any pending bankruptcy, insolvency, debtor’s relief, reorganization, receivership, or similar proceedings, nor the subject of a ruling with respect to any of the foregoing.

This Certificate shall be binding upon and inure to the benefit of the undersigned, Port, [Developer/Lender] and [its/their respective] successors and assigns.

Dated: _____, 20____.

[Name of Tenant]

By:

Name:

Title:

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EXHIBIT K
LOCAL HIRING PLAN

[To Be Attached]

[PAGE INTENTIONALLY LEFT BLANK]

EXHIBIT L
DIVERSITY, EQUITY & INCLUSION PLAN

[To Be Attached]

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SCHEDULE 1

FEMA-National Flood Insurance Program Disclosure Notice

As part of the National Flood Insurance Program (“NFIP”), Federal Emergency Management Agency (“FEMA”) issued the final flood insurance rate maps (“FIRMs”) for City and County of San Francisco on September 23rd, 2020, concluding a process that had been going on for more than a decade. This is the first time FEMA mapped flood risks for the City and County of San Francisco. FIRMs were later adopted by the Board of Supervisors through Ordinance 226-20 (“Floodplain Management Program Ordinance”) and became effective on March 23, 2021.

Based on detailed studies of coastal flood hazards associated with San Francisco Bay and the Pacific Ocean, the final FIRMs designate portions of the City and County of San Francisco (“City”), including portions of the waterfront, Mission Bay, Islais Creek, Bayview Hunters Point, Hunters Point Shipyard, Candlestick Point, Treasure Island, San Francisco International Airport, and Ocean Beach, in coastal flood hazard areas. Referred to as “Special Flood Hazard Areas” (“SFHAs”), these areas are subject to inundation during a flood having a 1 percent chance of occurrence in any given year. They are shown as zones beginning with the letter “A” or “V” on the FIRMs. Port’s structures over water, including piers and wharfs, are designated as Zone D (area of undetermined flood hazard). Zone D areas are not subject to Building Code and NFIP regulation. Historic structures are also exempted from compliance under the NFIP.

Additionally, the San Francisco Public Utilities Commission (“SFPUC”) has prepared the 100-Year Storm Flood Risk Map to show areas where flooding is highly likely to occur on City streets during a 100-year rain storm. More information about this map, including a searchable web map, is available at <https://sfplanninggis.org/floodmap/>. The SFPUC 100-Year Storm Flood Risk Map only shows flood risk from storm runoff and, floodproofing measures are not required at this time.

The SFPUC map does not consider flood risk in San Francisco from other causes, such as inundation from the San Francisco Bay or the Pacific Ocean, which are shown on the FIRMs that FEMA has prepared for San Francisco. Conversely, the FIRMs do not show flooding from storm runoff in San Francisco, because our historical creeks and other inland waterbodies have been built over and are no longer open waterways. In most areas, the flood hazards identified by SFPUC and FEMA are separate. There are a few areas, however, near the shoreline where SFPUC’s Flood Risk Zones overlap with the FEMA-designated floodplains.

The FIRM provides flood risk information for flood insurance and floodplain management purposes under the NFIP. The SFHAs, shown on the FIRM, may impact flood insurance requirements and rates, permitting, and building requirements for tenants and permit holders for property in designated SFHAs on the FIRM. Flood insurance is available through the NFIP and the private market. Flood insurance for Zone D areas is not available through NFIP. Pre-FIRM buildings of any type are not required to buy flood insurance. For more information on purchasing flood insurance, please contact your insurance agent.

City’s Floodplain Management Program ordinance is based on NFIP requirements. Under the ordinance, the Port and the City must regulate new construction and substantial improvements or repairs to structures in SFHAs to reduce the risk of flood damage. The requirements may include elevation or floodproofing of structures and attendant utilities.

Additional information on this matter are available on the City/Port websites and FEMA website as listed below-

San Francisco Floodplain Management Program website:
<https://onesanfrancisco.orgisan-francisco-floodplain-management-program>

Port Floodplain Management Program Website:
<https://sfport.com/flood-plain-management-program>

FEMA's NFIP website:
www.FloodSmart.gov.

SCHEDULE 2

SUBSTRUCTURE REPORT(S)

[Attachment on following page(s)]

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SCHEDULE 3

**ASBESTOS NOTIFICATION AND INFORMATION
NOTICE TO EMPLOYEES,
OWNERS, LESSEES, SUBLESSEES, AGENTS AND CONTRACTORS**

[Attachment on following page(s)]

SCHEDULE 4

HAZARDOUS MATERIAL DISCLOSURE

[Attachment on following page(s)]

SCHEDULE 5

LIST OF CONSTRUCTION WARRANTIES

Item Description	Warranty Period if not 24 months
Overall Warranty	
Corrugated Siding	
Sewage Pump	
Fire Alarm	
Hand Dryers	10 years
Roof	15 years (per Submittal #12)
Louvers	20 years
Outdoor Signage	5 years
LED Interior Lighting	5 years
Roll up door at restroom entrance	5 years for door closers and panic hardware
Compressors	6 years

SCHEDULE 6
IMPROVEMENTS AND ALTERATIONS REMOVAL REQUEST FORM

[Insert Tenant's Notice Address and Contact Information]

[Insert Date]

To: Port at Port's then-specified notice address

Re: Building 49, Crane Cove Park – Alterations Removal and Restoration

To Whom It May Concern:

We provide this notice request pursuant to Section 14.9 of that certain Lease No. L-16997, dated _____, 2023 between Port and Tenant (the "Lease") in connection with our separate request for Port's consent to perform certain Improvements and Alterations. As we have discussed with you, Tenant proposes to perform the Improvements and Alterations described herein below pursuant to Section 14 of the Lease:

[Describe Improvement(s)/Alteration(s) in detail and, as may be required under Section 14, include plans and specifications]

We request that Port inform us whether the Improvements Alterations must be removed on or before the expiration or sooner termination of this Lease. In all cases of removal, Tenant acknowledges that the Premises must be restored to its prior condition in compliance with the terms and conditions of the Lease, including obtaining permits if necessary.

Kindly indicate, by completing the form below, whether the Improvements or Alterations must be removed and then return a copy of this letter and the form to us at the address set forth above.

We understand that Port's response below applies only to the particular Improvement(s)/Alteration(s) described herein above and not to any other Improvement(s)/Alteration(s) or other Improvement(s)/Alteration(s) that may be performed in the future.

Sincerely,

YMCA of San Francisco

Port to complete the form below and return to Tenant:

[] Tenant is not required to remove the Improvement(s)/Alteration(s)

[] Tenant must remove the Improvement(s)/Alteration(s) before the expiration or sooner termination of the Lease.

[] Tenant must remove the following components of the Improvement(s)/Alteration(s) before the expiration or sooner termination of the Lease: _____

_____. The remainder of the Improvement(s)/Alteration(s) may remain on the Premises.

By: Port's Authorized Signatory

EXHIBIT F



**PIER 1
SAN FRANCISCO, CA 94111**

**LICENSE TO USE PROPERTY
LICENSE No. 17011**

BY AND BETWEEN

**THE CITY AND COUNTY OF SAN FRANCISCO OPERATING BY AND
THROUGH THE
SAN FRANCISCO PORT COMMISSION**

AND

**YOUNG MEN'S CHRISTIAN ASSOCIATION OF SAN FRANCISCO, A
CALIFORNIA NONPROFIT PUBLIC BENEFIT CORPORATION**

[LICENSE DATE, 2023]

CRANE COVE PARK

**ELAINE FORBES
EXECUTIVE DIRECTOR**

**SAN FRANCISCO PORT COMMISSION
WILLIE ADAMS, PRESIDENT
KIMBERLY BRANDON, VICE PRESIDENT
JOHN L. BURTON, COMMISSIONER
GAIL GILMAN, COMMISSIONER
STEVEN LEE, COMMISSIONER**

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EXHIBITS AND SCHEDULES

EXHIBIT 1 LICENSE AREA

EXHIBIT 2 EFFECTIVE DATE, COMMENCEMENT DATE MEMORANDUM

EXHIBIT 3 BCDC PERMIT

BASIC LICENSE INFORMATION

<i>License Date:</i>	XXXXXX, 2023
<i>License Number:</i>	17011
<i>Port:</i>	CITY AND COUNTY OF SAN FRANCISCO , a municipal corporation, operating by and through the SAN FRANCISCO PORT COMMISSION
<i>Port's Address:</i>	Port of San Francisco Pier 1 San Francisco, California 94111 Attention: Deputy Director, Real Estate and Development Telephone: (415) 274-0400 Facsimile: (415) 274-0494
<i>Licensee:</i>	Young Men's Christian Association of San Francisco , a California Nonprofit Public Benefit Corporation
<i>Contact Information:</i>	Licensee's Contact Information is provided in Lease No. L- 16997
<i>License:</i>	This License grants a revocable, personal, non-assignable, non-exclusive, and non-possessory privilege for the Licensee, in connection with Licensee's operations under Port Lease No. L- 16997 between Port as landlord and Licensee as tenant (" Lease ") on a temporary basis only, to conduct the Permitted Activities in the License Area (defined below).
<i>Sublicense:</i>	Notwithstanding Section 3 , subject to Port's consent as provided under the Lease, Licensee may sublicense this License to its Subtenants under the Lease, as those terms are defined by the Lease.
<i>License Area:</i>	The " License Area " consists of undesignated outdoor "pod" space in Crane Cove Park in the City and County of San Francisco, State of California, as such License Area is further described in Exhibit 1 attached hereto and made a part hereof, together with any and all improvements and alterations thereto which area(s) are not fixed, but will be located in suitable locations consistent with the terms and conditions of this License (" Pods "). Licensee shall have use of undesignated License Area space of up to 2,000 square feet consisting of up to 1,400 square feet in the Great Lawn or Slipway areas and, if needed by Licensee's subtenant for such subtenant's outdoor program, an additional 600 square feet of space in the Beach or North Lawn areas, as each area is approximately shown on Exhibit 1 . If Port reasonable determines that the use of such amount of square footage is materially affecting the general

	<p>public's use and enjoyment of Crane Cove Park, then Port may reduce the amount of the License Area square footage to not more than 1,400 square feet in the aggregate. Tenant may request to resume use of up to 2,000 square feet in the aggregate, and Port may either grant or deny Tenant's request in its reasonable discretion.</p> <p>Port, in its reasonable discretion, without liability to Licensee, shall have the right to permanently or temporarily close, revise or modify any portion of the License Area upon reasonable notice to Licensee and without amendment or modification of this License. Licensee shall comply with any such revisions or modifications and failure to do so will be a material default of this License. To the extent of such closure, revision or modification, Licensee's obligations shall terminate or be suspended (subject to any obligations that survive expiration or earlier termination of this License).</p>
<i>Term:</i>	<p>This License shall be effective on the effective date of the Lease ("License Effective Date"), shall commence on the date on which Licensee notifies Port in writing that Licensee (or a Sublicensee) elects to commence the Permitted Activities in the License Area, which date shall be no earlier than the commencement date of the Lease ("License Commencement Date"), and, unless earlier terminated in accordance with its terms and without limiting Port's right to terminate this License under Section 3, shall be coterminous with the Lease, including any Extension Term or holdover period with Port's consent as provided in the Lease ("License Expiration Date") ("Term").</p> <p>Promptly following each of the actual License Effective Date and License Commencement Date, Port and Licensee shall execute a Memorandum substantially in the form attached hereto as Exhibit 2, confirming the actual dates, but either party's failure to do so shall not affect the commencement or expiration of the Term.</p>
<i>Monthly License Fee:</i>	<p>Provided there is no Event of Default of the Lease (as defined in the Lease), there shall be no fee under this License.</p> <p>Licensee agrees to pay for the fair market usage of the License Area as determined by Port during any period of an Event of Default under the Lease.</p>
<i>Permitted Activities:</i>	<p>The License Area shall be used solely for (i) staging and gathering for class/camp participants, including check-in stations; and (ii) exercise and instructional classes as further detailed in the Operations Plan and for no other purpose.</p> <p>Licensee acknowledges and agrees that Special Events are not permitted either under this License and that a separate agreement is needed for Special Events and that Port shall process Licensee's and its Sublicensees' requests for Special Events in the same manner as for all other applicants.</p>
<i>Operations Plan:</i>	<p>All Permitted Activities must be performed in compliance with the Operations Plan attached to the Lease as Exhibit G and</p>

	<p>incorporated into this License. The Operations Plan is supplemental to the License; in the event of any conflict or inconsistency between the License and the Operations Plan, the License will control.</p> <p>Failure to comply with the Operations Plan after notice and an opportunity to cure as provided in Section 11 is a material breach of this License.</p>
<p><i>Permitted Hours of Operation:</i></p>	<p>Daily (7 days/week), sunrise to sunset</p>
<p><i>Additional Requirements/Prohibitions:</i></p>	<p>In addition to, and without limiting, the Prohibited Uses specified in Section 7, Licensee must comply with the following.</p> <p>(a) Licensee’s operations shall not unreasonably interfere with or impede the use of Crane Cove Park by the public, other Port tenants, licensees or users or the Port, and Licensee’s operations shall not interfere with the use of adjacent Port properties by their respective tenants, licensees and invitees. Licensee shall not place or allow to be placed furniture or equipment outside the License Area and no furniture or equipment may be left outside of Building 49 overnight.</p> <p>(b) To the extent that any portion of the License Area is within BCDC jurisdiction, Licensee activities must comply with BCDC permit, attached hereto as Exhibit 3.</p> <p>(c) All uses must comply with the Port Code and applicable Crane Cove Park Rules and Regulations, once adopted by the Port Commission, and as amended from time to time. Non-compliance with the Port Code shall be deemed a material default of this License.</p> <p>(d) This License allows Licensee to conduct certain commercial activities in Crane Cove Park which are otherwise prohibited by the Port Code without permission of the Port; this License constitutes a permit, license or other permission as required by the Port Code. Unless specifically authorized by this License, Licensee may not conduct any activities prohibited by the Port Code.</p> <p>(e) Retail sales, including equipment rentals, sale of lessons; sale of food, drink, merchandise are prohibited.</p> <p>(f) Special Events are prohibited.</p> <p>(g) construction of any kind; as well as temporary installations, such as signage and tents, are prohibited absent Port’s prior written approval and Regulatory Approvals. Port, in its proprietary capacity, has consented to the temporary installations detailed in the Operations Plan as of the License Effective Date.</p>

<i>Cure Period:</i>	Where Port elects to provide a cure period rather than exercise its right to revoke or terminate this License, the cure period shall be (i) Twenty Four (24) Hours following notice from Port for a failure to use the License Area in a manner that presents a health, safety, welfare or environmental risk or hazard, as determined by Port in its sole and absolute discretion; and (ii) within ten (10) days following written notice from Port in all other circumstances.
<i>Signage:</i>	Licensee shall not have the right to place, construct or maintain any business signage, awning or other exterior decoration or notices in or on the License Area without Port's prior written consent. Any sign that Licensee is permitted to place, construct or maintain on the License Area shall comply with all Laws relating thereto, including but not limited to Port's Sign Guidelines, the Port Code and the Port Building Code, as each may be revised from time to time, and Licensee shall obtain all Regulatory Approvals required by such Laws. All signage must be temporary and Licensee, at its sole cost and expense, shall remove all signs placed by it on the License Area at the expiration or earlier termination of this License.
<i>Parking:</i>	Drop-off only. Licensee acknowledges that this License does not include parking rights or spaces.
<i>Security:</i>	Licensee shall be solely responsible for any security services desired by Licensee for the License Area during Hours of Operation. Port shall have no obligation to provide security. Licensee shall have no obligation to provide security for the Building or License Areas. Licensee agrees that any loss, damage or theft from the License Area is not Port's responsibility.
<i>Mutual Cooperation:</i>	Licensee shall cooperate with Port, other licensees and users of the License Area and approaches thereto, and will not unreasonably interfere with their operations. Nothing in this License shall obligate Port to provide a Port representative at the License Area, nor shall such presence obligate Port, its officers, employees or agents to take any action whatsoever. Licensee agrees that Port, its officers, employees and agents shall not be responsible for regulating traffic at the License Area.
<i>Reporting Accidents:</i>	Licensee shall notify Port in writing of any incident or accident of which Licensee becomes aware involving significant personal injury or personal property damage which occurs in a License Area during Licensee's operations. Such notice shall be given within twenty-four (24) hours after Licensee learns of said incident. Failure to timely report such incidents or accidents shall constitute a material default under this License.
<i>License Prepared By:</i>	James Hurley, Development Project Manager

LICENSE TO USE PROPERTY

1. BASIC LICENSE INFORMATION.

This License to Use Property, dated for reference purposes only as of the License Date set forth in the Basic License Information, is by and between the **CITY AND COUNTY OF SAN FRANCISCO**, a municipal corporation (“City”), operating by and through the **SAN FRANCISCO PORT COMMISSION** (“Port”), as licensor, and the party identified in the Basic License Information as licensee (“Licensee”). The Basic License Information that appears on the preceding pages and all Exhibits and Schedules attached hereto are hereby incorporated by reference into this License and shall be construed as a single instrument and referred to herein as this “License.” In the event of any conflict or inconsistency between the Basic License Information and the License provisions, the Basic License Information will control.

2. GRANT OF LICENSE.

In consideration of the stated conditions and agreements, Port hereby grants permission to Licensee to carry on the Permitted Activities within the License Area described in the Basic License Information and *Exhibit 1* attached hereto.

3. TERM; REVOCABILITY.

This License is a revocable personal, non-assignable, non-exclusive and non-possessory privilege to enter and use the License Area for the Permitted Activities only on a temporary basis during the Term unless sooner terminated pursuant to the terms of this License.

3.1. Without limiting any of Port’s rights hereunder, by initialing below, Licensee agrees and acknowledges that Port may, in its sole and absolute discretion, revoke or terminate this License at any time prior to the License Expiration Date, without cause and without obligation to pay any consideration to Licensee (“**Port’s Termination Right**”). Failure of Licensee to initial below shall in no way affect or hinder Port’s Termination Right. If Port exercises Port’s Termination Right, all obligations of Licensee shall immediately terminate, except for those obligations that survive the expiration or earlier termination of this License.

Initials:

_____ Licensee

3.2. Licensee may terminate this License at any time prior to the License Expiration Date upon prior written notice to Port.

4. SECURITY DEPOSIT. The Security Deposit provided under the Lease will serve as security for the faithful performance by Licensee of all terms, covenants and conditions of this License. Port and Licensee agree that the terms, conditions, rights, and obligations of the parties as set forth in Section 9 of the Lease apply to the parties respective rights and obligations (including without limitation, Licensee’s waiver of provisions of California Civil Code Section 1950.7) with respect to the use of the Security Deposit under this License.

5. PERMITTED ACTIVITIES; SUITABILITY OF LICENSE AREA; PROHIBITED USES.

The License Area shall be used and occupied only for the Permitted Activities specified in the Basic License Information and for no other purpose. If the Basic License Information limits the times and location of the activities permitted hereunder, then Licensee shall not conduct the activity at times and locations other than at the times and locations hereinabove specified unless express prior written permission is granted by Port. Persons subject to this License must comply with the directions of the San Francisco Police Department and Fire Department in connection therewith.

Licensee acknowledges that Port has made no representations or warranties concerning the License Area, including without limitation, the seismological condition thereof. By entering onto the License Area under this License, Licensee acknowledges its receipt of **Schedules 1 and 4** attached to the Lease regarding conditions on and about the License Area and shall be deemed to have inspected the License Area and accepted the License Area in its “As Is” condition and as being suitable for the conduct of Licensee’s activity thereon as of the License Effective Date.

Licensee shall use the License Area solely for Permitted Activities and for no other purpose. Any other use in, on or around the License Area or surrounding or adjacent Port property shall be strictly prohibited, including, but not limited to, waste, nuisance or unreasonable annoyance to Port, its other licensees, tenants, or the owners or occupants of adjacent properties, interference with Port’s use of its property, or obstruction of traffic (including, but not limited to, vehicular and pedestrian traffic) (each, a “**Prohibited Use**”).

In the event Port determines after inspection of the License Area that a Prohibited Use or Prohibited Uses are occurring in, on or around the License Area, then Licensee shall immediately cease the Prohibited Use(s) and shall pay to Port an additional charge in the amount of Three Hundred Dollars (\$300) upon delivery of written notice to Licensee to cease the Prohibited Use (“**Notice to Cease Prohibited Use**”). In the event Port determines in subsequent inspection(s) of the License Area that Licensee has not ceased the Prohibited Use, then Licensee shall pay to Port an additional charge in the amount of Four Hundred Dollars (\$400) for each additional Notice to Cease Prohibited Use delivered to Licensee. The parties agree that the charges associated with each inspection of the License Area and delivery of the Notice to Cease Prohibited Use, if applicable, represent a fair and reasonable estimate of the administrative cost and expense which Port will incur by reason of Port’s inspection of the License Area and Licensee’s failure to comply with the applicable Notice to Cease Prohibited Use and that Port’s right to impose the foregoing charges shall be in addition to and not in lieu of any and all other rights under this License, at law or in equity. By signing this License, each party specifically confirms the accuracy of the statements made in this Section and the reasonableness of the amount of the charges described in this Section.

6. COMPLIANCE WITH LAWS; REGULATORY APPROVAL; PORT ACTING AS OWNER OF PROPERTY.

6.1. *Compliance With Laws.* Licensee, at Licensee’s sole cost and expense, promptly shall comply with all Laws relating to or affecting the condition, use or occupancy of the License Area to the extent that such Laws are applicable to Licensee’s or its Agents’ or Invitees’ acts or omissions on the License Area.

6.2. *Regulatory Approval.* Licensee understands that Licensee’s activity on the License Area may require Regulatory Approvals from Regulatory Agencies. Licensee shall be solely responsible for obtaining any such Regulatory Approvals, and Licensee shall not seek any Regulatory Approval without first obtaining the prior written approval of Port. All costs associated with applying for and obtaining any necessary Regulatory Approval shall be borne solely and exclusively by Licensee. Licensee shall be solely responsible for complying with any and all conditions imposed by Regulatory Agencies as part of a Regulatory Approval; provided, however, Licensee shall not agree to the imposition of conditions or restrictions in connection with its efforts to obtain a permit or other entitlement from any Regulatory Agency (other than Port), if the Port is required to be a co-permittee under such permit, or if the conditions or restrictions it would impose on Licensee’s activities could affect use of the Park or use or occupancy of other areas controlled or owned by the Port or would create obligations on the part of the Port (whether on or off of the License Area) to perform or observe, unless in each instance the Port has previously approved such conditions in writing, in Port’s sole and absolute discretion.

Any fines or penalties imposed as a result of the failure of Licensee to comply with the terms and conditions of any Regulatory Approval shall be promptly paid and discharged by Licensee, and Port shall have no liability, monetary or otherwise, for the fines and penalties. To the fullest extent permitted by Law, Licensee agrees to Indemnify City, Port and their Agents from and against any loss, expense, cost, damage, attorneys' fees, penalties, claims or liabilities which City or Port may incur as a result of Licensee's failure to obtain or comply with the terms and conditions of any Regulatory Approval.

6.3. Port Acting As Owner of Property. By signing this License, Licensee agrees and acknowledges that (i) Port has made no representation or warranty that any required Regulatory Approval can be obtained, (ii) although Port is an agency of City, Port has no authority or influence over any other Regulatory Agency responsible for the issuance of such required Regulatory Approvals, (iii) Port is entering into this License in its capacity as a landowner with a proprietary interest in the License Area and not as a Regulatory Agency of City with certain police powers, and (iv) Licensee is solely responsible for obtaining any and all required Regulatory Approvals in connection with the Permitted Activities on, in or around the License Area. Accordingly, Licensee understands that there is no guarantee, nor a presumption, that any required Regulatory Approval(s) will be issued by the appropriate Regulatory Agency and Port's status as an agency of City shall in no way limit the obligation of Licensee to obtain approvals from any Regulatory Agencies (including Port) which have jurisdiction over the License Area. Licensee hereby releases and discharges Port from any liability relating to the failure of any Regulatory Agency (including Port) from issuing any required Regulatory Approval.

6.4. Accessibility. California Law requires commercial landlords to disclose to tenants whether the property being leased has undergone inspection by a Certified Access Specialist ("CASp") to determine whether the property meets all applicable construction-related accessibility requirements. The Law does not require landlords to have the inspections performed. Licensee is hereby advised that the License Area has not been inspected by a CASp and, except to the extent expressly set forth in this License, Port shall have no liability or responsibility to make any repairs or modifications to the License Area in order to comply with accessibility standards. The following disclosure is required by Law:

"A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state Law. Although state Law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises."

Further, Licensee understands and agrees that Licensee may be subject to legal and financial liabilities if its use of the License Area does not comply with applicable federal and state disability access Laws. As further set forth in this Section, Licensee further understands and agrees that it is Licensee's obligation, at no cost to Port, to cause Licensee's uses of the License Area to be conducted in compliance with applicable federal or state disability access Laws.

7. UTILITIES, SERVICES, MAINTENANCE AND REPAIR.

7.1. Utilities. Port has no responsibility or liability of any kind with respect to any utilities that may be on, in or under the License Area. Licensee shall make arrangements and shall pay all charges for all Utilities to be furnished on, in or to the License Area to be used by Licensee. Licensee will procure all electricity for the License Area from the San Francisco Public Utilities Commission at rates to be determined by the SF Public Utilities Commission. If

the SF Public Utilities Commission determines that it cannot feasibly provide service to Licensee, Licensee may seek another provider.

7.2. Services. Port has no responsibility or liability of any kind with respect to the provision of any services to Licensee or on, in, or to the License Area. Licensee shall make arrangements and shall pay all charges for all services to be furnished on, in or to the License Area that may be required by Licensee, including, without limitation, security service, garbage and trash collection, janitorial service and extermination service.

7.3. Maintenance and Repair. Licensee shall not be obligated to maintain the License Area or to make any improvements, capital repairs, replacement or renewals of any kind, nature or description, except to the extent of damage caused by Licensee, its Agents or Invitees, as described below. Port shall not be obligated to make any repairs, replacement or renewals of any kind, nature or description whatsoever to the License Area or to any improvements or alterations now or hereafter located thereon. In the event that Licensee or its Agents or Invitees cause any damage (excepting ordinary wear and tear) to and around the License Area or any other Port property, Licensee shall be responsible and Port may, at its sole and absolute discretion, elect to repair the same itself or require Licensee to repair the same, all at Licensee's sole cost and expense; provided, however, that Licensee shall not be responsible for any damage caused by its Agents or Invitees on other Port property (in other words, property other than the License Area and the Premises under the Lease) unless the Agent's or Invitee's acts, omissions or negligence that caused the damage are such that they also trigger Licensee's indemnity obligations under **Section 12**. Upon receipt of any invoice from Port for costs incurred by Port related to any repair performed by Port in accordance with this Section, Licensee shall immediately reimburse Port therefor. This provision shall survive the expiration or earlier termination of this License.

8. TAXES AND ASSESSMENTS.

Licensee agrees to pay to the proper authority any and all taxes, assessments and similar charges on the License Area in effect at the time this License is entered into, or which become effective thereafter, including all taxes levied or assessed upon the possession, use, or occupancy, as distinguished from the ownership, of the License Area. Licensee, on behalf of itself and any permitted successors and assigns, recognizes and understands that this License may create a possessory interest subject to property taxation and that Licensee, and any permitted successor or assign may be subject to the payment of such taxes. Licensee, on behalf of itself and any permitted successors and assigns, further recognizes and understands that any assignment permitted hereunder and any exercise of any option to renew or extend this License may constitute a change in ownership for purposes of property taxation and therefore may result in a revaluation of any possessory interest created hereunder. San Francisco Administrative Code Sections 23.38 and 23.39 (or any successor statute) require that certain information relating to the creation, renewal, extension, assignment, sublicense, or other transfer of this License be reported to the County Assessor within sixty (60) days after any such transaction. Accordingly, Licensee must provide a copy of this License to the County Assessor not later than sixty (60) days after the Effective Date, and any failure of Licensee to timely provide a copy of this License to the County Assessor will be a default under this License. Licensee further agrees to provide such other information as may be requested by City or Port to enable City or Port to comply with any reporting requirements under applicable Law with respect to possessory interest. Licensee shall Indemnify Port, City and their Agents from and against any Claims resulting from any taxes and assessments related to this License.

9. INSURANCE. The insurance provisions set forth in Section 19 of the Lease are hereby incorporated in their entirety (except as set forth in the last sentence of this **Section 9**), and Licensee shall maintain throughout the Term, at Licensee's expense, the insurance coverages for the License Area in the manner required and subject to the terms and conditions of Lease Section 19 provided that terms applicable to a lease, such as "Premises", "Lease", and "Tenant"

will be replaced with terms applicable to a license, such as “License Area”, “License”, and “Licensee”. Further, the Parties agree that Licensee has no obligation under this License to maintain the following coverages for the License Area: (i) Builders Risk Insurance, (ii) Earthquake and Flood Insurance, (iii) Boiler and Machinery Insurance, (iv) Contractor’s Pollution Legal Liability Insurance, (v) Professional Liability, and (vi) Crime policy.

10. NOTICES.

Except as otherwise expressly provided in this License or by Law, all notices (including notice of consent or non-consent) required or permitted by this License or by Law must be in writing and be delivered by: (a) hand delivery; (b) first class United States mail, postage prepaid; or (c) overnight delivery by a nationally recognized courier or the United States Postal Service, delivery charges prepaid. Notices to a party must be delivered to that party’s mailing address in the Basic License Information, unless superseded by a notice of a change in that party’s mailing address for notices, given to the other party in the manner provided above, or by Licensee in Licensee’s written response to Port’s written request for such information.

All notices under this License shall be deemed to be duly delivered: (a) on the date personal delivery actually occurs; (b) if mailed, on the business day following the business day deposited in the United States mail or, if mailed return receipt requested, on the date of delivery or on which delivery is refused as shown on the return receipt; or (c) the business day after the business day deposited for overnight delivery.

Notices may not be given by facsimile or electronic mail, but either party may deliver a courtesy copy of a notice by facsimile or electronic mail.

11. DEFAULT BY LICENSEE; REMEDIES.

11.1. *Event of Default.* The occurrence of any one or more of the following events shall constitute a default by Licensee:

(a) Failure by Licensee to pay when due any Fees and/or all other charges due hereunder; or

(b) Failure to perform any other provisions of this License (including of the Operations Plan), if the failure to perform is not cured within the Cure Period set forth in the Basic License Information after Port has given notice to Licensee; or

(c) An assignment, or attempted assignment, of this License by Licensee except in connection with a Port-approved Transfer as defined by the Lease; or

(d) An Event of Default under the terms of the Lease; or

(e) Either (i) the failure of Licensee to pay its debts as they become due, the written admission of Licensee of its inability to pay its debts, or a general assignment by Licensee for the benefit of creditors; or (ii) the filing by or against Licensee of any action seeking reorganization, arrangement, liquidation, or other relief under any Law relating to bankruptcy, insolvency, or reorganization or seeking the appointment of a trustee, receiver or liquidator of Licensee’s or any substantial part of Licensee’s assets; or (iii) the attachment, execution or other judicial seizure of substantially all of Licensee’s interest in this License.

11.2. *Port’s Remedies.* Upon default by Licensee, Port shall, without further notice or demand of any kind to Licensee or to any other person, and in addition to any other remedy Port may have under this License and at law or in equity, have the ability to immediately terminate this License and Licensee’s right to use the License Area. Upon notice of any such termination, Licensee shall immediately vacate and discontinue its use of the License Area and Port may take any and all action to enforce Licensee’s obligations.

12. INDEMNITY AND EXCULPATION.

12.1. General Indemnity. Licensee shall Indemnify Port, City, including, but not limited to, all of their respective boards, commissions, departments, agencies, and other subdivisions, and their respective Agents (collectively, “**Indemnified Parties**”) from, and shall defend them, without cost to the Indemnified Parties, against any and all Claims arising directly or indirectly out of: (a) any accident, injury to or death of any person, including any Agents and/or Invitees of Licensee, or loss or damage to or destruction of any property occurring in, on or about the License Area, or any other Port property, from Licensee’s or its Agent’s or Invitee’s acts or omissions, or (b) any default by Licensee in the observance or performance of any of the terms, covenants or conditions of this License, or (c) the use, occupancy, manner of use or occupancy, or condition of the License Area or the activities therein by Licensee, its Agents, or Invitees, or (d) any construction or other work undertaken by Licensee on the License Area whether before or during the Term, or (e) any acts, omissions or negligence of Licensee, its Agents or Invitees, in, on or about the License Area, or any other Port property.

12.2. Hazardous Materials Indemnity.

(a) In addition to its obligations under *Section 12.1* and subject to *Section 12.2(b)*, Licensee, for itself and on behalf of its Agents and Invitees, agrees to Indemnify the Indemnified Parties from any and all Hazardous Material Claims that arise as a result of: (i) any Hazardous Material Condition, and (ii) Licensee’s Exacerbation of any Hazardous Material Condition.

(b) Unless Licensee or its Agents or Invitees Exacerbate a Hazardous Material Condition, Licensee’s Indemnity obligations under this License do not include any Hazardous Material Claims that arise as a result of a Hazardous Material Condition: (i) caused solely by City, Port, or their Agents during Licensee’s, its Agent’s or Invitee’s use of the License Area; (ii) arising before the Commencement Date or the date of Licensee’s first use of the License Area under the Prior Licenses, whichever is earlier; (iii) caused by Licensee’s Agent’s acts, omissions or negligence on other Port property (in other words, on Port property other than the License Area), unless such Agent was performing work on Licensee’s behalf or otherwise acting on Licensee’s behalf in furtherance of the Permitted Activities under this License; (iv) caused by Licensee’s Invitee’s acts, omissions or negligence on other Port property (in other words, on Port property other than the License Area); or (v) caused by Licensee’s Invitee’s acts, omissions or negligence at a time that is outside of the Hours of Operation unless there is a causal nexus between such Invitee’s acts, omissions or negligence and the Invitee’s relationship with Licensee.

(c) Licensee’s obligation to Indemnify the Indemnified Parties under subsection (a) includes: (i) costs incurred in connection with any Investigation or Remediation requested by Port or required by any Environmental Regulatory Agency and to restore the affected area to its condition before the Release; (ii) damages for diminution in the value of the License Area; (iii) damages for the loss or restriction on use of rentable or usable space or of any amenity of the License Area; (iv) damages arising from any adverse impact on marketing the space; (v) sums paid in settlement of Claims, Hazardous Material Claims, Environmental Regulatory Actions, including fines and penalties; (vi) natural resource damages; and (vii) attorneys’ fees, consultant fees, expert fees, court costs, and all other litigation, administrative or other judicial or quasi-judicial proceeding expenses. If Port pays any costs within the scope of this section, Licensee must reimburse Port for Port’s costs, plus interest at the Interest Rate from the date Port incurs each cost until paid, within three (3) business days after Port’s payment demand. Licensee’s obligations hereunder shall survive the expiration or earlier termination of this License.

12.3. Scope of Indemnities. The Indemnification obligations of Licensee set forth in this License shall be enforceable regardless of the joint or concurrent, active or passive negligence of the Indemnified Parties, and regardless of whether liability without fault is

imposed or sought to be imposed on the Indemnified Parties. The Indemnification obligations of Licensee set forth in this License shall be enforceable except to the extent that such Indemnity is void or otherwise unenforceable under applicable Law in effect on, or validly retroactive to, the date of this License. Except as specifically provided otherwise, the Indemnification obligations of Licensee set forth in this License shall exclude Claims resulting solely from the willful misconduct or gross negligence of the Indemnified Parties.

In addition to Licensee's obligation to Indemnify the Indemnified Parties, Licensee specifically acknowledges and agrees that it has an immediate and independent obligation to defend the Indemnified Parties from any Claim which actually or potentially falls within the Indemnification obligations of Licensee set forth in this License, even if the allegations are or may be groundless, false or fraudulent. This Indemnification by Licensee shall begin from the first notice that any claim or demand is or may be made and shall continue at all times thereafter.

Port agrees that Licensee's Indemnity for Claims that arise out of any Licensee's Invitee's acts, omissions or negligence on "other Port property" as set forth above in **Section 12.1** applies only if such Claims (i) arise directly or indirectly out of Licensee's Invitee's acts, omissions or negligence, (ii) such act, omission or negligence occurred in, on, under, or about the License Area, and (iii) if such act, omission or negligence occurred outside of the Hours of Operation, there is a causal nexus between such Invitee's acts, omissions or negligence and the Invitee's relationship with Licensee.

Port agrees that Licensee's Indemnity for Claims that arise out of any Licensee's Agent's acts, omissions or negligence on "other Port property" as set forth above in **Section 12.1** applies only if such Claims (i) arise directly or indirectly out of Licensee's Agent's acts, omissions or negligence, and (ii) such act, omission or negligence occurred while such Agent was performing work on Licensee's behalf or otherwise acting on Licensee's behalf in furtherance of the Permitted Activities under this License.

12.4. Exculpation and Waiver. To the fullest extent permitted by Law, Licensee, as a material part of the consideration to be rendered to Port, hereby waives any and all Claims, including without limitation all Claims arising from the joint or concurrent, active or passive, negligence of the Indemnified Parties, but excluding any Claims caused solely by the Indemnified Parties' willful misconduct or gross negligence. The Indemnified Parties shall not be responsible for or liable to Licensee, and Licensee hereby assumes the risk of, and waives and releases the Indemnified Parties from all Claims, whether direct or indirect, known or unknown, foreseen or unforeseen, for any injury, loss or damage to any person or property in or about the License Area by or from any cause whatsoever including, without limitation, (i) any act or omission of persons occupying or using adjoining areas, including without limitation, Port, (ii) theft, (iii) explosion, fire, steam, oil, electricity, water, gas or rain, pollution or contamination, (iv) stopped, leaking or defective Utilities, (v) damages to goods, wares, goodwill, merchandise, equipment or business opportunities, (vi) Claims by persons in, upon or about the License Area, or any other Port property for any cause arising at any time, (viii) alleged facts or circumstances of the process or negotiations leading to this License prior to the Commencement Date, (ix) inability to use all or any portion of the License Area due to sea level rise, and (x) any other acts, omissions or causes to the fullest extent permitted by Law.

Licensee understands and expressly accepts and assumes the risk that any facts concerning the Claims released in this License might be found later to be other than or different from the facts now believed to be true, and agrees that the releases in this License shall remain effective. Therefore, with respect to the Claims released in this License, Licensee waives any rights or benefits provided by Section 1542 of the Civil Code, which reads as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE

MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE
DEBTOR OR RELEASED PARTY.

Licensee's Initials

Licensee's Initials

Licensee specifically acknowledges and confirms the validity of the release made above and the fact that Licensee was represented by counsel who explained the consequences of the release at the time this License was made, or that Licensee had the opportunity to consult with counsel, but declined to do so.

12.5. *Survival.* The provisions of *Section 12* shall survive the expiration or earlier termination of this License.

13. HAZARDOUS MATERIALS.

13.1. *Requirements for Handling.* Neither Licensee nor its Agents or Invitees may Handle or permit any other person to Handle any Hazardous Material in, on, under or about the License Area or any other Port property, subject only to the following exceptions, provided that Handling is at all times in full compliance with all Environmental Laws: janitorial, office and other supplies and equipment in amounts customarily used for the Permitted Activities and subject to the Operations Plan.

13.2. *Licensee Responsibility.*

(a) Generally. Licensee agrees to protect its Agents and Invitees in its operations on the License Area from hazards associated with Hazardous Materials in accordance with all Environmental Laws and also agrees, for itself and on behalf of its Agents and Invitees, that during its use and occupancy of the License Area, each of them:

(i) will not permit any new Hazardous Materials to be present in, on, under or about the License Area, or other Port property except as permitted under *Section 13.1* (Requirements for Handling);

(ii) will not cause or permit any new Hazardous Material Condition;
and

(iii) will comply with all Environmental Laws relating to Licensee's use of the License Area and any Hazardous Material Condition, and will not engage in or permit any activity at the License Area or any other Port property, or in the operation of any vehicles or vessels used in connection with the License Area in violation of any Environmental Laws.

(b) Other Port Property. Port agrees that with respect to "other Port property" only (in other words, on Port property other than the License Area) as such term is used under *Sections 13.1 and 13.2(a)*, (i) without limiting any other agreement Licensee may have with Port, Licensee has no obligations to or for Licensee's Invitees on other Port property, and (ii) Licensee's obligations with respect to Licensee's Agents on other Port property arise only to the extent such Agent is performing work on Licensee's behalf or otherwise acting on Licensee's behalf in furtherance of the Permitted Activities under this License.

13.3. *Licensee's Environmental Condition Notice Requirements.*

(a) Licensee must notify Port immediately, orally or by other means that will transmit the earliest possible notice to Port staff, followed within twenty-four (24) hours by written notice, of and when Licensee learns or has reason to believe Hazardous Materials were Released or, except as allowed under *Section 13.1* (Requirements for Handling), Handled, in, on, or about the License Area, any other Port property, or the environment or from any vehicles or vessels that Licensee, its Agents or Invitees use during Licensee's occupancy of the License

Area, whether or not the Release or Handling is in quantities that would be required under Environmental Laws to be reported to an Environmental Regulatory Agency.

(b) Licensee must notify Port immediately, orally or by other means that will transmit the earliest possible notice to Port staff, followed within twenty-four (24) hours by written notice, and contemporaneously provide Port with an electronic copy, of:

(i) Any notice of the Release or Handling of Hazardous Materials, in, on, or about the License Area, any other Port property, or the environment, or from any vehicles or vessels Licensee or its Agents or Invitees uses during Licensee's occupancy of the License Area that Licensee or its Agents or Invitees provides to an Environmental Regulatory Agency;

(ii) Any notice of a violation, or a potential or alleged violation, of any Environmental Law that Licensee or its Agents or Invitees receives from any Environmental Regulatory Agency related to the License Area;

(iii) Any other Environmental Regulatory Action that is instituted or threatened by any Environmental Regulatory Agency against Licensee or its Agents or Invitees and that relates to the Release or Handling of Hazardous Materials, in, on, or about the License Area, other Port property, or the environment, or from any vehicles or vessels Licensee or its Agents or Invitees use during Licensee's occupancy of the License Area;

(iv) Any Hazardous Materials Claim that is instituted or threatened by any third party against Licensee or its Agents or Invitees and that relates to the Release or Handling of Hazardous Materials, in, on, or about the License Area, other Port property, or the environment, or from any vehicles or vessels that Licensee or its Agents or Invitees use during Licensee's occupancy of the License Area; and

(v) Any notice of the termination, expiration, or substantial amendment of any Environmental Regulatory Approval needed by Licensee or its Agents or Invitees for their operations at the License Area.

(c) Licensee must notify Port of any meeting, whether conducted face-to-face or telephonically, between Licensee and any Environmental Regulatory Agency regarding an Environmental Regulatory Action. Port will be entitled to participate in any such meetings at its sole election.

(d) Licensee must notify Port of any Environmental Regulatory Agency's issuance of an Environmental Regulatory Approval. Licensee's notice to Port must state the issuing entity, the Environmental Regulatory Approval identification number, and the date of issuance and expiration of the Environmental Regulatory Approval. In addition, Licensee must provide Port with a list of any Environmental Regulatory Approval, plan or procedure required to be prepared and/or filed with any Environmental Regulatory Agency for operations on the License Area, including a "Spill Prevention Control and Countermeasure Plan." Licensee must provide Port with copies of any of the documents within the scope of this Section upon Port's request.

(e) Licensee must provide Port with copies of all communications with Environmental Regulatory Agencies and all non-privileged communications with other persons regarding potential or actual Hazardous Materials Claims arising from Licensee's or its Agents' or Invitees' operations at the License Area. Upon Port's request, Licensee must provide Port with a log of all communications withheld under a claim of privilege that specifies the parties to and subject of each withheld communication.

(f) Port may from time to time request, and Licensee will be obligated to provide, information reasonably adequate for Port to determine that any and all Hazardous Materials are being Handled in the License Area in a manner that complies with all Environmental Laws.

13.4. Requirement to Remediate.

(a) Licensee's Remediation obligations under this Subsection (a) are subject to *Sections 13.4(b) and 13.4(c)*.

(i) After notifying Port in accordance with *Section 13.3(a)* (Licensee's Environmental Condition Notice Requirements), Licensee must Remediate at its sole cost in compliance with all Environmental Laws and this License, any Hazardous Material Condition occurring during the Term or while Licensee or its Agents or Invitees otherwise occupy any part of the License Area. Licensee must obtain Port's approval of a Remediation work plan, whether or not required under Environmental Laws, then begin Remediation actions immediately following Port's approval of the work plan and continue diligently until Remediation is complete, as determined by Port, in its sole discretion.

(ii) In addition to its obligations under clause (i), before this License terminates for any reason, Licensee must Remediate at its sole cost in compliance with all Environmental Laws and this License: (A) any Hazardous Material Condition caused by Licensee's or its Agents' or Invitees' Handling Hazardous Materials during the Term; and (B) any Hazardous Material Condition discovered during Licensee's occupancy that is required to be Remediated by any Regulatory Agency if Remediation would not have been required but for Licensee's use of the License Area.

(iii) If Environmental Laws require a Remediation action plan, Licensee must provide a draft of its plan to Port for comment and approval before submittal to the appropriate Environmental Regulatory Agency, and a copy of the final plan as submitted.

(iv) In all situations relating to Handling or Remediating Hazardous Materials, Licensee must take all actions that are reasonably necessary in Port's sole judgment to protect the value of the License Area, such as obtaining Environmental Regulatory Approvals related to Hazardous Materials and taking measures to remedy any deterioration in the condition or diminution of the value of any portion of the License Area in any manner related directly, or indirectly to Hazardous Materials.

(b) Unless Licensee or its Agents or Invitees Exacerbate the Hazardous Material Condition and subject further to *Section 13.4(c)*, Licensee will not be obligated to Remediate any Hazardous Material Condition: (i) caused solely by City, Port, or their Agents during Licensee's occupancy of the License Area; or (ii) arising before the Commencement Date or the date of Licensee's first use of the License Area, whichever is earlier.

(c) Licensee will not be obligated to Remediate any Hazardous Material Condition on other Port property (in other words, on Port property other than the Premises) (i) caused by Licensee's Agent's acts, omissions or negligence on other Port Property, unless at the time such Hazardous Material Condition was caused or Exacerbated, such Agent was performing work directly or indirectly on Licensee's behalf or otherwise acting directly or indirectly on Licensee's behalf in furtherance of the Permitted Activities under this License; or (ii) caused by Licensee's Invitee's acts, omissions or negligence on other Port Property.

13.5. Port's Right to Audit. Port will have the right, but not the obligation, to inspect and audit the License Area for any Hazardous Materials, including the right to Investigate, at reasonable times under *Section 14* (Port's Entry on License Area). Port's failure to inspect or obtain samples or to detect conditions attributable to Licensee's operations if an inspection is conducted may not be deemed to be a release of any liability for any Hazardous Materials subsequently determined to be Licensee's responsibility under this License.

13.6. Storm Water Pollution Prevention.

(a) Licensee must comply with the applicable provisions of the Statewide General Permit for Discharge of Industrial Storm Water issued by the State Water Resources Control Board, including filing a Notice of Intent to be covered, developing and implementing a

site-specific Storm Water Pollution Prevention Plan (“SWPPP”), and conducting storm water monitoring and reporting. If applicable, Licensee’s SWPPP and a copy of a Notice of Intent for Licensee’s License Area must be submitted to Port’s Real Estate Division before beginning operations in the License Area.

(b) In addition to requiring compliance with the permit requirements under Subsection (a), Licensee shall comply with the post-construction stormwater control provisions of the Statewide General Permit for Discharge of Stormwater from Small Municipalities and the San Francisco Stormwater Management Requirements and Design Guidelines, subject to review and permitting by the Port.

13.7. Presence of Hazardous Materials. California Law requires landlords to disclose the presence or potential presence of certain Hazardous Materials. Accordingly, Licensee is hereby advised that Hazardous Materials (as herein defined) may be present on or near the License Area, including, but not limited to vehicle fluids, janitorial products, tobacco smoke, and building materials containing chemicals, such as asbestos, naturally-occurring radionuclides, lead and formaldehyde. Further, the Hazardous Materials described in the reports listed in *Schedule 4* attached to the Lease, copies of which have been delivered to or made available to Licensee, are known to be present at or near the License Area. By execution of this License, Licensee acknowledges that the notice set forth in this Section satisfies the requirements of California Health and Safety Code Section 25359.7 and related Laws. Licensee must disclose the information contained in this Section to any sublicensee, licensee, transferee, or assignee of Licensee’s interest in this License. Licensee also acknowledges its own obligations pursuant to California Health and Safety Code Section 25359.7 as well as the penalties that apply for failure to meet such obligations.

13.8. Survival. Licensee’s obligations under this *Section 13* (Hazardous Materials) shall survive the expiration or earlier termination of this License.

14. PORT’S ENTRY ON LICENSE AREA.

14.1. Entry for Inspection. Port and its authorized Agents shall have the right to enter the License Area without notice at any time for the purpose of inspecting the License Area to determine whether the License Area is in good condition and whether Licensee is complying with its obligations under this License; to perform any necessary maintenance, repairs or restoration to the License Area; and to show the License Area to prospective licensees, tenants or other interested parties.

14.2. Emergency Entry. Port may enter the License Area at any time, without notice, in the event of an emergency. Port shall have the right to use any and all means that Port may deem proper in such an emergency in order to obtain entry to the License Area. Entry to the License Area by any of these means, or otherwise, shall not under any circumstances be construed or deemed to be a breach of Licensee’s rights under this License.

14.3. No Liability. Port shall not be liable in any manner, and Licensee hereby waives any Claims for damages, for any inconvenience, disturbance, loss of business, nuisance, or other damage, including without limitation any abatement or reduction in Fees due hereunder, arising out of Port’s entry onto the License Area, or entry by the public (as Licensee has a non-exclusive right to use such License Area) onto the License Area.

15. SURRENDER.

Upon the expiration or earlier termination of this License, Licensee shall surrender to Port the License Area and any pre-existing alterations and improvements without damage or deterioration caused by Licensee’s Permitted Activities or failure to perform all of its obligations under this License. The License Area shall be surrendered clean, free of debris, waste, and with respect to Hazardous Materials, in accordance with Licensee’s obligations under *Section 13*. On or before the expiration or earlier termination hereof, Licensee shall remove all of its personal

property and, unless Port directs otherwise, any alterations and improvements that Licensee has installed with Port's consent, and perform all restoration made necessary by the removal of Licensee's personal property.

Without any prior notice, Port may elect to retain or dispose of Licensee's personal property and any alterations and improvements that Licensee has installed with or without Port's consent that Licensee does not remove from the License Area prior to the expiration or earlier termination of this License. These items shall be deemed abandoned. Port may retain, store, remove, and sell or otherwise dispose of abandoned property, and Licensee waives all Claims against Port for any damages resulting from Port's retention, removal and disposition of such property; provided, however, that Licensee shall be liable to Port for all costs incurred in storing, removing and disposing of abandoned property and repairing any damage to the License Area resulting from such removal. Licensee agrees that Port may elect to sell abandoned property and offset against the sales proceeds Port's storage, removal, and disposition costs without notice to Licensee. Licensee hereby waives the benefits of California Civil Code Section 1993 et seq., to the extent applicable.

If Licensee fails to surrender the License Area as required by this Section, Licensee shall Indemnify Port from all damages resulting from Licensee's failure to surrender the License Area, including, but not limited to, any costs of Port to enforce this Section and Claims made by a succeeding licensee or tenant resulting from Licensee's failure to surrender the License Area as required together with, in each instance, reasonable attorneys' fees and costs.

Licensee's obligation under this Section shall survive the expiration or earlier termination of this License.

16. ATTORNEYS' FEES; LIMITATIONS ON DAMAGES.

16.1. *Litigation Expenses.* The prevailing party in any action or proceeding (including any cross complaint, counterclaim or bankruptcy proceeding) against the other party by reason of a claimed default, or otherwise arising out of a party's performance or alleged non-performance under this License, shall be entitled to recover from the other party its costs and expenses of suit, including but not limited to, reasonable attorneys' fees, which fees shall be payable whether or not such action is prosecuted to judgment. "**Prevailing party**" within the meaning of this Section shall include, without limitation, a party who substantially obtains or defeats, as the case may be, the relief sought in the action, whether by compromise, settlement, judgment or the abandonment by the other party of its claim or defense. Attorneys' fees under this Section shall include attorneys' fees and all other reasonable costs and expenses incurred in connection with any appeal.

16.2. *City Attorney.* For purposes of this License, reasonable fees of attorneys of the City's Office of the City Attorney shall be based on the fees regularly charged by private attorneys with an equivalent number of years of professional experience (calculated by reference to earliest year of admission to the bar of any state) who practice in San Francisco in Law firms with approximately the same number of attorneys as employed by the Office of the City Attorney.

16.3. *Limitation on Damages.* Licensee agrees that Licensee will have no recourse with respect to, and Port shall not be liable for, any obligation of Port under this License, or for any Claim based upon this License, except to the extent of the fair market value of Port's fee interest in the License Area (as encumbered by this License). Licensee's execution and delivery hereof and as part of the consideration for Port's obligations hereunder Licensee expressly waives all such liability.

16.4. *Non-Liability of City Officials, Employees and Agents.* No elective or appointive board, commission, member, officer, employee or other Agent of City and/or Port shall be personally liable to Licensee, its successors and assigns, in the event of any default or breach by City and/or Port or for any amount which may become due to Licensee, its successors

and assigns, or for any obligation of City and/or Port under this License. Under no circumstances shall Port, City, or their respective Agents be liable under any circumstances for any consequential, incidental or punitive damages.

16.5. *Limitation on Port's Liability Upon Transfer.* In the event of any transfer of Port's interest in and to the License Area, Port (and in case of any subsequent transfers, the then transferor), subject to the provisions hereof, will be automatically relieved from and after the date of such transfer of all liability with regard to the performance of any covenants or obligations contained in this License thereafter to be performed on the part of Port, but not from liability incurred by Port (or such transferor, as the case may be) on account of covenants or obligations to be performed by Port (or such transferor, as the case may be) hereunder before the date of such transfer.

17. MINERAL RESERVATION.

The State of California ("State"), pursuant to Section 2 of Chapter 1333 of the Statutes of 1968, as amended, has reserved all subsurface mineral deposits, including oil and gas deposits, on or underlying the License Area and Licensee acknowledges such reserved rights including necessary ingress and egress rights. In no event shall Port be liable to Licensee for any Claims arising from the State's exercise of its rights nor shall such action entitle Licensee to any abatement or diminution of Fees or otherwise relieve Licensee from any of its obligations under this License.

18. CITY AND PORT REQUIREMENTS.

The provisions of Lease Section 35 (City and Port Requirements) are incorporated by reference as though fully set forth in this License. Licensee understands and agrees that its failure to comply with any applicable provision of the listed requirements shall be deemed a material breach of this License and may give rise to penalties under the applicable ordinance.

19. MISCELLANEOUS PROVISIONS.

19.1. *California Law; Venue.* This License is governed by, and shall be construed and interpreted in accordance with, the Laws of the State of California and City's Charter. Any legal suit, action, or proceeding arising out of or relating to this License shall be instituted in the Superior Court for the City and County of San Francisco, and each party agrees to the exclusive jurisdiction of such court in any such suit, action, or proceeding (excluding bankruptcy matters). The parties irrevocably and unconditionally waive any objection to the laying of venue of any suit, action, or proceeding in such court and irrevocably waive and agree not to plead or claim that any suit, action, or proceeding brought in San Francisco Superior Court relating to this License has been brought in an inconvenient forum. The parties also unconditionally and irrevocably waive any right to remove any such suit, action, or proceeding to federal Court.

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

19.3. *Amendments.* No amendment of this License or any part thereof shall be valid unless it is in writing and signed by all of the parties hereto.

19.4. *Severability.* If any provision of this License or the application thereof to any person, entity or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this License, or the application of such provision to persons, entities or circumstances other than those as to which is invalid or unenforceable, shall not be affected thereby, and each other provision of this License shall be valid and be enforceable to the fullest extent permitted by Law.

19.5. Interpretation of License.

(a) References in this License to Licensee's acts or omissions will mean acts or omissions by Licensee and its Agents and Invitees unless the context requires or specifically stated otherwise.

(b) Whenever an exhibit or schedule is referenced, it means an attachment to this License unless otherwise specifically identified. All exhibits and schedules are incorporated in this License by reference.

(c) Whenever a section, article or paragraph is referenced, it refers to this License unless otherwise specifically provided. The captions preceding the articles and sections of this License and in the table of contents have been inserted for convenience of reference only and must be disregarded in the construction and interpretation of this License. Wherever reference is made to any provision, term, or matter "in this License," "herein" or "hereof" or words of similar import, the reference will be deemed to refer to any reasonably related provisions of this License in the context of the reference, unless the reference refers solely to a specific numbered or lettered article, section, subdivision, or paragraph of this License.

(d) References to all Laws, including specific statutes, relating to the rights and obligations of either party mean the Laws in effect on the effective date of this License and as they are amended, replaced, supplemented, clarified, corrected, or superseded at any time during the Term or while any obligations under this License are outstanding, whether or not foreseen or contemplated by the parties. References to specific code sections mean San Francisco ordinances unless otherwise specified.

(e) The terms "include," "included," "including" and "such as" or words of similar import when following any general term, statement, or matter may not be construed to limit the term, statement, or matter to the specific items or matters, whether or not language of non-limitation is used, but will be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of the term, statement, or matter, and will be deemed to be followed by the phrase "without limitation" or "but not limited to."

(f) This License has been negotiated at arm's length between persons sophisticated and knowledgeable in the matters addressed. In addition, each party has been represented by experienced and knowledgeable legal counsel, or has had the opportunity to consult with counsel. Accordingly, the provisions of this License must be construed as a whole according to their common meaning in order to achieve the intents and purposes of the parties, without any presumption (including a presumption under California Civil Code § 1654) against the party responsible for drafting any part of this License.

(g) The party on which any obligation is imposed in this License will be solely responsible for paying all costs and expenses incurred in performing the obligation, unless the provision imposing the obligation specifically provides otherwise.

(h) Whenever required by the context, the singular includes the plural and vice versa, the masculine gender includes the feminine or neuter genders and vice versa, and defined terms encompass all correlating forms of the terms (e.g., the definition of "waive" applies to "waiver," "waivers," "waived," "waiving," etc.).

(i) References to days mean calendar days unless otherwise specified, provided that if the last day on which a party must give notice, respond to a notice, or take any other action under this License occurs on a day that is not a business day, the date by which the act must be performed will be extended to the next business day.

19.6. Successors. The terms, covenants, agreements and conditions set forth in this License shall bind and inure to the benefit of Port and Licensee and, except as otherwise provided herein, their personal representatives and successors and assigns.

19.7. Real Estate Broker's Fees. Port will not pay, nor will Port be liable or responsible for, any finder's or broker's fee in connection with this License. Licensee agrees to Indemnify Port from any Claims, including attorneys' fees, incurred by Port in connection with any such Claim or Claims of any person(s), finder(s), or broker(s) to a commission in connection with this License.

19.8. Counterparts. For convenience, the signatures of the parties to this License may be executed and acknowledged on separate pages which, when attached to this License, shall constitute as one complete License. This License may be executed in any number of counterparts each of which shall be deemed to be an original and all of which shall constitute one and the same License.

19.9. Authority. If Licensee signs as a corporation or a partnership, each of the persons executing this License on behalf of Licensee does hereby covenant and warrant that Licensee is at the time of execution and at all times while this License is in effect during the Term will continue to be: (1) a duly authorized and existing entity, (2) that Licensee has and is qualified to do business in California, and that Licensee has full right and authority to enter into this License, and that each and all of the persons signing on behalf of Licensee are authorized to do so. Upon Port's request, Licensee shall remain qualified to do business in California and shall provide Port with evidence reasonably satisfactory to Port confirming the foregoing representations and warranties, and covenants.

19.10. No Implied Waiver. No failure by Port to insist upon the strict performance of any obligation of Licensee under this License or to exercise any right, power or remedy arising out of a breach thereof, irrespective of the length of time for which such failure continues, and no acceptance of full or partial Fees during the continuance of any such breach shall constitute a waiver of such breach or of Port's rights to demand strict compliance with such term, covenant or condition. Port's consent to or approval of any act by Licensee requiring Port's consent or approval shall not be deemed to waive or render unnecessary Port's consent to or approval of any subsequent act by Licensee. Any waiver by Port of any default must be in writing and shall not be a waiver of any other default (including any future default) concerning the same or any other provision of this License.

19.11. Time is of Essence. Time is of the essence with respect to all provisions of this License in which a definite time for performance is specified.

19.12. Cumulative Remedies. All rights and remedies of either party hereto set forth in this License shall be cumulative, except as may otherwise be provided herein.

19.13. Survival of Indemnities. Termination or expiration of this License shall not affect the right of either party to enforce any and all indemnities and representations and warranties given or made to the other party under this License, the ability to collect any sums due, nor shall it affect any provision of this License that expressly states it shall survive termination or expiration hereof.

19.14. Relationship of the Parties. Port is not, and none of the provisions in this License shall be deemed to render Port, a partner in Licensee's business, or joint venturer or member in any joint enterprise with Licensee. Neither party shall act as the agent of the other party in any respect hereunder. This License is not intended nor shall it be construed to create any third party beneficiary rights in any third party, unless otherwise expressly provided.

19.15. No Recording. Licensee shall not record this License or any memorandum hereof in the Official Records of the City and County of San Francisco.

19.16. Additional Written Agreement Required. Licensee expressly agrees and acknowledges that no officer, director, or employee of Port or City is authorized to offer or promise, nor is Port or the City required to honor, any offered or promised rent credit, concession, abatement, or any other form of monetary consideration (individually and

collectively, “Concession”) without a written agreement executed by the Executive Director of Port or his or her designee authorizing such Concession and, if applicable, certification of the Concession from the City’s Controller.

20. DEFINITIONS.

For purposes of this License, the following terms have the meanings ascribed to them in this Section or elsewhere in this License as indicated:

“**Agents**” when used with reference to either party to this License or any other person, means the officers, directors, commissioners, employees, agents, and contractors of the party or other person, and their respective heirs, legal representatives, successors, and assigns.

“**Basic License Information**” refers to the summary of basic license information attached to this License.

“**City**” is defined in Section 1.

“**Claim**” means all liabilities, injuries, losses, costs, claims, demands, rights, causes of action, judgments, settlements, damages, liens, fines, penalties and expenses, including without limitation, direct and vicarious liability of any kind for money damages, compensation, penalties, liens, fines, interest, attorneys’ fees, costs, equitable relief, mandamus relief, specific performance, or any other relief.

“**Cure Period**” means the period of time described in the Basic License Information.

“**Environmental Laws**” means any Laws relating to Hazardous Material (including its Handling, Release, or Remediation) or to human health and safety, industrial hygiene, or environmental conditions in the environment, including structures, soil, air, bay water, and groundwater, and any environmental mitigation measure adopted under Environmental Law affecting any portion of the License Area. Environmental Laws include the Risk Management Plan for Pier 70 (Treadwell & Rollo, 7/25/13) as amended and as interpreted by Regulatory Agencies with jurisdiction (“**RMP**”).

“**Environmental Regulatory Action**” when used with respect to Hazardous Materials means any inquiry, investigation, enforcement, Remediation, agreement, order, consent decree, compromise, or other action that is threatened, instituted, filed, or completed by an Environmental Regulatory Agency in relation to a Release of Hazardous Materials, including both administrative and judicial proceedings.

“**Environmental Regulatory Agency**” means the United States Environmental Protection Agency, OSHA, any California Environmental Protection Agency board, department, or office, including the Department of Toxic Substances Control and the San Francisco Bay Regional Water Quality Control Board, Cal OSHA, the Bay Area Air Quality Management District, the San Francisco Department of Public Health, the San Francisco Fire Department, Port, or any other Regulatory Agency now or later authorized to regulate Hazardous Materials.

“**Environmental Regulatory Approval**” means any approval, license, registration, permit, or other authorization required or issued by any Environmental Regulatory Agency, including any hazardous waste generator identification numbers relating to operations on the License Area and any closure permit.

“**Exacerbate**” or “**Exacerbating**” when used with respect to Hazardous Materials means any act or omission that increases the quantity or concentration of Hazardous Materials in the affected area, causes the increased migration of a plume of Hazardous Materials in soil, groundwater, or bay water, causes a Release of Hazardous Materials that had been contained until the act or omission, or otherwise requires Investigation or Remediation that would not have been required but for the act or omission. Exacerbate also includes the disturbance, removal or generation of Hazardous Materials in the course of Licensee’s operations, Investigations,

maintenance, repair, Improvements and Alterations under this License. “Exacerbation” has a correlating meaning.

“**Handle**” or “**Handling**” means to use, generate, process, manufacture, produce, package, treat, transport, store, emit, discharge, or dispose of a Hazardous Material.

“**Hazardous Material**” means any substance, waste, or material that is now or in the future designated by any Regulatory Agency to be capable of posing a present or potential risk of injury to human health or safety, the environment, or property. This definition includes anything designated or defined in any Environmental Law as hazardous, hazardous substance, hazardous waste, toxic, pollutant, or contaminant; any asbestos, ACMs, and PACMs, whether or not part of the structure of any existing Improvements on the License Area, any Improvements to be constructed on the License Area by or on behalf of Licensee, or occurring in nature; and other naturally-occurring substances such as petroleum, including crude oil or any fraction, and natural gas or natural gas liquids.

“**Hazardous Material Claim**” means any Environmental Regulatory Action or any Claim made or threatened by any third party against the Indemnified Parties, or the License Area, relating to damage, contribution, cost recovery compensation, loss or injury resulting from the presence or Release of any Hazardous Material, including, without limitation, Losses based in common law. Hazardous Material Claims include, without limitation, Investigation and Remediation costs, fines, natural resource damages, damages for decrease in value of the License Area or any other Port property, the loss or restriction of the use or any amenity of the License Area or any other Port property, and attorneys’ fees and consultants’ fees and experts’ fees and costs.

“**Hazardous Material Condition**” means the presence, Release, or threatened Release of Hazardous Materials in, on, or about the License Area, any other Port property, or the environment, or from any vehicles or vessels Licensee, or its Agents and Invitees uses during Licensee’s occupancy of the License Area.

“**Indemnified Parties**” is defined in Section 12.1.

“**Indemnify**” means to indemnify, protect, defend, and hold harmless forever. “Indemnification” and “Indemnity” have correlating meanings.

“**Investigate**” or “**Investigation**” when used with reference to Hazardous Materials means any activity undertaken to determine and characterize the nature and extent of Hazardous Materials that have been, are being, or are threatened to be Released in, on, under or about the License Area, any other Port property, or the environment, and includes, without limitation, preparation of site history reports, performing equipment and facility testing such as testing the integrity of secondary containment and above and underground tanks, and sampling and analysis of environmental conditions before, during, and after Remediation begins and continuing until the appropriate Environmental Regulatory Agency has issued a no further action letter, lifted a clean-up order, or taken similar action.

“**Invitees**” means Licensee’s clients, customers, invitees, patrons, guests, members, licensees, permittees, concessionaires, assignees, Sublicensees, and any other person whose rights arise through them.

“**Law**” means any present or future law, statute, ordinance, code, resolution, rule, regulation, judicial decision, requirement, proclamation, order, decree, policy (including the Waterfront Land Use Plan), and Regulatory Approval of any Regulatory Agency with jurisdiction over any portion of the License Area, including Regulatory Approvals issued to Port which require Licensee’s compliance, and any and all recorded and legally valid covenants, conditions, and restrictions affecting any portion of the License Area, whether in effect when this License is executed or at any later time and whether or not within the present contemplation of the parties.

“**Lease**” means that certain Lease No. L- 16997 between Port as landlord and Licensee as tenant.

“**License**” is defined in Section 1.

“**License Area**” means the area described in the Basic License Information.

“**License Commencement Date**” is defined in the Basic License Information.

“**License Effective Date**” is defined in the Basic License Information.

“**License Expiration Date**” is defined in the Basic License Information.

“**Notice to Cease Prohibited Use**” is defined in Section 5.

“**Operations Plan**” is the Operations Plan attached to the Lease as Exhibit G

“**Permitted Activities**” is means the activities described in the Basic License Information.

“**Port**” is defined in Section 1.

“**Port’s Termination Right**” is defined in Section 3.

“**prevailing party**” is defined in Section 16.1.

“**Prohibited Use**” is defined in Section 5.

“**Regulatory Agency**” means the municipal, county, regional, state, or federal government and their bureaus, agencies, departments, divisions, courts, commissions, boards, officers, commissioners, or other officials, including the Bay Conservation and Development Commission, any Environmental Regulatory Agency, the City and County of San Francisco (in its regulatory capacity), Port (in its regulatory capacity), Port’s Chief Harbor Engineer, the Dredged Material Management Office, the State Lands Commission, the Army Corps of Engineers, the United States Department of Labor, the United States Department of Transportation, or any other governmental agency now or later having jurisdiction over Port property.

“**Regulatory Approval**” means any authorization, approval, license, registration, or permit required or issued by any Regulatory Agency.

“**Release**” when used with respect to Hazardous Materials means any actual or imminent spilling, introduction, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing in, on, under or about the License Area, other Port property, or the environment.

“**Remediate**” or “**Remediation**” when used with respect to Hazardous Materials means to clean up, abate, contain, treat, stabilize, monitor, remediate, remedy, remove, or otherwise control Hazardous Materials, or to restore the affected area to the standard required by the applicable Environmental Regulatory Agency in accordance with applicable Environmental Laws and any additional Port requirements. “**Remediation**” also includes the creation of a remedial work plan to be approved by the appropriate Environmental Regulatory Agency when required.

“**Special Event**” means the following types of activities of Licensee in the Park: conferences and meetings, temporary exhibitions, concerts, musical and theatrical performances and other forms of live entertainment, public ceremonies, shows, fundraising events or other temporary public or private events or exhibitions and activities related thereto.

“**SWPPP**” is defined in Section 13.6.

“**Term**” is defined in the Basic License Information.

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IN WITNESS WHEREOF, PORT and LICENSEE execute this License as of the last date set forth below.

PORT: **CITY AND COUNTY OF SAN FRANCISCO,**
a municipal corporation, operating by and through the
SAN FRANCISCO PORT COMMISSION

By: _____

Deputy Director, Real Estate and Development

Date Signed: _____

LICENSEE: **YOUNG MEN’S CHRISTIAN ASSOCIATION OF SAN**
FRANCISCO, a California Nonprofit Public Benefit
Corporation

By: _____

Name: _____

Title: _____

Date Signed: _____

By: _____

Name: _____

Title: _____

Date Signed: _____

APPROVED AS TO FORM:
DAVID CHIU, City Attorney

By: _____

Name: Grace Park
Deputy City Attorney

License Prepared By: James Hurley, Development Project Manager Initials: _____

Port Commission Resolution:

EXHIBIT 1
LICENSE AREA

(To be attached.)

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EXHIBIT 2

LICENSE EFFECTIVE DATE; LICENSE COMMENCEMENT DATE MEMORANDUM

Landlord: **CITY AND COUNTY OF SAN FRANCISCO**, a municipal corporation,
operating by and through the **SAN FRANCISCO PORT
COMMISSION**

Licensee:

License Number:

License Date:

License Area: [_____, Suite ____]
San Francisco, California

The Effective Date of the License is _____, 2023. The Commencement Date of the License is hereby established as _____, 20__

PORT: **CITY AND COUNTY OF SAN FRANCISCO**,
a municipal corporation, operating by and through the
SAN FRANCISCO PORT COMMISSION

By: _____
Rebecca Benassini
Deputy Director, Real Estate and Development

Date Signed: _____

LICENSEE:

By: _____
Name: _____
Title: _____

Date Signed: _____

EXHIBIT 3
BCDC PERMIT
(To be attached)



MEMORANDUM

February 5, 2021

TO: MEMBERS, PORT COMMISSION
Hon. Kimberly Brandon, President
Hon. Willie Adams, Vice President
Hon. John Burton
Hon. Gail Gilman
Hon. Doreen Woo Ho

FROM: Elaine Forbes
Executive Director 

SUBJECT: Request authorization to issue a Request for Proposals for the adaptive rehabilitation, reuse, lease and operation of two historic structures – the ‘Kneass Building’ and ‘Building 49’ – both located in the Pier 70 Area adjacent to Crane Cove Park generally along Illinois Street between 18th and 19th Streets.

DIRECTOR’S RECOMMENDATION: Approve Attached Resolution No. 21-07

EXECUTIVE SUMMARY

On October 13, 2020 the Port Commission received an informational presentation on the status of two long-vacant historic structures that frame the newly opened Crane Cove Park, known as the “Kneass Building” and “Building 49,” and provided feedback on a proposed approach to rehabilitating and activating these two properties. The proposed approach summarized in October was to release a Request for Proposals (RFP) and to allow respondents to submit proposals for rehabilitation and operation of one or both buildings.

Since October, Port staff planned the RFP process for Port Commission consideration and conducted community outreach to secure community and stakeholder “Values and Priorities” for inclusion in the RFP, consistent with the process and draft policy outlined in the Draft Waterfront Plan Goal: *Partnering for Success*.

Port staff seeks approval of the attached resolution, authorizing release of the Crane Cove Park Buildings RFP. Should the Port Commission authorize the resolution, Port

staff will issue the RFP in the coming weeks, complete the competitive selection process, and return to the Port Commission with the top scoring team or teams. Consistent with the solicitation process in the Draft Waterfront Plan and in the two recent RFPs, the Port Commission will have the option to select the top scoring team or teams or choose to terminate the RFP process and choose an alternative path.

This staff report provides an overview of key sections of the proposed RFP and includes the following

- I. Strategic Plan Alignment
- II. Project Background
- III. Development Context
- IV. Values and Priorities as heard from the community and stakeholders
- V. Solicitation Strategy
- VI. Minimum Qualifications of Respondents
- VII. Evaluation Criteria used to Review Responses
- VIII. Response Scoring Panel Composition
- IX. Port Commission Review and Selection Process
- X. Economic Benefits Port is seeking
- XI. Next Steps

I. STRATEGIC PLAN ALIGNMENT

A successful solicitation will elicit proposals from qualified respondent teams that will provide community, water recreation and public-oriented tenants, and revenue generating uses to implement a financially feasible project. The success of the project or projects will be defined by rehabilitating and maintaining these historic resources, providing water recreation and publicly-oriented uses that enhance Crane Cove Park, offering new activities and attractions for the neighborhood and park visitors, while accomplishing these objectives within a financially-feasible project and a sustainable operating structure.

If approved and implemented, a successful RFP will support five of the Port's strategic plan objectives (2019-2023 Strategic Plan):

Evolution: Successful project(s) will serve as milestones in the ongoing transformation of the Pier 70 area to better address the needs of the public and the Waterfront.

Engagement: Successful project(s) will provide amenities that increase the public's awareness of the sites' remarkable history and setting.

Equity: Successful project(s) will be accessible, attractive and beneficial to a diverse group of people who live, work and/or use the recreational assets along the Southern Waterfront, particularly visitors to Crane Cove Park.

Productivity: Successful project(s) will return two long-vacant and deteriorated structures to productive use and attract tenants who contribute to an economically-viable Port and capitalize on the Port's unique assets, including the new Crane Cove Park.

Stability: Successful project(s) will help maintain the Port's financial strength by (a) using investor capital to address the Port's deferred maintenance backlog and/or (b) generating revenues for the Port to sustain ongoing operations and address deferred maintenance.

II. PROJECT BACKGROUND

Both the Kneass Building and Building 49 are a part of the City of San Francisco's rich shipbuilding legacy. The Kneass (671 Illinois Street) building takes its name from an early San Francisco boatbuilder, George Kneass, who took over the property in 1936 and operated his business out of the building until 1970. Building 49 (located within Crane Cove Park along Illinois Street southeast of the 18th Street T-intersection) is a contributing resource in the Pier 70 Union Iron Works Historic District. It was constructed in 1940 or 1941 during a time of shipyard modernization, as World War II raged in Europe but the U.S had yet to be attacked.

Recent investment in the immediate vicinity including the redevelopment of the 20th Street Historic Core, the completion of Crane Cove Park, and major private partner investment in infrastructure at the 28-acre site at Pier 70 has spurred significant interest from the community in restoring the buildings and returning them to productive use for the benefit of the public. In response to this continued interest in the buildings, Port staff have conducted preliminary financial feasibility analysis which found that the buildings could provide small positive net revenues to the Port in addition to providing community and Public Trust benefits that are complementary to nearby development and benefit the overall Southern Waterfront.¹

III. DEVELOPMENT CONTEXT

Location

The two buildings are located within the Port's Southern Waterfront subarea, along Illinois Street just south of the Ramp restaurant and adjacent to the newly opened Crane Cove Park in the Pier 70 area and within the Central Waterfront area. (See *Exhibit 1*).

The Dogpatch along with the Mission Bay neighborhoods in the Central Waterfront have seen a tremendous amount of development and growth over the past two decades, transforming the area into a vibrant and still-growing waterfront neighborhood filled with old and new residences, restored historic buildings, modern office buildings, two world class sports and entertainment venues, a world class university hospital, bars, restaurants, retail businesses, and more. Within this larger neighborhood context, redevelopment of the Pier 70 Area east of Illinois Street and roughly between Mariposa and 22nd Street continues to re-shape Port lands.

¹ It is important to note that this analysis was conducted pre-COVID-19 pandemic. Port staff believe that, while the cost and revenue assumptions may be outdated, the opportunity is still attractive to potential respondents due to the success of Crane Cove Park. In the short time it has been open, the Park is becoming a popular gathering place for neighbors and regional visitors.

Exhibit 1: Site Map



Waterfront Plan

The Port's Waterfront Land Use Plan was adopted in 1997 and provides policies and objectives to guide the improvement of Port properties, including a description of "Acceptable Uses". Acceptable Uses for the Kneass Building and Building 49 include community facilities, water and recreational uses, retail, and office uses. In June 2019, the Port published a Draft Waterfront Plan.² The updated Draft Waterfront Plan includes updated goals (described below) and policies which have been endorsed by the Port Commission, and which express sub-area objectives that inform this proposal to improve the Kneass Building and Building 49. The proposed uses in the RFP will be consistent with both the adopted Waterfront Land Use Plan and the Draft Waterfront Plan.

The Draft Waterfront Plan's nine Port-wide goals are summarized below:

1. **MARITIME:** Preserve and enhance the Port's diverse maritime industries
2. **DIVERSE USES AND PEOPLE:** Public-oriented, recreational, workplace and civic uses that complement maritime industry and provide economic opportunity
3. **PARKS AND OPEN SPACE:** Complete the waterfront open space network, protect natural habitat areas, create a new Ferry Building plaza, activate and enliven waterfront parks
4. **QUALITY URBAN DESIGN:** Respect the waterfront's maritime heritage, promote physical and visual connections between the City and the Bay

² https://sfport.com/sites/default/files/UPDATED_COMPRESSED_FinalWaterfrontPlan_DigitalVersion_6.10.2019.pdf

5. **FINANCIALLY STRONG PORT:** Stimulate investment and waterfront revitalization, and equitably providing new jobs, revenues, and amenities for everyone
6. **SUSTAINABLE TRANSPORTATION:** Safe and accessible for people and goods, by all modes, for workers, neighbors, visitors and Port tenant operations
7. **ENVIRONMENTAL SUSTAINABILITY:** Limit the impacts of climate change, improve the ecology of the Bay, and promote healthy waterfront neighborhoods
8. **A RESILIENT PORT:** Strengthen resilience to hazards and climate change effects while protecting the community, ecological, social and economic assets and services
9. **PARTNERING FOR SUCCESS:** Strengthen partnerships and community engagement to increase public understanding of Port and community needs and opportunities

The Draft Waterfront Plan describes objectives for each of the five geographic segments of the Port waterfront. Crane Cove Park, Kneass Building and Building 49 are located in the Southern Waterfront subarea, which includes the area from *Crane Cove Park to India Basin*. The Southern Waterfront sub-area objectives provide a finer level of detail on the Port-wide goals and guide future development of the Crane Cove Park Buildings; among the Southern Waterfront sub-area objectives, the three listed below are particularly applicable to the activation of Building 49 and the Kneass Building:

1. Throughout the Southern Waterfront, improve and enhance Blue Greenway and open space and public access areas that do not compromise maritime operations or sensitive environmental habitat areas, and provide education to promote public safety among maritime, small boating, and recreational water users.
2. Implement approved development plans for the Pier 70 Special Use District, Historic Core, and Crane Cove Park projects to connect and integrate all areas within Pier 70, which will give new life to the Union Iron Works Historic District and create a unique waterfront neighborhood addition in the Dogpatch area.
3. Work with the community to assess vulnerabilities, consequences, and community priorities to build resilience, reduce risks, and advance benefits in the Southern Waterfront.

The Draft Waterfront Plan also identifies acceptable uses for both the Kneass Building and for Crane Cove Park (home to Building 49) shown in **Table 1**, an excerpt from the Plan’s “Southern Waterfront Acceptable Land Uses.”

Table 1. Southern Waterfront Acceptable Land Uses

<u>Kneass Building: Acceptable Uses</u>	<u>Building 49 & Crane Cove Park Acceptable Uses</u>
Maritime Office	Recreational Boating/Water Recreation
Harbor Services and Maritime Industry	Parks/Open Space
Retail (includes food and beverage uses)	Public Access/Public Realm
General Office	Accessory Retail (including food and beverage uses)
Community Facilities	Short Term Interim Uses
Short Term Interim Uses	

Public Trust

The Kneass Building is not subject to public trust use requirements because it was included in the Pier 70 public trust exchange – a reconfiguration of trust and non-trust properties as part of planning for development in the Pier 70 area. Building 49, located south of the Kneass along Illinois Street and within Crane Cove Park, remains subject to the Public Trust use requirements to promote maritime commerce, navigation and fisheries, protect and enhance natural resources (including historic cultural resources), and provide facilities that attract the public to use and enjoy the waterfront.

These objectives recognize the validity of using or reusing waterfront facilities to serve maritime and public access trust uses, activities that attract the public to use and enjoy these cultural and historic resources and uses that generate revenue to finance necessary improvements.

State Lands & BCDC Coordination

During the Waterfront Plan Update process, Port staff consulted with State Lands and San Francisco Bay Conservation and Development Commission (BCDC) staff on various issues of shared interest, including strategies for supporting the reuse and development of the Port's historic resources. The two Crane Cove Park buildings lie beyond the 100-foot shoreline band that is subject to BCDC review authority. However, Port staff has reached out to staff at both agencies to alert them to the issuance of this RFP and will be consulting with both agencies' staff regarding the details of rehabilitating and reusing these two historic structures in ways that are compatible with their respective agencies' missions, including enhancing public use and enjoyment of Crane Cove Park.

Workforce Development and Local Business Enterprise (LBE)

Once a partner or partners are selected, Port staff will work with the successful respondent and the City's Contract Monitoring Division (CMD) to establish LBE goals and enforcement mechanisms for the various phases of the project. CMD will collaborate in negotiating the design of each LBE participation program tailored to the project, develop LBE goals and enforcement mechanisms, provide developers with technical assistance to maximize LBE participation, and where necessary, aid outreach to LBEs regarding procurement opportunities. The project will also need to comply with the City's Local Hiring Policy for Construction (mandatory 30% of project hours by trade) and requirements for wage and apprenticeship programs.

IV. VALUES AND PRIORITIES

In addition to the goals, policies and objectives articulated in the Waterfront Plan, the draft values below represent key points that Port staff have heard through outreach efforts targeting relevant stakeholders with a focus on minority groups and those representing a younger demographic within Southern Waterfront neighborhoods. The list of organizations contacted regarding this RFP include the following:

- Port Southern Advisory Committee
- Office of Board President and District 10 Supervisor Shamann Walton
- Boys and Girls Clubs of San Francisco
- Dogpatch Neighborhood Association
- 826 Valencia
- Potrero Neighborhood House
- Rafiki
- SF Black Wallstreet
- ReUNION: Education-Arts-Heritage
- SF Bay Water Trail Advisory Committee
- Bay Area Association of Disabled Sailors (BAADS)
- Bay Area Outreach & Recreation Program (BORP)

The following is a brief summary of what Port staff heard from the various stakeholders organized into Key Values and Priorities that are specific to each of the two buildings:

Key Values and Priorities for Building 49

- Provide programs and uses that support human-powered recreational boating (e.g. kayaks, Stand Up Paddleboards)
- Enhance use and activation of Crane Cove Park
- Provide needed amenities for park visitors, including public bathroom facilities
- Preservation of historic character and maritime function of the building

Key Values and Priorities for the Kneass Building

- Provide community-serving space offering programs and services to diverse community segments (e.g. at-risk youth, seniors, persons with disabilities, and parents/families)
- Opportunity, through community-oriented programming, to foster community building, engagement and connections
- Enhance use and activation of Crane Cove Park
- Leverage nearby development in vicinity (e.g. Pier 70, Chase Center, UCSF) to provide additional neighborhood services and employment opportunities (both paid and volunteer)
- Preservation of the historic character of the building

V. SOLICITATION STRATEGY

Respondents to the RFP may propose projects and uses for one or both of the two buildings described below. Respondents wishing to compete for more than one scenario (e.g. a single building as well as both buildings) will be required to submit a separate proposal for each competition and Port staff recommend that single-building proposals and two building proposals be considered without any weighting towards a “master tenant” model (i.e., one tenant for both buildings) nor towards a two-tenant model (i.e., one tenant for Building 49 and another to Kneass Building). Port staff believe that each

approach has advantages and disadvantages but that both models can deliver the public benefits and economic benefits desired through the RFP.

The Offering

The Kneass Building, located at 671 Illinois Street just south of Mariposa Street, is a long-vacant, historically significant two-story structure that is unoccupied and in poor and deteriorating condition. The Kneass Building was removed from the Public Trust as part of the Pier 70 Trust Exchange, which consolidated Public Trust lands along the waterfront and on streets leading to the waterfront. While it is not included in the Union Ironworks Historic District, a private partner could nominate the Kneass Building for historic status which could unlock historic tax credits for the substantial rehabilitation work that the building requires for re-occupancy.

Building 49 is listed on the Register of Historic Register of Building and is part of the City's rich shipbuilding history. The Port is developing a bid package which will deliver core and shell improvements to the building prior to occupancy of the selected Respondent of this RFP. This contract will deliver a partial renovation of the building, including constructing public restrooms on the northwest corner. The work also includes plumbing and electrical work for the restrooms, replacing the building's roof, replacing some of the exterior corrugated metal panels, painting, and signage. The budget for this work is \$2 million. This project will ready the building for future development or leasing for a small café, human powered boating storage and rental, among other uses which may be proposed. The planned Port capital project does not include any structural work and without additional structural retrofit, the use of the building is limited to occupants of 100 or fewer. The schedule for completion of this work is end of 2021. Port staff desire to have a tenant in place in time for the building opening, if possible depending upon the complexity of the selected proposer's tenant improvements.

Desired Responses

Kneass Building. Propose, design, entitle, develop, and operate a mixed-use, community-oriented historic rehabilitation project under a lease development and disposition agreement and lease. Proposals must include, among other things, (1) a well-defined community-serving concept which will anchor the building program and (2) financially viable route to both deliver the rehabilitation project and successfully operate the building for the duration of the lease. Revenue-generating uses like office, events, and food-serving uses may also be part of the program to ensure a financially feasible program. Proposers should propose rent to Port and/or in-kind services which benefit the public and the newly completed Crane Cove Park.

Building 49. Provide all necessary tenant improvements and operate a park-serving facility that will include, at a minimum, a personal watercraft rental, storage, and/or sales facility (i.e. aquatics center) to serve the public as well as maintenance and security for the public restrooms within the building. In addition to these desired desirable qualities, proposals may include a "take out" café with designated space within the park for outdoor service or a more intensive development program, through, for example, the construction of an interior mezzanine and appropriate structural elements.

Overall goal. While the solicitation will offer the opportunity to propose a project at either or both sites as described above, Port staff sees the provision of a personal watercraft rental, storage and potentially sales facility as the minimum provision of park-serving amenities to be delivered in these buildings. Port staff also view one or more food and beverage operation as a desirable amenity for park visitors. The community-developed goals and objectives provide more detail for additional services.

VI. MINIMUM QUALIFICATIONS OF RESPONDENTS

Each Respondent (or Respondent Team, as specified) must meet the following Minimum Qualifications, as determined by Port staff, for consideration of its proposal. The Port will not consider or advance submittals from respondents that have not demonstrated they have met the following Minimum Qualifications. In addition to the Minimum Qualifications described below, the Port will not advance proposals deemed to be incomplete (i.e. not fully responsive to the RFP submittal requirements).

Kneass Only Proposals

1. Respondent or Respondent Team must have a minimum of three (3) years in active ownership or management of a business or program similar in nature to the predominant use proposed;
2. Respondent or Respondent Team obtained at least \$1 million in committed funding for a single development project;
3. Respondent or Respondent Team entitled a single development project with a total cost of at least \$1 million; and
4. Respondent or Respondent Team completed construction of a single development project with a total cost of at least \$1 million.

Building 49 Only Proposals

1. Respondent must have a minimum of three (3) years in the active ownership or management of a business similar in nature to the predominant use proposed.

Combined (Both Buildings) Proposals

Respondents with a combined (both Kneass and Building 49) proposal must demonstrate Minimum Qualifications described above for both buildings.

For All Proposals

Form of Entity

Respondent may be a newly formed entity (e.g., limited liability company, joint venture, corporation, or nonprofit), provided that such newly formed entity is duly organized and validly existing prior to the submittal deadline for the RFP and can demonstrate that the

party(ies) or entity(ies) that meet the Minimum Qualification will be in control of the proposing entity. For example, if the newly formed entity is:

1. A limited liability company comprised of two members, owning 51% and 49% respectively, the entity will be deemed qualified if the 51% member satisfies the Minimum Qualifications; or
2. A limited liability company comprised of three members, owning 40%, 35% and 25% respectively, the company will be deemed qualified if two of the three members each satisfy the Minimum Qualifications; or
3. Owned 50/50, then each principal must satisfy the Minimum Qualifications.

Communications Policy – Black-Out Period

Respondent must satisfy submittal requirements, including a signed form verifying compliance with the policy governing communications with City staff, Port Commissioners, and Selection Panel. As with the recent RFPs for the historic piers, the Port will institute a black-out policy requiring, as a Minimum Qualification, that all respondents agree to direct all communications related to the RFP to specified Port staff members. Only Port staff identified in the RFP as contacts for the competitive solicitation are authorized to respond to comments or inquiries from proposers, or potential proposers. The form referenced above will describe the communications policy substantively as follows:

During the selection process under this RFP, potential proposers, their counsel, agents, contractors, representatives, and associates may not contact or solicit the Mayor and her staff, members of the Port Commission, any members of the Selection Panel (once those members are identified) or any other Port, City, or Commission staff member other than the contact persons designated by the Port (which may be updated at the Port's discretion through a written communication), regarding this RFP, the content of this RFP, any responses or proposals received in response to this RFP, or for the purpose of influencing the content of the competitive solicitation, bids, or the award of an Exclusive Negotiating Agreement (ENA) if any. Failure to comply with this provision may result in the disqualification of the proposer from the solicitation process at the sole discretion of the Port.

This prohibition extends from the date the RFP is issued until the later of the date the Port Commission by Resolution selects a respondent and authorizes negotiations with such respondent or the date an ENA is executed, if any. This prohibition does not apply to communications with the City regarding normal business not related to this RFP.

VII. EVALUATION CRITERIA

Responses to the RFP will be scored by a scoring panel designated by Port staff with the qualifications described below. The panel will review proposals based upon a set of criteria established and described below. Only those Respondents that have met the Minimum Qualifications and submitted complete proposals will advance to the scoring

panel. The panel will review and score written responses and conduct and score oral interviews. A point system as shown below will be used to score the submittals.

- 1) Operations and Public Benefits Delivery (20 pts)
 - a) responsiveness to RFP development objectives, planning goals, and community values and priorities
 - b) proposed operations include high-quality and equitable public benefits that meet community desires such as (for Building 49) serving Crane Cove Park visitors, and (for Kneass Building) including community-serving programming
- 2) Diverse, Equitable, and Inclusive Programming (10 pts)
 - a) Business model and public programming are targeted to provide an inclusive array of activities, opportunities, and other public benefits for a diversity of users
- 3) Quality of the Design (10 pts)
 - a) Character and design quality of the development (e.g., connectivity to the surrounding area, treatment of building and historic features
 - b) Clarity of sustainability principles
 - c) Development concept is consistent with Secretary of the Interior Standards for treatment of historic resources
- 4) Strength of Financial Proposal (20 pts)
 - a) Provide “in kind” financial benefits towards Crane Cove Park facilities such as public restroom operations and maintenance or public programming and activation, among others
 - b) Economic return to the Port which may include base rent, percentage rent, and other forms of revenue participation proposed by the Respondent
 - c) Financial feasibility of the proposer’s program and project proforma
- 5) Financial Capacity of the Respondent and Economic Viability of Operations (20 pts)
 - a) Demonstrated ability to raise and commit funds for the proposed project investment
 - b) Adequacy of projected revenues to support the respondent’s proposed investment and ongoing costs of operations and maintenance throughout the proposed lease term
 - c) Cash flow analysis confirms with likely economic return scenario
- 6) Experience and Organization of Respondent's Team (20 pts)
 - a) Experience engaging the community
 - b) Team make-up and diversity reflecting San Francisco population
 - c) Experience and success in utilization of certified San Francisco LBE businesses, California Small Business Enterprise (SBE) or similar municipal, state, or federal work force and business development programs in development projects
 - d) Team & key personnel qualifications and availability
 - e) Experience with complex regulatory environment, including experience completing projects with historic resources
 - f) Experience with sustainability practices and programs

Table 2 below summarizes the RFP scoring. Respondents wishing to compete for more than one scenario (e.g. a single building as well as both buildings) will be required to submit a separate proposal for each competition and will be scored on each submittal; however, in such cases only a single interview will be required of the Respondent.

Table 2. Evaluation Criteria Scoring

EVALUATION AND SELECTION CRITERIA SUMMARY	KNEASS BUILDING ONLY Total:100 Points	BUILDING 49 ONLY Total: 100 Points	COMBINED PROPOSAL Total: 200 Points
1. Operations and Programming: Public Benefits Delivery	20 pts	20 pts	40 pts
2. Diverse, Equitable, and Inclusive Programming	10 pts	10 pts	20 pts
3. Quality of the Design	10 pts	10 pts	20 pts
4. Strength of Financial Proposal	20 pts	20 pts	40 pts
5. Financial capacity of Respondent and Economic viability of proposal	20 pts	20 pts	40 pts
6. Experience, organization and reputation of Respondent's team	20 pts	20 pts	40 pts

In addition to the points achievable through the written proposal, up to 60 additional points (or 30 for single building proposals) may be awarded based upon performance in the oral interviews. All respondents that have submitted a complete proposal which meet the Minimum Qualifications will be invited for an interview.

VIII. RESPONSE SCORING PANEL COMPOSITION

The draft Waterfront Plan goal of “Partnering for Success” includes a policy that defines a scoring panel that represents diverse interests to assist the Port Commission in the selection of a development partner. As recommended by the policy, the scoring panel will include at a minimum the following types of representative individuals:

1. development expert
2. Port staff person
3. Port advisory group member

4. person representing a neighborhood, City or regional stakeholder perspective
5. one additional panelist with relevant experience

The panel may include other stakeholder representations should the Port deem desirable. Development experts should include experts with development experience in the Bay area, waterfront projects or historic preservation projects. The Port staff person should be a senior level person with a broad range of real estate, development, finance, or planning background. The Port Advisory Group member should be from the advisory group within the geography of the project, and the neighborhood or local community representative should be a stakeholder that complements or fills an expertise gap or unique project quality or issue. The panel will be diverse, reflecting the San Francisco community.

IX. PORT COMMISSION REVIEW AND SELECTION PROCESS

The following process is proposed to seek Port Commission input and eventual approval to award the opportunity and enter into an ENA and/or lease with the successful Respondent(s). This process allows the Port Commission to hear from qualified respondents, receive background information regarding the proposals and their relative financial and regulatory feasibility prior to Port staff providing its recommendation for action based on the results of the scoring process. The process includes the following steps:

- Port staff will review proposals for Minimum Qualifications.
- Proposals meeting the Minimum Qualifications will be analyzed for financial feasibility and for occupancy and building code compliance. This review will be summarized in a memo for use by the scoring panel in their evaluation and scoring of the proposals.
- The scoring panel will score based on the scoring and selection criteria outlined above. The scoring panel will review the qualifying proposals to score the written proposals. The scoring panel will interview the qualifying proposers to score the oral interviews.
- Port staff will calendar an informational item on the RFP scoring results . At that informational hearing, Port staff will invite all Respondents with complete submittals meeting the Minimum Qualifications to make a brief presentation. This presentation will not affect the panel's scoring and is intended simply to provide information to the Port Commission and public about the responses received. The staff report will attach all of the executive summaries from qualifying respondents and will include the scoring panel's results. Port staff will advise Port Commissioners that the options at a subsequent Port Commission meeting will be to either select the top score(s) or to cancel the RFP.
- Port staff will calendar an action item laying out the Port staff recommendations. Port staff will develop up to three recommendations for award: (1) the highest scoring combined buildings proposal (if any); (2) the highest-scoring Kneass Building only proposal (if any), and/or (3) the highest-scoring Building 49-only proposal (if any).

The number of Port staff recommendations will depend on whether there are qualifying proposals in each category.

The Commission can decide at that meeting to (1) select the top-scoring combined proposal (if any), (2) select both top-scoring single-site proposals (if any of either), (3) select only one of the top-scoring single-site proposals and reject the other, or (4) reject all proposals and terminate the process.

In addition to the key sections of the RFP outlined in this staff report, the RFP will also require that respondents agree to: a) enter into a lease disposition and development agreement; and/or b) execute a lease substantially similar to the forms presented in the RFP; and c) agree to abide by all City policies and laws and will include appropriate procedures for objections and protests of the RFP process.

The RFP will contain other customary provisions including: (a) an earnest money deposit requirement (proposed to be set lower than typical RFPs, at \$5,000 per Respondent to reflect the smaller-scale and public-serving nature of anticipated uses) and (b) requirement for payment of cost-recovery and other fees in order to complete exclusive negotiations.

Issuance of an RFP does not commit the Port to proceeding with any agreement or project, and the Port cannot approve any lease or other development agreement for the project until after environmental review has been completed in compliance with the California Environmental Quality Act.

X. ECONOMIC BENEFITS PORT IS SEEKING

The Port's economic benefits for the Crane Cove Park Buildings RFP include the following:

1. *Significant investment in Port assets.* The financial feasibility analysis roughly estimated rehabilitation costs of between \$10 M and \$15 M in these buildings (combined), depending on uses and programming.
2. *Assume maintenance responsibilities, provide in-kind benefits, and provide rent, participation in net revenues, and/or upside revenues.* Maintenance of the public restrooms in Building 49, programming and "eyes on Crane Cove Park", and a participation rent structure are all elements of significant benefits to the Port, in transforming these currently empty buildings into activated, beneficial public assets.

XI. NEXT STEPS

If the Port Commission approves the release of the RFP, Port staff will complete drafting and target the beginning of March for release of the RFP and will provide at least 10 weeks for Respondent submissions.

The Port has and will continue to reach out to potential and interested Respondents to make them aware of the RFP opportunity and will conduct the following outreach:

- Update and notify known interested parties
- Seek news coverage in professional periodicals and newspapers and use social media for notifications
- Conduct outreach through professional organizations
- Conduct outreach with the neighborhood, local, regional and ethnic Chambers of Commerce
- Coordinate outreach with CMD and through other City agency outreach events

RECOMMENDATION

Port staff recommends that the Port Commission authorize and direct staff to issue an RFP for the adaptive rehabilitation, reuse, lease and operation of the Kneass Building and Building 49, which will incorporate the terms indicated above. The attached resolution authorizes the actions and establishes the policy parameters resulting from these real estate actions.

Prepared by: Jamie Hurley
Project Manager
Real Estate and Development

Prepared for: Rebecca Benassini
Acting Deputy Director
Real Estate and Development

**PORT COMMISSION
CITY AND COUNTY OF SAN FRANCISCO**

RESOLUTION NO. 21-07

- WHEREAS, Charter Section B3.581 empowers the Port Commission with the authority and duty to use, conduct, operate, maintain, regulate and control the lands within Port jurisdiction; and
- WHEREAS, The Port owns in trust Building 49 which is a contributing feature to the Union Ironworks Historic District; and
- WHEREAS, The Port owns Kneass Building which is not subject to the trust and which is not included in the Union Ironworks Historic District but is eligible for nomination to historic status; and
- WHEREAS, On October 13, 2020 the Port Commission directed staff to prepare for a release of a development Request for Proposals (RFP); and
- WHEREAS, On August 14, 2018 the Port Commission endorsed the Draft Waterfront Plan Goals and Plan Objectives and 161 Policy Recommendations; and
- WHEREAS, Successful adaptive reuse of the buildings is consistent with the following Port's Strategic Plan objectives: Evolution, Engagement, Equity, Productivity, and Stability; and
- WHEREAS, The Port will continue to collaborate with the State Lands Commission and Bay Conservation Development Commission on accommodating uses within the buildings to benefit the Public Trust; and
- WHEREAS, The Port and a selected respondent or respondents will work with the City's Contract Monitoring Division to establish appropriate Local Business Enterprise and work force development goals; and
- WHEREAS, Port staff has conducted community and stakeholder outreach consistent with the Draft Waterfront Plan policies and has identified community Values and Priorities for adaptive reuse of the buildings; and
- WHEREAS, The Draft Waterfront Plan identifies potential development concepts for Building 49 and the Kneass Building; and
- WHEREAS, Port staff presented an update to the Port Commission on February 9, 2021, on the development of the RFP, the results of the community and stakeholder outreach that contributed to the identification of Community Values to be included in the RFP, the proposal for Minimum Qualifications and selection criteria to be used by Port staff and a scoring

panel in evaluating responses to the RFP, and a recommendation to the Port Commission for reviewing and awarding responses to the RFP; and

- WHEREAS, Staff will first determine whether respondents meet the Minimum Qualifications and have submitted complete responses; those not meeting the Minimum Qualifications or having submitted completed responses will not be further considered; and
- WHEREAS, As further described in the Memorandum to the Port Commission dated February 5, 2021, the RFP will include a communications policy (or "blackout policy") that prohibits certain communications with the City; the blackout policy will also include prohibitions on communications with members of the scoring panel except during oral interviews and will not prohibit respondents from participating in Port Commission meetings; and
- WHEREAS, Complete responses to the RFP that meet the Minimum Qualifications will be scored by a panel selected by Port staff; scoring will be based on a set of criteria and weighting as described in the Memorandum to the Port Commission dated February 5, 2021; and
- WHEREAS, The scoring panel will be a diverse panel with a minimum of five (5) members, including a development expert, a Port staff employee, a Port Advisory Group member and a person representing the neighborhood, City or regional interest; and additional member with relevant experience; and
- WHEREAS, After scoring of the proposals are completed by the panel, staff will present as an informational item at a Port Commission meeting including the scoring panel's results and an executive summary of each proposal scored by the panel; all respondents whose proposals were scored by the panel will also be given an opportunity to present their proposal at the meeting; and
- WHEREAS, At a subsequent Port Commission hearing, depending on whether there are qualifying proposals in each category, staff will provide up to three recommendations for action for the Port Commission's consideration as follows: (i) one recommendation of the respondent receiving the highest score by the scoring panel for a proposal that combines both buildings (if any); (ii) one recommendation of the respondent receiving the highest score by the scoring panel for a proposal for the Kneass Building alone (if any); and/or (iii) one recommendation of the respondent receiving the highest score by the scoring panel for a proposal for Building 49 alone (if any); and
- WHEREAS, the Port Commission may then take an action to (a) select the top-scoring combined proposal (if any), (b) select both top-scoring single-site proposals (if any of either), (c) select only one of the top-scoring single-

site proposals and reject the other, or (d) reject all proposals and terminate the process; and

WHEREAS, Port staff recommends that publicly soliciting proposals through a request for proposals process for the reuse of Building 49 and the Kneass Building will require the successful respondent to repair and rehabilitate such buildings, and will garner the best market response and provide the Port with the best opportunity to meet its overall goals for the buildings; and

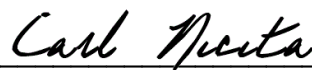
WHEREAS, Issuance of an RFP does not commit the Port to proceed with any agreement or development project, and the Port cannot approve any lease or other development agreement for the project until after environmental review has been completed in compliance with the California Environmental Quality Act; now, therefore, be it

RESOLVED, That the Port Commission has reviewed the goals and objectives for Building 49 and the Kneass Building, the proposed Minimum Qualifications, selection criteria, selection panel representation, Commission review and approval process and authorizes Port staff to issue an RFP and manage the solicitation process described herein and in the Memorandum to the Port Commission dated February 5, 2021; and be it further

RESOLVED, The Port Commission authorizes Port staff to take further actions in connection with the RFP to achieve the purposes described in this Resolution.

I hereby certify that the Port Commission at its meeting of February 9, 2021 adopted the foregoing Resolution.

DocuSigned by:



Secretary

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MEMORANDUM

October 22, 2021

TO: MEMBERS, PORT COMMISSION
Hon. Kimberly Brandon, President
Hon. Willie Adams, Vice President
Hon. John Burton
Hon. Gail Gilman
Hon. Doreen Woo Ho

FROM: Elaine Forbes
Executive Director

SUBJECT: Request authorization for Port staff to enter into lease negotiations with YMCA of San Francisco, the highest scoring respondent for the Building 49 Request for Proposals

DIRECTOR'S RECOMMENDATION: Approve the Attached Resolution No. 21-46

EXECUTIVE SUMMARY

On February 9, 2021 the Port Commission authorized Port staff to issue a Request for Proposals ("RFP") for two long-vacant historic structures that frame the newly opened Crane Cove Park (the "Kneass Building" and "Building 49", or collectively the "Crane Cove Park Buildings").¹ The RFP allowed respondents to submit proposals for rehabilitation and operation of one or both buildings. The Port received two responses to the RFP for Building 49, both of which met the minimum qualifications and were then scored by a five-member scoring panel. The scoring panel ranked the YMCA of San Francisco's ("YMCA SF") proposal the highest.

Port staff presented an informational item to the Port Commission on September 14, 2021 summarizing both respondents' proposals and presented similar information on October 6, 2021 to the Port's Southern Advisory Committee ("SAC"). The Port Commission, the SAC, and community members at each meeting provided favorable feedback to advance the YMCA SF's proposal for Building 49, all of which directly inform the Executive Director's recommendation.

¹ [Item 15A Crane Cove Buildings RFP Authorization final.pdf \(sfport.com\)](#)

Given the strength of and support for the YMCA SF's proposal, Port staff is seeking authorization from the Port Commission to select the top scoring proposal for Building 49 and negotiate a lease with the YMCA SF. Once the final deal term and lease is negotiated, staff anticipates returning to the Port Commission to seek approval of that lease agreement. As part of the previously approved RFP process, the Port Commission can choose to select the top scoring proposal and authorize Port staff to take the next steps with YMCA SF, or reject the proposal.

This staff report provides an overview of the RFP process to date, organized into the sections below. The primary new information since the September 2021 informational memorandum is summarized in item #4, feedback from the Southern Advisory Committee.

1. Strategic Plan Alignment
2. Project Background
3. YMCA SF Respondent Development Concept and Summary of Proposal
4. Southern Advisory Committee Review of the YMCA SF Proposal
5. Next Steps

1. STRATEGIC PLAN ALIGNMENT

The goal of the solicitation was to elicit proposals for the redevelopment of the buildings from qualified respondent teams that will provide community, water recreation and public-oriented tenants, and revenue-generating uses to implement a financially-feasible project. A successful project will rehabilitate and maintain these historic resources, provide water recreation and publicly-oriented uses that enhance Crane Cove Park, offer new activities and attractions for the neighborhood and park visitors, and accomplish these objectives within a financially-feasible project, with a sustainable operating structure.

If approved and implemented, a successful RFP will support four of the Port's strategic plan objectives (from the 2021-2025 Strategic Plan):

Evolution: Successful project(s) will serve as milestones in the ongoing transformation of the Pier 70 area to better address the needs of the public and the Waterfront.

Engagement: Successful project(s) will provide amenities that increase the public's awareness of the sites' remarkable history and setting.

Equity: Successful project(s) will be accessible, attractive and beneficial to a diverse group of people who live, work and/or use the recreational assets along the Southern Waterfront, particularly visitors to Crane Cove Park.

Productivity: Successful project(s) will return Building 49 to productive use and attract visitors who contribute to an economically-viable Port and capitalize on the Port's unique assets, including the new Crane Cove Park.

2. BACKGROUND

Building 49 is a part of the City of San Francisco's rich shipbuilding legacy. It is located within Crane Cove Park, along Illinois Street southeast of the 18th Street T-intersection, and is a contributing resource in the Pier 70 Union Iron Works Historic District. Building 49 was constructed in 1940 or 1941 during a time of shipyard modernization, as World War II raged in Europe.

Recent investments in the immediate vicinity, which include the redevelopment of the 20th Street Historic Core, the completion of Crane Cove Park, and major, private partner investment in infrastructure at the 28-acre site at Pier 70, have spurred significant interest from the community in restoring Building 49 and integrating it within Crane Cove Park for the benefit of the public.

The Port sought a qualified partner through the RFP to enter exclusive negotiations to develop and operate Building 49. The Port issued the RFP on April 14, 2021, conducted a pre-submittal meeting on April 21, and offered building tours on April 22 and 23. On the submittal deadline of June 9, the Port received two responses for Building 49. The respondents were Ted Choi, dba "City Kayak" and YMCA of SF.

The Port convened a five-member scoring panel including community leaders, experts from key disciplines, and Port staff to review and score both the written responses and oral interviews, based upon the criteria approved by the Port Commission and described in the RFP.

The RFP process provides that Port staff will:

- Facilitate the RFP scoring and bring the results of the scoring to the Port Commission in an informational session to receive Port Commission and public comments (occurred September 14, 2021); then
- Bring the results to the applicable advisory group (in this case, the SAC on October 6, 2021) to promote discussion and receive any further comments; and, finally
- Return to the Port Commission (today's action) recommending an action in which the Port Commission directs staff to do *one* of the following:
 1. **Select highest-scored proposal.** Authorize exclusive negotiations with the highest-scoring proposal.
 2. **Select none.** Reject all proposals, thereby terminating the process.

Today, Port staff is recommending the first option set forth above.

3. YMCA SF'S DEVELOPMENT CONCEPT

The YMCA SF submittal met the goals, objectives, and values described in the RFP.

Exhibit 1 is an executive summary of the proposal prepared by YMCA SF.

The YMCA SF operates 14 YMCAs in San Francisco, Marin, and San Mateo Counties, including one on the Embarcadero near Rincon Park and one in Bayview Hunter's

Point. Their mission is “to build strong kids, strong families, and strong communities by enriching the lives of all people in spirit, mind, and body”.²

YMCA SF has partnered with two local organizations for this proposal:

- Dogpatch Paddle, a human powered boating business/club that was spawned by the opening of Crane Cove Park and currently has over 900 members. Dogpatch Paddle offers stand up paddle board (SUP) and kayak rentals, lessons, camps, and equipment sales, and will operate the aquatic center under the YMCA SF proposal. (<https://dogpatchpaddle.com>)
- Daily Driver is a community-oriented, female-owned food and beverage business specializing in bagels and house-made butter and cream cheese. Their flagship restaurant is located near Crane Cove Park in the American Industrial Building on 3rd Street, and they also have a location within the Ferry Building. (<https://dailydriver.com/>)

YMCA SF’s Vision and Site Concept

Through its own programming and its service partners, the YMCA SF’s vision for Building 49 is “a community hub focused on human-powered watercraft, fitness, and wellness, hyper-local food concessions, diverse and inclusive programming, targeted retail, and educational programs”. They propose to construct an approximately 4,000 square foot, membership-based community wellness center that includes traditional gym amenities like cardio machines, weights, and group exercise classes, along with gender-neutral locker rooms, onsite wellness coaching, health education classes, and personal training for members and guests (e.g. visitors using the facility for a daily use fee). With regard to membership cost, they offer inclusive, sliding scale packages. They bring a strong commitment to providing access to underserved populations (including through their African American Holistic Wellness program based at the Bayview YMCA and their partnership with the SF Department of Public Health).

Dogpatch Paddle will occupy approximately 2,500 square feet on the water-facing east side of the facility. They will offer lessons, rentals, classes, youth programs, and a retail store featuring equipment sales and beach provisions, as they seek to expand their current operations and draw more of the surrounding community and beyond to Crane Cove Park. They will offer drop-in services and monthly memberships, as well as combined aquatics and fitness packages in partnership with the YMCA SF.

Daily Driver will occupy 500 square feet and offer healthy grab-and-go provisions.

The building program proposed by the YMCA SF also includes public restrooms and a public concourse area totaling approximately 1,000 square feet.

4. SOUTHERN ADVISORY COMMITTEE REVIEW OF YMCA SF PROPOSAL

Consistent with the process outlined in the Waterfront Plan, on October 6, 2021, Port staff presented the two Building 49 proposals to the SAC, including an overview of the process to date. The SAC and community unanimously voiced support of the YMCA SF

² (<https://www.ymcasf.org/>)

concept, but did express a few concerns and/or issues to be considered going forward, including:

- Encouraging local hiring in construction and operation of the facility.
- Stressing the importance of timely activation of the building considering the amount of use that Crane Cove Park is already getting and the need for permanent restroom facilities.
- Suggesting the YMCA SF consider seismic issues in building design, depending on occupancy.

The SAC, plus associated public comment, indicated that the concerns could likely be resolved through appropriate planning and ongoing dialogue with the community. Port staff will draw upon experience of our contracts and engineering staff (as well as consult with the City's Contracts Monitoring Division) to include Local Business Enterprise goals in the lease. In addition, Port engineering and contracts staff will bring their valuable Crane Cove Park construction experience to bear in providing information to YMCA's design and construction teams, once they are on-boarded.

5. NEXT STEPS

If this proposed resolution is approved by the Port Commission, Port staff will initiate negotiations for a lease with the YMCA SF. If lease negotiations are successful, Port Staff will return to the Port Commission seek approval of the lease under the negotiated terms. Approval of this proposed resolution does not commit the Port Commission to any future approval of a lease or related documents. Further, Port staff and the YMCA SF will continue to engage with the SAC and the broader community throughout the negotiations. As part of the approved RFP process, if the Port Commission does not authorize Port staff to take the next steps with YMCA SF, the RFP process will terminate.

Recommendation

Port staff recommends that the Port Commission authorize staff to initiate exclusive negotiations for a lease with the YMCA SF and return to the Port Commission, as appropriate in the future, to seek approval to enter into a lease under negotiated terms and conditions, to be generally consistent with the YMCA SF's original proposal.

Prepared by: Jamie Hurley
Development Project Manager
Real Estate and Development

through: Joshua Keene
Assistant Deputy Director
Real Estate and Development

Prepared for: Rebecca Benassini
Deputy Director
Real Estate and Development

Exhibit 1: YMCA SF Executive Summary


**PORT COMMISSION
CITY AND COUNTY OF SAN FRANCISCO**

RESOLUTION NO. 21-46

- WHEREAS, Charter Section B3.581 empowers the Port Commission with the power and duty to use, conduct, operate, maintain, manage, regulate and control Port area of the City and County of San Francisco; and
- WHEREAS, on February 9, 2021, the Port Commission, by Resolution 21-07, authorized Port staff to issue a request for proposals and manage the solicitation process for the adaptive rehabilitation, reuse, lease and operation of two historic structures – the ‘Kneass Building’ and ‘Building 49’ – both located in the Pier 70 Area adjacent to Crane Cove Park generally along Illinois Street between 18th and 19th Streets; and
- WHEREAS, on April 14, 2021, the Port issued the Request for Proposals for the “Kneass Building” and “Building 49”, (or collectively the “Crane Cove Park Buildings”); and
- WHEREAS, the RFP allowed respondents to submit proposals for rehabilitation and operation of one or both buildings; and
- WHEREAS, on June 9, 2021 the Port received two responses for Building 49 that met the RFP minimum qualifications; and
- WHEREAS, a five-member scoring panel consisting of real estate development expertise, a Port staff person, a Port advisory committee member, a citywide stakeholder and a person with City planning experience conducted interviews and scored the two Building 49 proposals against the objectives and evaluation criteria set forth in the RFP; and
- WHEREAS, the YMCA of San Francisco (“YMCA SF”) proposal received the highest score from the scoring panel; and
- WHEREAS, on September 14, 2021 the Port Commission received a briefing on the responses received, the concepts presented and the scoring panel process; and
- WHEREAS, on October 6, 2021 Port staff and YMCA SF presented to the Port’s Southern Advisory Committee (SAC) a briefing on the responses received, the concepts presented and the scoring panel process; and;

- WHEREAS, the SAC and community provided input and comment on the YMCA SF concept; and
- WHEREAS, Port staff is requesting that the Port Commission authorize staff to enter into exclusive negotiations for a lease (Lease) with YMCA SF; now therefore be it
- RESOLVED, that the Port Commission expresses its thanks and appreciation to the five-member scoring panel for their participation in and support of the Port's evaluation of responses to the RFP; and
- RESOLVED, the Port Commission authorizes Port staff to begin exclusive negotiations for a Lease with YMCA SF for the opportunity described in the RFP and, if such negotiations are successful, to seek Port Commission and, as required, Board of Supervisors' approval of the Lease; and
- RESOLVED, that entering into lease negotiations does not commit the Port Commission to approve Lease or any related documents.

I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of October 26, 2021.

DocuSigned by:

Secretary
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MEMORANDUM

April 21, 2023

TO: MEMBERS, PORT COMMISSION
Hon. Kimberly Brandon, President
Hon. Willie Adams, Vice President
Hon. Gail Gilman
Hon. Ed Harrington
Hon. Steven Lee

FROM: Elaine Forbes
Executive Director

SUBJECT: Request approval of proposed development and multi-use lease of Building 49 located at 701 Illinois Street within Crane Cove Park by the YMCA of San Francisco, for an initial term of 10 years plus options to extend for a total term of up to 34 years, and a fee waiver for a companion license agreement.

DIRECTOR'S RECOMMENDATION: Approve the Attached Resolution No. 23-20

This item was presented as an informational item at the October 11, 2022 Port Commission meeting and is now before the Port Commission for approval. For convenience, substantive changes from the informational staff memorandum are shown in underline and strikeout.

EXECUTIVE SUMMARY

On October 26, 2021, the Port Commission adopted Resolution 21-46 which authorized staff to begin negotiating a long-term lease with the Young Men's Christian Association of San Francisco, a California Nonprofit Public Benefit Corporation ("YMCA SF" or "YMCA") for Building 49 located within Crane Cove Park at 701 Illinois Street. The YMCA SF's proposed program includes a center for the community focused on human-powered watercraft fitness & wellness, food concessions, diverse & inclusive programming, and educational programs. The program will also provide publicly available restrooms.

THIS PRINT COVERS CALENDAR ITEM NO. 7D

On October 11, 2022, Port staff presented an informational item to the Port Commission on the proposed lease terms as negotiated by the parties. Port staff and the YMCA SF then presented the lease terms and proposed program to the Port’s Southern Advisory Committee on October 26, which was favorably received. The Committee’s feedback centered around minimizing disruption to Crane Cove Park during construction and the historic and architectural significance of Building 49, and the park activation benefits that the project will deliver. Now, Port staff requests Port Commission approval of Lease No. 16997 (the “Lease”). Additionally, Port staff seeks approval for a fee waiver associated with a companion license agreement for certain programmatic activities in Crane Cove Park (e.g., aquatics and fitness programs), as described further at the end of Table 1 in Section 6 of this report.

This staff report is broken into the following sections:

1. Strategic Plan Alignment
2. Background
3. Project Concept
4. Review of the Diversity Equity and Inclusion Plan
5. Consistency with RFP Goals and YMCA Response to RFP
6. Key Lease Terms
7. California Environmental Quality Act
8. Public Trust Consistency
9. Recommendation and Next Steps

STRATEGIC PLAN ALIGNMENT

YMCA SF’s proposal is to rehabilitate and maintain Building 49, a historic resource, provide water recreation and publicly oriented uses that enhance Crane Cove Park, offer new activities and attractions for the neighborhood and park visitors, and accomplish these objectives within a financially feasible project, with a sustainable operating structure.

Specifically, the lease and development of Building 49 by the YMCA SF as proposed will support four of the Port’s strategic plan objectives (from the 2021-2025 Strategic Plan):

1. Evolution: The completion by the YMCA SF of the Building 49 renovation that was begun by the Port in 2020 will serve as a milestone in the ongoing transformation of the Pier 70 area to better address the needs of the public and the Waterfront.
2. Engagement: The re-opening and activation of this contributing resource to the Pier 70 Union Ironworks Historic District will provide amenities that increase the public’s awareness of the history of the Pier 70 area.
3. Equity: Building 49 will be accessible, attractive, and beneficial to a diverse group of people who live, work, and/or recreate along the Southern Waterfront.
4. Productivity: The proposed lease and development of Building 49 by the YMCA SF will return the building to productive use and attract visitors to Crane Cove Park.

BACKGROUND

In 2021, the Port sought a qualified partner to enter exclusive negotiations to develop and operate Building 49 through a competitive Request for Proposals (“RFP”) process. The Port received two responses to the RFP for Building 49; the respondents were Ted Choi, dba “City Kayak”, and YMCA SF.

As part of the RFP process, the Port convened a five-member scoring panel including community leaders, experts from key disciplines, and Port staff to review and score both the written responses and oral interviews, based upon the criteria approved by the Port Commission and described in the RFP. The YMCA SF submittal, which met the goals, objectives, and values described in the RFP, scored significantly higher on its RFP submittal than the other respondent.

On October 26, 2021, the Port Commission adopted Resolution 21-46 which authorized staff to begin negotiating a long-term lease with YMCA SF for Building 49 located within Crane Cove Park at 701 Illinois Street. The YMCA SF’s proposed program includes a center for the community focused on human-powered watercraft, fitness & wellness, food concessions, diverse & inclusive programming, and educational programs.

The YMCA SF is a proven local community engager, operating 14 YMCAs throughout San Francisco, Marin, and San Mateo Counties, including one on the Embarcadero near Rincon Park and one in Bayview Hunter’s Point. Their mission is “to build strong kids, strong families, and strong communities by enriching the lives of all people in spirit, mind, and body”.¹

As in its RFP proposal, YMCA SF has partnered with two local organizations that will occupy portions of the building under subtenant agreements:

- Dogpatch Paddle is a human-powered boating business/club that was spawned by the opening of Crane Cove Park and currently has over 900 members. Dogpatch Paddle offers stand-up paddle board (SUP) and kayak rentals, lessons, camps, and equipment sales, and will operate the aquatic center at the eastern end of the building.
- Daily Driver is a community-oriented, female-owned food and beverage business specializing in bagels and house-made butter and cream cheese. Their flagship restaurant and production facility is located near Crane Cove Park in the American Industrial Building on 3rd Street, and they also have a location within the Ferry Building.

¹ See: <https://www.ymcasf.org/>

PROJECT CONCEPT

Through its own programming and its service partners, the YMCA SF's vision for Building 49 is "a community hub focused on human-powered watercraft, fitness, and wellness, hyper-local food concessions, diverse and inclusive programming, targeted retail, and educational programs". YMCA SF proposes to construct an approximately 4,000 square foot, membership-based community wellness center that includes traditional gym amenities like cardio machines, weights, and group exercise classes, along with gender-neutral locker rooms, onsite wellness coaching, health education classes, and personal training for members and guests.

Dogpatch Paddle will occupy approximately 2,200 square feet on the water-facing east side of the facility. They will offer lessons, rentals, classes, youth programs, and a retail store featuring equipment sales and beach provisions, as they seek to expand their current operations and draw more of the surrounding community and beyond to Crane Cove Park. They will offer drop-in services and monthly memberships, as well as combined aquatics and fitness packages in partnership with the YMCA SF.

Daily Driver will occupy 480 square feet and offer healthy grab-and-go provisions at the southwest corner of the building, nearest the picnic tables on the south side of Crane Cove Park.

The proposed lease includes a requirement that the YMCA SF maintain the public restrooms located at the northeast corner of the building near the intersection of 18th and Illinois streets.

DIVERSITY, EQUITY, AND INCLUSION

The YMCA of San Francisco is deeply embedded in communities among the most deeply impacted by structural inequality and racism. Foundational in their approach is a belief in community-centered solutions and the value they place on community dialogue. Through culturally, linguistically, and gender-responsive practices, YMCA SF ensures that people who have historically been impacted by structural inequality have both access and voice in their programs. Community-based staff is essential to their work.

YMCA staff live and work in the communities they serve, and the shared understanding and experiences allow them to build rapport with the young people they work with and create safe and trusting spaces conducive to positive youth experiences.

The YMCA of San Francisco has historically been one of the largest employers in the City and a significant employer of young adults; for many of their membership and youth development staff, the YMCA is their first professional experience. Additionally, their workforce development programs provide job readiness, skill building, and job and internship placements for underserved youth.

As an organization, YMCA SF is committed to diversity and inclusion at all levels. They

maintain an agency-wide diversity and inclusion committee which advances inclusive internal policies including job development for underrepresented groups in leadership positions. The YMCA SF is committed to staff professional development and has invested significantly in training and mentoring programs within the organization to ensure that they can retain and promote diverse staff. YMCA SF has partnered with the San Francisco Department of Public Health (SFDPH) and Trauma Transformed to adopt the Trauma Informed Systems (TIS) model for organizational change.

With regard to membership cost, they offer inclusive, sliding-scale packages. They bring a strong commitment to providing access to underserved populations (including through their African American Holistic Wellness program based at the Bayview YMCA and their partnership with the SF Department of Public Health).

CONSISTENCY WITH RFP GOALS AND YMCA RESPONSE TO RFP

Throughout the lease negotiations process over the past year, Port staff have focused on delivering a lease and development program for Building 49 that meets the community values and priorities listed in the RFP as follows:

- Provide programs and uses that support human-powered recreational boating (e.g., kayaks, paddleboards)
- Enhance the use and activation of Crane Cove Park
- Provide needed amenities for park visitors, including public bathroom facilities
- Preserve the historic character and maritime function of the building

As we look ahead to lease approval and execution, Port staff are confident that the YMCA SF will not only deliver on all of these priorities but will also deliver a robust program of community benefits through their organizational mission and their keen focus on diversity, equity, and inclusion.

Another goal of the lease negotiations has been to maintain consistency with the original proposal submitted by the YMCA SF, which scored very highly on each of the criteria set forth in the RFP. That said, the further due diligence investigation into the scope and cost of the building improvements required to complete the renovation begun by the Port and to successfully operate and maintain the facility have revealed the need to temper the Port's expectations with regard to financial benefits to the Harbor Fund.

In particular, a review of the structural integrity of the building has resulted in a substantial unanticipated cost for a partial seismic retrofit of the building. Port staff agrees that this work – estimated at \$1.5M - is prudent to undertake from both a life-safety perspective and a preservation of the historic resource perspective given the potential for a significant seismic event over the next 30 years. Therefore, Port staff propose to share these costs through rent credits as described in Table 1 below (“Seismic Cost Sharing”) in order to make the project financially feasible for the YMCA SF.

There are two other negotiated financial terms that deviate somewhat from the YMCA’s original proposal: (1) a 15% reduction to starting Base Rent in exchange for annual escalation of Base Rent; and (2) monthly rent credits to offset the capital costs associated with the public restrooms (both as described in Table 1). With these financial concessions by the Port and additional improvements by the Tenant, all parties believe that the proposed project will be financially feasible and sustainable. Indeed, in addition to delivering on the promise of preserving this historic resource and delivering a facility that serves the needs of the community and enhances the experience of visitors to Crane Cove Park, Building 49 will become a productive asset for the Port, generating positive net revenues to the Harbor Fund well into the future.

KEY LEASE TERMS

Table 1 below outlines the key negotiated lease terms (substantive changes as a result of refining and negotiating terms are highlighted in underline and strikeout) which Port staff believes will deliver a financially feasible project that meets all of the Port’s objectives for the rehabilitation and reuse of Building 49 as described in the RFP.

Table 1: Key Lease Terms:

Premises	Building 49 includes approx. 8,000 square feet Total Rentable <u>Building Area</u> : 6,758 square feet (<u>does not include use of outdoor space within Crane Cove Park which is covered through a separate license agreement as described below</u>).
Primary Tenant	YMCA SF (4,068 square feet): Community Wellness Facility
Subtenants	Dogpatch Paddle (2,210 square feet): Retail/Aquatics Center Daily Driver (480 square feet): Retail Food and Beverage
Required Tenant Improvements; Time allowed for Completion of Improvements; Tenant Termination Right	<p>Tenant estimates the proposed capital investment to cost approximately \$5.4 million as of September 2022 <u>\$5.2 million not including the seismic improvements described immediately below as of April 2023</u>, subject to escalations over time. Tenant is solely responsible for these improvements and costs. <u>Tenant is obligated to contribute a minimum of \$5.0 million (inclusive of hard and soft costs) to the improvements at Building 49 as consideration for the Tenant Extension Options below. This capital contribution is exclusive of the seismic work described below.</u></p> <p><u>The improvements must be completed within twenty-four (24) months after the Port issues the building permit provided, however, that the Port’s Executive Director may extend the 24-</u></p>

	<u>month deadline in writing following Tenant's written request and provided that Tenant is working diligently toward completion of the improvements and provided further that any such extension will not operate to relieve Tenant of its obligations to pay Rent. If the Building Permit is not issued within 11 months after the Commencement Date, then Tenant can terminate the Lease at no further cost.</u>
Seismic Work - Cost Sharing/Rent Credits	Tenant will perform voluntary seismic improvements and structural upgrades to the building, estimated to cost approximately \$1,000,000 <u>\$1,500,000</u> . Port will share these additional structural improvement costs through rent credits equal to 50% of the actual costs of the seismic strengthening/structural improvement work or \$500,000, whichever is less.
Initial Lease Term	Ten (10) Years
Construction Rent Abatement	Port will provide up to <u>11 months (330 days)</u> of rent abatement during the construction of the Tenant Improvements.
Tenant Extension Options	Four, 5-Year Tenant Extension Options and two, 2-year Tenant Extension Options pursuant to the terms of the Lease. Total possible lease term inclusive of all Extension Options and 270 days of construction = 34 years, 11 months
Base Rent	Year 1 Base rent of \$93,500 <u>92,810</u> per annum to be paid by YMCA SF in monthly installments of approximately \$7,792 <u>7,735</u> .
Initial Term Base Rent Escalation	The annual Base Rent amount will be increased by 3% every year during the Initial Lease Term.
Extension Periods Base Rent Escalation	The annual Base Rent escalation for each year during any 5-year Extension Term shall be escalated by the percentage that is the "collared" average of the CPI for the prior 5 years, which average is subject to a minimum of 1% and a maximum of 4% per year. In no event shall Base Rent be less than Base Rent in the prior lease year. For the final two, 2-year options, the calculation will be based upon the average CPI for the preceding two years, subject to a minimum of 1% and a maximum of 4% per year.
Percentage Rent for Subtenant Activities	Tenant is responsible for payment of Percentage Rent equal to 6% of gross revenues generated at Building 49 by each for-

	profit subtenant. For each for-profit subtenant (initially Dogpatch Paddle and Daily Driver), if the Percentage Rent calculation falls below the subtenant's respective share of Base Rent as defined in the Lease in any given month, only Base Rent shall be due.
Maintenance and Repair	Sole responsibility of Tenant for all Building including roof, core, shell, windows, and interiors, including all site infrastructure, stormwater and drainage, and sea level rise measures; Tenant responsible for all security, daily custodial servicing, and maintenance and repair of public restrooms (including improvements, replacements, and other capital costs). Port will have no maintenance obligations with respect to the Site.
Port Financial Contribution to Public Restrooms	Port shall contribute financially to the <u>capital</u> costs associated with maintaining and repairing the Public Restrooms through a reduction of Base Rent of \$2,000 each month, subject to increase at the rate of the applicable annual escalation factor.
Connection to Existing Power Line to Building 49 During Initial Term	<u>Port will allow the Tenant to connect to the existing power line currently provided to Building 49 for the Initial Term. Port makes no representation or warranty on the condition of the existing power line. From the Rent Commencement Date, Tenant will pay an annual Capacity Charge at the Port parameter rate of \$0.20 per rentable square foot of Building 49 (6,817 x \$0.20 = \$16,360.80) on an annual basis, plus the actual costs charged by SFPUC to supply the power. The Capacity Charge will be indexed annually in line with the Rent.</u>
Southern Waterfront Community Benefits and Beautification Policy	Consistent with the latest adoption of Parameter Rates (Reso. 22-41), 6.5% of lease revenues will be set aside in the Port's Southern Waterfront Community Benefits and Beautification fund. Also, Tenant will support key elements of this Port policy. YMCA brings a proven track record of engagement with the community, supports local hiring practices, and has a strong commitment to environmental sustainability through their building design and operations as well as their educational programming. Tenant agrees that Port staff and Tenant will work collaboratively to highlight the areas of benefits to the public through ongoing engagement with the community, and to consider community members' comments and proposals in the context of Tenant's operations and the requirements and constraints of the new lease.

Port Participation in Lease Transfer Proceeds	<u>Tenant and all subsequent assignees must pay to Port twelve percent (12%) of the sales proceeds from any transfer or financing of the lease, net of reasonable costs associated with such transfer or financing (e.g., attorney fees, broker commissions).</u>
Damage & Destruction	<u>If a casualty event occurs, then available insurance proceeds will be used to repair the Premises, including the YMCA's tenant improvements. If insurance proceeds are not adequate to fully restore the Premises within 270 days, then the YMCA can terminate the Lease under certain conditions. If the Lease is terminated without repairing the Premises, any available insurance proceeds will be equitably distributed between the parties.</u>
Substantial Condemnation; Partial Condemnation; Rent Abatement	<u>Tenant entitled to lease termination or partial rent abatement in the event of a taking of the Premises which renders all or a portion of the Premises untenable, unsuitable, or economically infeasible for the Permitted Uses.</u>
Force Majeure	<u>The Lease contains commercially reasonable force majeure provisions to allow for a suspension of certain obligations during events beyond the control of the parties.</u>
Port Form Lease and City Requirements	<u>Except as noted, the Lease will be consistent with the Port's form retail lease and include standard provisions regarding Security Deposits, bonding, and other financial guarantees, Consent to Subtenants, Assignments and Transfers, and Port participation in such events, Sea Level Rise/Flooding, Taxes, Utilities, Maintenance and Repair, Hazardous Materials, Defaults and Remedies, Indemnity and Waiver, Insurance, all applicable City requirements and other customary provisions for similar leases. <u>The Port does not retain a right to terminate for convenience.</u></u>
Termination Based on Change in Laws	<u>The Lease allows the YMCA to terminate during an extension term upon payment to Port of a termination fee equal to 50% of the remaining Base Rent for the remaining term if there is a change in Laws that would materially impact the YMCA's ability to operate the Premises or cause a financially material hardship for the YMCA by requiring the YMCA to make capital improvements or impairing the YMCA's operations as determined by the YMCA. Termination under this provision requires at least 180 days' notice.</u>

<p>Port Form Lease and City Requirements</p>	<p><u>Except as noted, the Lease will be consistent with the Port's form retail lease and include standard provisions regarding Security Deposits, bonding, and other financial guarantees, Consent to Subtenants, Assignments and Transfers, and Port participation in such events, Sea Level Rise/Flooding, Taxes, Utilities, Maintenance and Repair, Hazardous Materials, Defaults and Remedies, Indemnity and Waiver, Insurance, all applicable City requirements and other customary provisions for similar leases. The Port does not retain a right to terminate for convenience given the Trust consistency of the Lease and the size of investment (at least \$5.0 million).</u></p>
<p>Limited Hazardous Materials Responsibility on Other Port Property and Indemnity Provisions for Claims on Other Port Property</p>	<p><u>Tenant is not responsible for the handling or release of hazardous materials on "other Port property" (in other words, on Port property other than the Premises) by its agents (unless such agent is performing work on Tenant's behalf or otherwise acting on Tenant's behalf in furtherance of the Permitted Uses under the Lease) or its invitees. Tenant also has limited indemnification obligations for claims on "other Port property" arising out of its invitees' and agents' acts, omissions, or negligence.</u></p>
<p>No-Fee License for Use of Outdoor Space in Crane Cove Park</p>	<p><u>In conjunction with the Lease and in compliance with the Port Code (which regulates Port parks), the Port will enter into a separate license agreement (License No. 17011, or "License") with the YMCA which grants a revocable, personal, non-assignable, non-exclusive, and non-possessory privilege for the YMCA and its approved subtenants to conduct aquatics and fitness classes and other permissible activities in the Park. All activities must be performed in compliance with the Operations Plan. Provided there is no Event of Default under the Lease, there shall be no fee under the License, but the License will otherwise conform to the approved Port form for license agreements including standard provisions regarding Indemnity and Waiver, Insurance, applicable City requirements, and other customary provisions.</u></p>

By year 5 of the lease, these lease terms are estimated to result in approximately \$5.4 to \$6.4M ~~\$6.7M~~ invested in the building; \$67k to \$125k in total annual rent to the Port Base Rent plus Percentage Rent), and publicly accessible restrooms, food and beverage cafe, water recreation center, and a community wellness facility.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

The San Francisco Planning Department has reviewed the YMCA SF Building 49 project for compliance with CEQA. On October 5, 2015, the Planning Department issued a Community Plan Exemption for the Crane Cove Park – Pier 70 project (Planning Department Case No. 2015-001314ENV) under the Eastern Neighborhoods Rezoning and Area Plans Final EIR (Planning Department Case No. 2004.0160E). The Port Commission affirmed this determination on October 13, 2015. Subsequently, on April 11, 2022, the San Francisco Planning Department issued a Determination of No Substantial Modification, which found that the YMCA SF Building 49 project is within the scope of the project evaluated in the prior Community Plan Exemption (2015-001314ENV), and no additional environmental review is required.

PUBLIC TRUST CONSISTENCY

The rehabilitation, reuse, lease, and operation of Building 49 by the YMCA SF as described in this Memorandum will benefit the Public Trust through historic rehabilitation of and investment in Trust assets, enhanced water recreation opportunities, and provision of visitor-serving amenities, all of which will attract the public to use and enjoy these cultural and historic resources and generate revenue to help fund necessary improvements throughout the Port.

RECOMMENDATION AND NEXT STEPS

Port staff recommends approval of the attached Resolution 23-20, authorizing the Port Executive Director to execute Lease 16997 and to waive any applicable fees with the companion License. If approved by the Port Commission, Port Staff will promptly seek the Board of Supervisors' approval of the Lease as is required for any lease having a term of ten (10) years or more.

Prepared by: Jamie Hurley, Development Project Manager
Real Estate and Development

For: Josh Keene, Assistant Deputy Director
Real Estate and Development

Rebecca Benassini, Deputy Director
Real Estate and Development

**PORT COMMISSION
CITY AND COUNTY OF SAN FRANCISCO**

RESOLUTION NO. 23-20

- WHEREAS, Charter Section B3.581 empowers the Port Commission with the power and duty to use, conduct, operate, maintain, manage, regulate and control Port area of the City and County of San Francisco; and
- WHEREAS, On February 9, 2021, the Port Commission, by Resolution 21-07, authorized Port staff to issue a request for proposals (“Request for Proposals” or “RFPs”) and manage the solicitation process for the adaptive rehabilitation, reuse, lease, and operation of two historic structures – the ‘Kneass Building’ and ‘Building 49’ – both located in the Pier 70 Area adjacent to Crane Cove Park generally along Illinois Street between 18th and 19th Streets; and
- WHEREAS, On April 14, 2021, the Port issued the Request for Proposals for the “Kneass Building” and “Building 49”, (or collectively the “Crane Cove Park Buildings”); and
- WHEREAS, On June 9, 2021, the Port received two responses for Building 49 that met the RFP minimum qualifications; and
- WHEREAS, A five-member scoring panel consisting of a real estate development expert, a Port staff person, a Port advisory committee member, a citywide stakeholder and a person with City planning experience conducted interviews and scored the two Building 49 proposals against the objectives and evaluation criteria set forth in the RFP; and
- WHEREAS, The YMCA of San Francisco (“YMCA SF”) proposal received the highest score from the scoring panel; and
- WHEREAS, On September 14, 2021, the Port Commission received a briefing on the responses received, the concepts presented and the scoring panel process; and
- WHEREAS, On October 6, 2021, Port staff and YMCA SF presented to the Port’s Southern Advisory Committee (SAC) a briefing on the responses received, the concepts presented and the scoring panel process; and;


- WHEREAS, On October 26, 2021, the Port Commission approved Resolution 21-46 authorizing staff to enter into lease negotiations with YMCA SF; and
- WHEREAS, On June 19, 2008, the San Francisco Planning Commission certified the Final Environmental Impact Report for the Eastern Neighborhoods Rezoning and Area Plans (Eastern Neighborhoods EIR) (Planning Department Case No. 2004.0160E) in compliance with the California Environmental Quality Act (CEQA); and
- WHEREAS, On October 5, 2015, the San Francisco Planning Department issued a Community Plan Exemption (CPE) for the Crane Cove Park – Pier 70 project (Planning Department Case No. 2015-0013214ENV) under the Eastern Neighborhoods EIR, which found that the Crane Cove Park project is encompassed within the analysis contained in the Eastern Neighborhoods EIR and required no further environmental review; and
- WHEREAS, Planning Department staff prepared a Mitigation Monitoring and Reporting Program (MMRP) setting forth mitigation measures that were identified in the Eastern Neighborhoods EIR that are applicable to the Crane Cove Park project, and these mitigation measures are set forth in their entirety in the MMRP attached to this resolution as Exhibit A; and
- WHEREAS, On April 11, 2022, the San Francisco Planning Department issued a Determination of No Substantial Modification which found that the YMCA SF Building 49 project (Project) is within the scope of the project evaluated in the Eastern Neighborhoods EIR and the prior Community Plan Exemption (2015-001314ENV), and no additional environmental review is required; and
- WHEREAS, There have been no substantial changes to the Eastern Neighborhoods Rezoning and Area Plans or the Crane Cove Park project, and no substantial changes in circumstances, that would require major revisions to the Eastern Neighborhoods EIR or prior Community Plan Exemption due to the involvement of new significant environmental effects or an increase in the severity of previously identified significant impacts, and there is no new information of substantial importance that would change the conclusion set forth in the Eastern Neighborhoods EIR or prior Community Plan Exemption; and
- WHEREAS, On October 11, 2022, Port staff presented an information item to the Port Commission, which discussed the proposed terms of Lease No. L-16997 (the “Lease”) as negotiated by the parties; and

- WHEREAS, On October 26, 2022, Port staff and YMCA SF presented a briefing to the SAC on the proposed Lease terms and program; and
- WHEREAS, The rehabilitation, reuse, lease and operation of Building 49 by the YMCA SF as described in the Memorandum to the Port Commission dated April 21, 2023 will benefit the Public Trust through historic rehabilitation of and investment in Trust assets, enhance water recreation opportunities, and provide visitor-serving amenities which will attract the public to use and enjoy these cultural and historic resources and generate revenue to fund necessary improvements throughout the Port; and
- WHEREAS, Port staff recommends approval of the proposed Lease with the YMCA SF on terms including an investment by the YMCA SF of at least five million dollars (\$5,000,000) into Building 49 and monthly rent to the Port, and approval of a companion, no-fee License 17011 (the "License") governing the YMCA SF's use of a portion of Crane Cove Park for YMCA SF programming, all as further described in the Memorandum to the Port Commission dated April 21, 2023 accompanying this resolution and on terms set forth in the Lease and License on file with the Port Commission Secretary; and now therefore be it
- RESOLVED, That the Port Commission hereby affirms the Planning Department's CEQA determinations and adopts the MMRP attached hereto as Exhibit A and incorporated by reference as part of this resolution, and includes all required mitigation measures contained in the MMRP as conditions of approval; and be it further
- RESOLVED, That the Port Commission hereby approves the Lease on the terms and conditions described in this resolution and the Memorandum to the Port Commission dated April 21, 2023 accompanying this resolution and on terms set forth in the Lease on file with the Port Commission Secretary, and authorizes the Executive Director or her designee to forward the Lease to the Board of Supervisors for their consideration and approval; and be it further
- RESOLVED, That the Port Commission hereby approves the License as described in the Memorandum to the Port Commission accompanying this resolution and on terms set forth in the License on file with the Port Commission Secretary, and authorizes the Executive Director or her designee to forward the License to the Board of Supervisors for their consideration and approval; and be it further

RESOLVED, That the Port Commission authorizes the Executive Director or her designee, to execute the Lease and after execution of the Lease, the License, after approval of said documents by the Board of Supervisors; and be it further

RESOLVED, That the Port Commission authorizes the Executive Director or her designee, to enter into any additions, amendments or other modifications to the Lease or License that the Executive Director, in consultation with the City Attorney, determines are in the best interest of the Port, do not materially increase the obligations or liabilities of the Port or materially decrease the public benefits accruing to the Port, and are necessary and advisable to complete the transaction and effectuate the purpose and intent of this resolution, such determination to be conclusively evidenced by the execution and delivery by the Executive Director of any such documents.

I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of April 25, 2023.

DocuSigned by:

Secretary
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EASTERN NEIGHBORHOODS REZONING AND AREA PLANS

Final EIR

Planning Department Case No. 2004.0160E

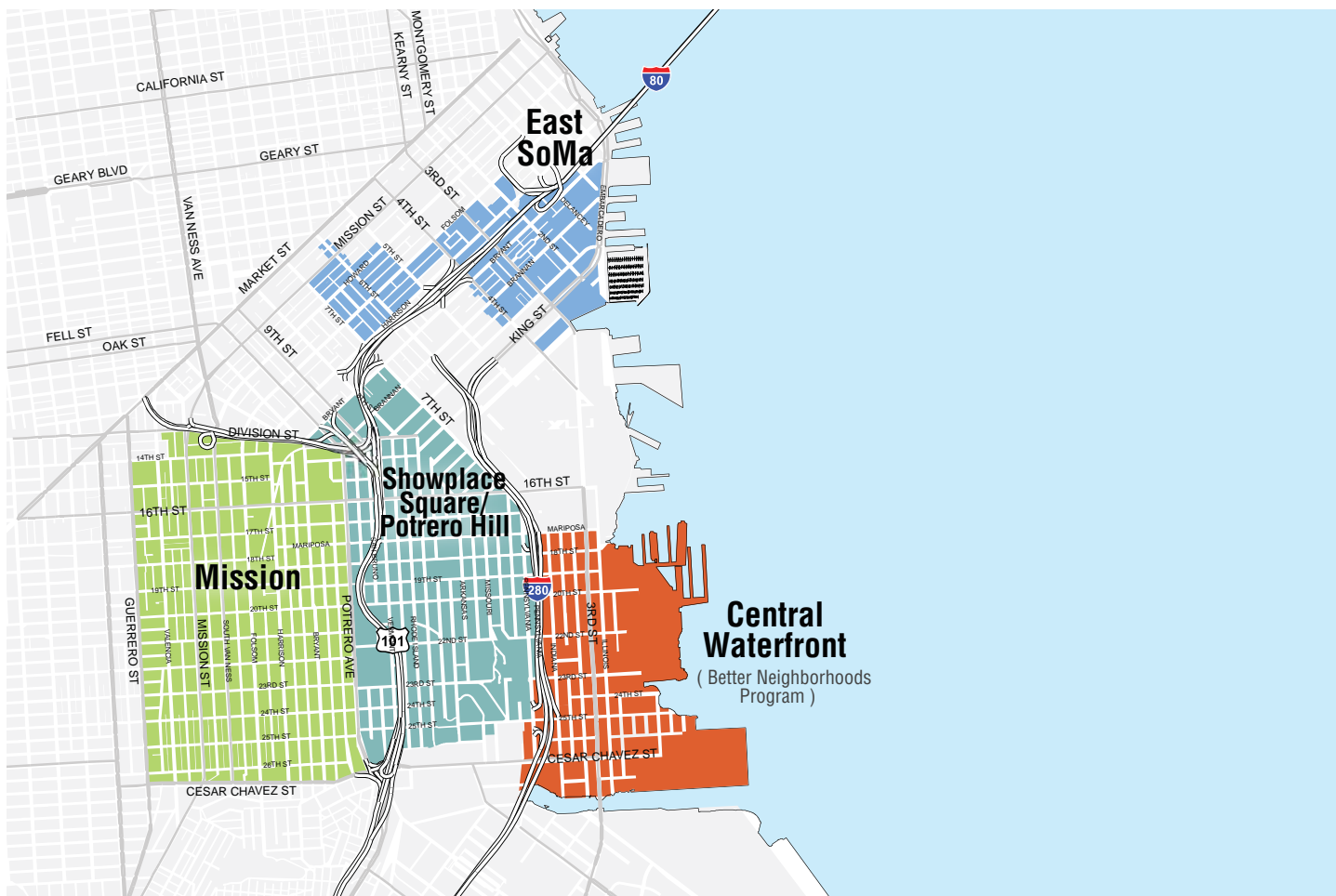
State Clearinghouse No. 2005032048

Draft EIR Publication Date: June 30, 2007

Draft EIR Public Hearing Date: August 9, 2007

Draft EIR Public Comment Period: June 30 – September 14, 2007

Final EIR Certification Date: August 7, 2008





SAN FRANCISCO PLANNING DEPARTMENT

SAN FRANCISCO
CITY PLANNING COMMISSION
MOTION NO. 17659

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CERTIFYING A FINAL ENVIRONMENTAL IMPACT REPORT FOR THE PROPOSED EASTERN NEIGHBORHOODS REZONING AND AREA PLANS PROJECT, AMENDMENTS TO THE SAN FRANCISCO PLANNING CODE AND ZONING MAPS, AMENDMENTS TO THE SAN FRANCISCO GENERAL PLAN, AND ADOPTION OF INTERIM HISTORIC PRESERVATION PROCEDURES. THE PLAN AREA GENERALLY INCLUDES THE EASTERN PORTION OF THE SOUTH OF MARKET AREA ("EAST SOMA"), THE MISSION, SHOWPLACE SQUARE/POTRERO HILL, AND THE CENTRAL WATERFRONT NEIGHBORHOODS OF SAN FRANCISCO AND MAKING OTHER RELATED FINDINGS.

MOVED, that the San Francisco Planning Commission (hereinafter "Commission") hereby CERTIFIES the Final Environmental Impact Report identified as Case File No. 2004.0160E – Eastern Neighborhoods Rezoning and Area Plans Project (hereinafter "Project") based upon the following findings:

- 1) The City and County of San Francisco, acting through the Planning Department (hereinafter "Department") fulfilled all procedural requirements of the California Environmental Quality Act (Cal. Pub. Res. Code Sections 21000 *et seq.*, hereinafter "CEQA"), the State CEQA Guidelines (Cal. Admin. Code Title 14, Sections 15000 *et seq.*, (hereinafter "CEQA Guidelines") and Chapter 31 of the San Francisco Administrative Code (hereinafter "Chapter 31").
 - a. The Citywide Group of the Department filed for environmental evaluation on February 19, 2004 and the Major Environmental Analysis section of the Department determined that an Environmental Impact Report (hereinafter "EIR") was required and provided public notice of that determination by publication in a newspaper of general circulation on March 9, 2005.
 - b. Notice of Completion was filed with the State Secretary of Resources via the State Clearinghouse on March 9, 2005.
 - c. On June 30, 2007, the Department published the Draft Environmental Impact Report ("DEIR") and provided public notice in a newspaper of general circulation of the availability of the document for public review and comment and of the date and time of the Planning Commission public hearing on the DEIR; this notice was mailed to the Department's list of persons requesting such notice.

- d. On June 30, 2007, copies of the DEIR were mailed or otherwise delivered to a list of persons requesting it, to those noted on the distribution list in the DEIR, and to government agencies, the latter both directly and through the State Clearinghouse.
 - e. Notices of Availability of the DEIR and of the date and time of the public hearings were posted on the Planning Department's website and also in various locations in the project area by Department staff on June 30, 2007.
- 2) The Commission held a duly advertised public hearing on the DEIR on August 9, 2007 at which time opportunity for public comment was given, and public comment was received on the DEIR. The period for acceptance of written comments ended on September 14, 2007.
 - 3) The Department prepared responses to comments on environmental issues received at the public hearing and in writing on the DEIR, prepared revisions to the text of the DEIR in response to comments received or based on additional information that became available during the public review period, corrected errors in the DEIR, and prepared impact analysis for proposed revisions to the Area Plans. This material was presented in a Comments and Responses document, published on May 29, 2008, was distributed to the Commission and to all parties who commented on the DEIR, and was available to others upon request at Department offices and web site.
 - 4) A Final Environmental Impact Report has been prepared by the Department, consisting of the DEIR, any consultations and comments received during the review process, any additional information that became available, and the Summary of Comments and Responses all as required by law ("FEIR").
 - 5) Project environmental files have been made available for review by the Commission and the public. These files are available for public review at the Department offices at 1650 Mission Street, Suite 400, and are part of the record before the Commission.
 - 6) On August 7, 2008, the Commission reviewed and considered the FEIR and hereby does find that the contents of said report and the procedures through which the FEIR was prepared, publicized and reviewed comply with the provisions of CEQA, the CEQA Guidelines and Chapter 31 of the San Francisco Administrative Code.
 - 7) The Planning Commission hereby does find that the FEIR concerning Case File No. 2004.0160E – Eastern Neighborhoods Rezoning and Area Plans Project reflects the independent judgment and analysis of the City and County of San Francisco, is adequate, accurate and objective. The Commission also finds that since publication of the DEIR there has been no significant new information or

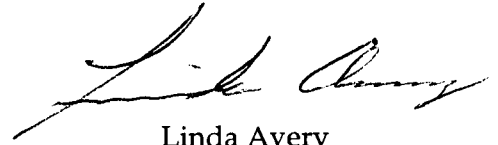
other factors that would require recirculation of the document pursuant to CEQA Guidelines Section 15088.5. Information to support this conclusion is found in the Final EIR document, which includes the Comments and Responses and in Department staff analysis. In furtherance of the above findings, the Planning Commission hereby does CERTIFY THE COMPLETION of said Final Environmental Impact Report in compliance with CEQA, the CEQA Guidelines, and Chapter 31.

The Commission, in certifying the completion of the FEIR, hereby does find that the proposed project described in the FEIR would have the following significant unavoidable environmental impacts, which could not be mitigated to a level of non-significance:

- a. The Preferred Project would result in a potentially significant, adverse cumulative land use impact related to the loss of Production, Distribution and Repair land supply and building space as identified for EIR Option C.
- b. The Preferred Project would result in a significant, adverse transit impact on Muni service affecting the following seven lines: 9-San Bruno, 22-Fillmore, 26-Valencia, 27-Bryant, 33-Stanyan, 48-Quintara, 49-Van Ness/Mission.
- c. A significant, adverse transportation impact to the following intersections would occur under Preferred Project conditions: 13th/Bryant, South Van Ness/Howard/13th, Seventh/Brannan, Seventh/Townsend, Eighth/Brannan, Eighth/Bryant, Eighth/Harrison, Third/César Chávez, and César Chávez/Evans.
- d. A significant, adverse environmental impact related to historical architectural resources would occur under Preferred Project conditions. Demolition or significant alteration of buildings that are identified as historical resources, potential resources or age-eligible properties could be anticipated to occur as a result of development secondary to project implementation. The EIR also identifies a significant, adverse cumulative impact related to the demolition, alteration, or other changes to one or more resources (including historic districts), such that the historical significance of those resources would be "materially impaired."
- e. A significant, adverse environmental impact related to potential shading of parks and public open spaces under the jurisdiction of the San Francisco Recreation and Parks Department would occur under Preferred Project conditions, because the feasibility of complete mitigation for potential new shadow impacts of currently unknown development proposals cannot be known at this time.

August 7, 2008
File No: 2004.0160E
Eastern Neighborhoods
Rezoning & Area Plans
Motion No. 17659

I hereby certify that the foregoing Motion was ADOPTED by the Planning Commission on August 7, 2008.



Linda Avery
Planning Commission Secretary

AYES: Borden, More, Lee, Olague

NOES: None

ABSENT: None

EXCUSED: Antonini, Miguel, Sugaya

ACTION: Certification of the Eastern Neighborhoods Rezoning and Area Plans FEIR

EASTERN NEIGHBORHOODS REZONING AND AREA PLANS

Final EIR

Planning Department Case No. 2004.0160E
State Clearinghouse No. 2005032048

Draft EIR Publication Date: June 30, 2007

Draft EIR Public Hearing Date: August 9, 2007

Draft EIR Public Comment Period: June 30 – September 14, 2007

Final EIR Certification Date: August 7, 2008

Changes from the Draft EIR text are indicated by a dot (•) in the left margin (adjacent to page number for added pages and figures; adjacent to table number for tables).

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CHAPTER I

Introduction

This environmental impact report (EIR) analyzes potential environmental effects associated with a range of rezoning options proposed by the San Francisco Planning Department for East SoMa, the Mission, Showplace Square/Potrero Hill, and the Central Waterfront neighborhoods, collectively referred to as “the Eastern Neighborhoods,” and also referred to in this document as the “project area” and the “study area.” The rezoning options that form the basis for the EIR analysis are discussed in depth in Chapter III, Project Description.

These rezoning options (“Options A, B, and C”) are based on the options set forth in the Planning Department’s February 2003 publication entitled, *Community Planning in the Eastern Neighborhoods: Rezoning Options Workbook*. However, the options described and analyzed in this EIR reflect revisions and refinements developed by Planning staff through approximately spring 2006. Accordingly, some of the proposed zoning revisions vary from those presented in the Workbook. Since early 2006, Planning staff and the community have continued to refine the proposed rezoning and to develop area plans for the Eastern Neighborhoods. Because this effort has been aimed at achieving relative consensus on a single rezoning proposal for each neighborhood, there has been no further development of the three side-by-side options that are presented and analyzed in this EIR. It is assumed that the ultimate rezoning proposal would fall within the range of the options analyzed in this EIR.

A. Environmental Review

The San Francisco Planning Department, serving as Lead Agency responsible for administering the environmental review for the proposed rezoning project, prepared an Initial Study and Environmental Review Checklist (“Initial Study”) and found that preparation of an environmental impact report (EIR) was needed.

The California Environmental Quality Act (CEQA) requires that before a decision can be made to approve a project that would pose potential adverse physical effects, an EIR must be prepared that fully describes the environmental effects of the project. The EIR is a public information document for use by governmental agencies and the public to identify and evaluate potential environmental impacts of a project, to recommend mitigation measures to lessen or eliminate significant adverse impacts, and to examine feasible alternatives to the project. The information

contained in the EIR is reviewed and considered by the Lead Agency prior to a decision to approve, disapprove, or modify the Eastern Neighborhoods Rezoning and Area Plans project.

CEQA requires that the Lead Agency shall neither approve nor implement a project unless the project's significant environmental effects have been reduced to a less-than-significant level, essentially "eliminating, avoiding, or substantially lessening" the expected impact, except when certain findings are made. If the Lead Agency approves a project that will result in the occurrence of significant adverse impacts that cannot be mitigated to less-than-significant levels, the agency must state the reasons for its action in writing, demonstrate that its action is based on the EIR or other information in the record, and adopt a Statement of Overriding Considerations.

The Eastern Neighborhoods Rezoning and Area Plans Initial Study prepared by the Planning Department identified the environmental issues that should be addressed in the EIR and environmental issues that could be excluded from further analysis. On December 17, 2005, the City sent a Notice of Preparation (NOP) to governmental agencies and organizations and persons interested in the project. The Initial Study and NOP are included as Appendix A of this EIR. The NOP requested agencies and interested parties to comment on environmental issues that should be addressed in the EIR. The comment letters received in response to the Initial Study and the NOP are available for review, by appointment, as part of Case File No. 2004.0160E.

During the approximately 60-day period that the Draft EIR is available for public review, written comments on the adequacy of the environmental analysis presented therein may be submitted to the Planning Department. Responses to all substantive comments received on the adequacy of the Draft EIR analysis and submitted within the specified review period will be included and responded to in the Final EIR. Prior to approval of the project, the Planning Commission must certify the Final EIR and adopt environmental findings and a mitigation monitoring and reporting program (MMRP) for mitigation measures identified in this Draft EIR or modified by the Final EIR.

B. Purpose of this EIR

This EIR is intended as an informational document, that in and of itself does not determine whether a project will be approved, but aids the planning and decision-making process by disclosing the potential for significant and adverse impacts. In conformance with CEQA, California Public Resources Code, Section 21000 *et. seq.*, this EIR provides objective information addressing the environmental consequences of the project and identifies possible means of reducing or avoiding its potentially significant impacts.

Specific technical studies prepared for the environmental analysis of the Eastern Neighborhoods Rezoning and Area Plans project include a transportation study by CHS Consulting Group, Wilbur Smith Associates, and LCW Inc. (2006); a historical resources background report by

Carey & Co. Inc. (2006); a “Technical Memorandum: Eastern Neighborhoods Rezoning and Community Plans Archeological Context” by Randall Dean, San Francisco Planning Department (2006), and a hazardous materials environmental records search (2005). These technical studies are detailed data reports and are available for review, by appointment, with the San Francisco Planning Department, in Case File No. 2004.160E.

The CEQA *Guidelines* help define the role and expectations of this EIR as follows:

Information Document. An EIR is an informational document which will inform public agency decision-makers and the public generally of the significant environmental effect(s) of a project, identify possible ways to minimize the significant effects, and describe reasonable alternatives to the project. The public agency shall consider the information in the EIR along with other information which may be presented to the agency (Section 15121(a)).

Degree of Specificity. An EIR on a project such as the adoption or amendment of a comprehensive zoning ordinance or a local general plan should focus on the secondary effects that can be expected to follow from the adoption or amendment, but the EIR need not be as detailed as an EIR on the specific construction projects that might follow (Section 15146(b)).

Standards for Adequacy of an EIR. An EIR should be prepared with a sufficient degree of analysis to provide decision-makers with information, which enables them to make a decision which intelligently takes account of environmental consequences. An evaluation of the environmental effects of a proposed project need not be exhaustive, but the sufficiency of an EIR is to be reviewed in the light of what is reasonably feasible. Disagreement among experts does not make an EIR inadequate, but the EIR should summarize the main points of disagreement among the experts. The courts have looked not for perfection but for adequacy, completeness, and a good faith effort at full disclosure (Section 15151).

This EIR is a Program EIR. A Program EIR is appropriate for this project that will involve a series of actions that are 1) related geographically, 2) logical parts in a chain of contemplated actions, 3) connected as part of a continuing program, and 4) carried out under the same authorizing stature or regulatory authority and have similar environmental impacts that can be mitigated in similar ways (Section 15168 of the CEQA *Guidelines*). Accordingly, this EIR presents reasonable assumptions (as described in Chapter III, Project Description and Chapter IV, Environmental Setting and Impacts) about the overall types and levels of activities that the City anticipates under the project and describes their associated environmental impacts. Where necessary, the analysis is based on the most reasonably conservative assumptions so as to not understate the project’s environmental effects.

The CEQA *Guidelines*, Section 15382, define a significant effect on the environment as “a substantial, or potentially substantial, adverse change in any of the physical conditions within the area affected by the project....” Therefore, in identifying the significant impacts of the

project, this EIR concentrates on its substantial physical effects and on mitigation measures to avoid, reduce, or otherwise alleviate those effects.

C. Organization of the Draft EIR

Following this chapter, this Draft EIR has been organized as follows:

Chapter II, Summary. This chapter summarizes the EIR by providing a concise overview of the project, including the range of zoning options and project variants, the environmental impacts that would result from the project, the mitigation measures identified to reduce or eliminate these impacts.

Chapter III, Project Description. This chapter discusses the project objectives, provides background data on the project location, describes the operational and physical characteristics of the three proposed rezoning options, and identifies required project approvals. The project description also outlines two variants to the proposed project applicable to portions of the Mission District –the *People’s Plan*, prepared by the Mission Anti-Displacement Partnership (March 2005), and *An Alternative Future for the North East Mission Industrial Zone (NEMIZ)*, prepared by the Mission Coalition for Economic Justice and Jobs (MCEJJ) (March 2003).

Chapter IV, Environmental Setting and Impacts. This chapter describes the project’s existing setting (generally, the year 2000 for quantified data), environmental impacts, and cumulative impacts. Each environmental topic is discussed in a separate section within this chapter. Unlike a typical EIR, this EIR presents the impacts of three potential rezoning options (project alternatives) at an equal level of detail, along with impacts of the No-Project Alternative (future (2025) scenario without implementation of the proposed rezoning and area plans). Accordingly, this EIR has no separate detailed Alternatives chapter.

Chapter V, Mitigation and Improvement Measures. This chapter presents mitigation measures to reduce or avoid significant impacts identified in Chapter IV. CEQA requires EIRs to include mitigation measures for identified significant impacts. Also included are applicable improvement measures that would reduce the severity of less-than-significant effects.

Chapter VI, Significant Environmental Effects that Cannot Be Avoided if the Proposed Project is Implemented. This chapter presents recapitulates the significant environmental effects that cannot be mitigated to a less-than-significant level.

Chapter VII, Alternatives to the Proposed Project. This chapter briefly summarizes the three project options (alternatives) analyzed in Chapter IV and identifies the environmentally superior alternative.

Chapter VIII, Appendices. Included as appendices are the Initial Study prepared for the project by the Planning Department in December 2005; a summary of the draft area plan policies as they were drafted at the time of DEIR publication; and an analysis by the San Francisco Department of Public Health of public health effects related to air quality.

Chapter IX, EIR Authors and Consultants. This chapter lists persons and affiliations of those persons who prepared this EIR.

The EIR distribution list is not included in the EIR, but is available for review, by appointment, at the Planning Department, 1650 Mission Street, Suite 500.

Unlike most EIRs, this EIR contains no separate chapter analyzing alternatives to the proposed project. This is because this EIR does not analyze a preferred project; instead, this EIR evaluates Rezoning Options A, B, and C, as well as a future No-Project scenario (i.e., the circumstance in which none of the rezoning options is adopted; also identified as the 2025 No-Project scenario), at an equal level of detail, as EIR alternatives, throughout this document. Chapter VII, Alternatives, identifies Option A as the Environmentally Superior Alternative, because Option A would result in a less-than-significant land use impact relative to land for PDR uses (as would Option B), would result in significant effects at fewer intersections than would Options B or C (or the No-Project Alternative), and would result in lesser transit impacts than would Options B or C (or the No-Project Alternative). Option A would also result in potentially significant impacts on fewer historical resources than Options B or C.

D. Public Participation

The CEQA *Guidelines* and Chapter 31 of the San Francisco Municipal Code encourage public participation in the planning and environmental review processes. The City will provide opportunities for the public to present comments and concerns regarding the CEQA and planning process. These opportunities will occur during a public review and comment period and a public hearing before the San Francisco Planning Commission. Written public comments may be submitted to the Planning Department during the specified public review and comment period, and written and oral comments may be presented at public hearings concerning the project.

E. Related Studies

Separate from this EIR, but as part of the Eastern Neighborhoods Rezoning and Area Plans planning process, the Planning Department is undertaking additional studies related to community facilities and improvements and to socioeconomic analysis of the proposed rezoning and area plans.

Public Benefits Analysis

In conjunction with the development of neighborhood (or “area”) plans and proposed zoning changes, the Planning Department is also undertaking an assessment of existing deficiencies and projected needs for certain services and amenities in the Eastern Neighborhoods including, but not limited to, education, recreation, and library facilities, community services, neighborhood-serving retail and businesses, transit and childcare. This Public Benefits Analysis has resulted in

preparation of a needs matrix, based on public participation and input, depicting potential methods to meet identified community needs and implementation recommendations. The Public Benefits Analysis will lead to a quantification of existing and anticipated future needs for a variety of facilities and services and assessment of the ability of a number of different tools to meet the identified needs. Among the tools that could be evaluated and implemented to address community needs are planning policies, specific zoning requirements, taxes and impact fees, the establishment of service and/or assessment districts, and the direct provision of certain facilities by developers. This public benefits package will eventually be formulated into a Final Implementation Plan, containing a Public Improvements Program and a Funding Strategy to finance the identified improvements, which is intended to be incorporated into each of the area plans.

Socioeconomic Studies

Two studies have been completed in advance of the EIR that address socioeconomic issues related to the Eastern Neighborhoods planning process.

PDR Supply/Demand Study

In 2005, a report was prepared by Economic & Planning Systems (EPS) assessing the estimated future demand for land and building space to accommodate production, distribution and repair (PDR) businesses, which then compared that estimated demand to the anticipated future supply of land and building space where PDR businesses could be accommodated.¹ The EPS report concluded that the supply of both land and building space for PDR uses in San Francisco is likely to continue to decline if left to “unconstrained market forces and/or current zoning.” The EPS report cautioned that the term PDR as currently defined is overly broad, in that it encompasses “a wide variety of activities that have very different outlooks for employment growth, land demand, and supportable real estate prices,” making it difficult to draw generalizations about the ability of PDR uses to function effectively in the future economy of San Francisco. Having set forth the foregoing caveat, the report nevertheless found that Option B of the proposed Eastern Neighborhoods rezoning (which is among the options that are the subject of this EIR analysis) would provide for an adequate supply of land to meet the future demand for PDR uses, if the available land were to be used at somewhat greater intensity than under existing conditions. The report noted that the City would have to actively work to retain PDR uses in the future, by allowing certain PDR uses to remain in place despite not being in areas zoned for PDR use, by promoting the inclusion of PDR space in mixed-use areas or developments, and by allowing only PDR uses in certain zoning districts.

¹ Economic & Planning Systems, Inc., *Supply/Demand Study for Production, Distribution, and Repair (PDR) in San Francisco's Eastern Neighborhoods*, April 15, 2005; page 7. Available on the internet at: <http://www.sfgov.org/site/uploadedfiles/planning/Citywide/pdf/14158FinRpt1.pdf>.

Socioeconomic Impacts Analysis

This report, published in 2007 and prepared by Hausrath Economics Group, presents the results of a socioeconomic impact analysis of the proposed rezoning for the Eastern Neighborhoods.² It presents baseline information for on-going community planning efforts, focusing on the residents, workers, and businesses that will be influenced by outcomes under either the proposed rezoning options or continuation of existing market trends and development patterns. The socioeconomic impacts analysis report is an assessment of the cumulative change expected under proposed rezoning, comparing those changes to what would otherwise be expected under a baseline in the absence of rezoning.

The socioeconomic impact analysis report found that, because the proposed rezoning would almost double the housing development potential in San Francisco, there would be less pressure in the Eastern Neighborhoods than would be expected in the absence of the project, giving existing residents and newcomers alike a greater choice of housing options. The report noted, however, that without affirmative programs to preserve potential affordable housing sites in the Eastern Neighborhoods, the proposed rezoning would reduce the number of such sites available. The report also found that, while some existing PDR uses would be displaced by new housing or other development (and displacement would also occur without the proposed rezoning), the project, by providing a stable, albeit smaller, supply of land for PDR uses, with restrictions that limit incompatible development, would also result in better long-term outcomes for many other PDR businesses. The socioeconomic report cautioned, however, that the proposed project would not resolve “the lingering tension between the need for incubator locations for emerging enterprises and the need to reserve a land supply for PDR where demand from higher-value uses and speculation do not disrupt traditional PDR clusters.” The report also found that land use regulation alone would not adequately address the wide range of community needs and planning goals, and that “new financial resources, new programs, and interagency coordination to better target existing programs and resources are required to complement the proposed land use regulations.”

F. Concurrent Planning Efforts

A number of additional planning activities are being conducted separate from, but concurrent with the Eastern Neighborhoods Rezoning and Area Plans effort.

² Hausrath Economics Group, *San Francisco's Eastern Neighborhoods Rezoning: Socioeconomic Impacts*, Draft for Public Review, March 2007. Available on the internet at: http://www.sfgov.org/site/uploadedfiles/planning/Citywide/pdf/SEIA_DRAFT_for_Public_Review.pdf.

Eastern Neighborhoods Community Health Impact Assessment

Separate from the Planning Department's efforts but also related to the Eastern Neighborhoods planning process, the San Francisco Department of Public Health (DPH), in collaboration with a representative multi-stakeholder community council composed of more than 20 diverse organizations, conducted an Eastern Neighborhoods Community Health Impact Assessment (ENCHIA), an 18-month-long study on how land use development can best promote conditions required for health.

Using a set of methods broadly referred to as "Health Impact Assessment," ENCHIA reflected growing scientific understanding that optimal health could not be achieved by health services and individual behaviors alone but through healthful neighborhood conditions including adequate housing; access to public transit, schools, parks and public spaces; safe routes for pedestrians and bicyclists; meaningful and productive employment; unpolluted air, soil, and water; and, cooperation, trust, and civic participation. ENCHIA was organized to explicitly call out the health relationships to these issues. Completed in May 2006, the study resulted, in part, in development of the Healthy Development Measurement Tool, which DPH indicates can be used "to evaluate a plan or project against broad set of health goals, measure progress towards those goals, and highlight where conflicts exist between goals."³

ENCHIA has also resulted in a number of process outcomes. These include achieving an increased understanding of the human health impacts of development; the use of public health rhetoric and evidence in public policy dialogues and debates; new working relationships among members of the community council with complementary interests; and, a broadening of the horizons of a government agency. The Healthy Development Measurement Tool represents the most significant product of this process. Participants in ENCHIA envision that the Healthy Development Measurement Tool might ultimately be used in a comprehensive way by many City agencies in planning, plan and project review, and agency-specific planning and budgeting. DPH is committed to developing and maintaining the Healthy Development Measurement Tool, supporting pilot applications in San Francisco, and monitoring the progress of community health indicators.

Backstreets Business Advisory Board

Created by the Board of Supervisors in accordance with Ordinance No. 279-04, the Back Streets Business Advisory Board is charged with seeking ways to develop and implement focused policies and programs to retain and attract PDR businesses. This ordinance calls for a fourteen-member board: eight members appointed by the Board of Supervisors, and one member each representing the following agencies: Mayor's Office of Economic and Workforce Development;

³ Information on ENCHIA can be found at the San Francisco Department of Public Health website, <http://www.sfdph.org/phes/ENCHIA.htm>, accessed November 22, 2006.

Mayor's Office of Community Development; Planning Department; Port of San Francisco; San Francisco Redevelopment Agency; and Small Business Commission. The effort is consistent with and furthers the Commerce and Industry Element of the *General Plan*, which calls for a balanced local economy where well-paying jobs are available to the widest breadth of the San Francisco labor force. The research phase of this study is complete and final conclusions, including a series of recommendations, are to be published in 2007.

Biosciences Task Force

By Resolution 217-03, the San Francisco Board of Supervisors in 2003 charged the Bioscience Task Force with developing recommended policies for consideration by the Planning Commission and the Board of Supervisors on land use and zoning controls for bioscience industries in areas outside of the Mission Bay, Hunters Point Shipyard and Hunters Point Redevelopment Areas, including how to define a land use classification and zoning districts for the Planning Code that includes biosciences research and development, which allows any combination of bioscience office uses and laboratory used and bioscience manufacturing uses; and where to permit as of right (with size constraints), conditionally permit, or prohibit bioscience.

The task force issued its report in February 2005, recommending, among other things, that the Planning Code be amended to include specific bioscience land use classifications, with bioscience treated as a "mixed" use since it includes elements of research and development, office, warehouse, and animal care uses and that bioscience "overlay" zones be created in parts of Mission Bay, West SoMa, the Central Waterfront, the Northeast Mission, Showplace Square, and Bayview-Hunters Point. The task force also recommended that all bioscience companies meet minimum requirements for development of safety procedures and that they be assessed a fee to fund Department of Public Health oversight. The task force also set forth a series of economic development recommendations to assist biotechnology companies gain City approval and City residents who could work for those companies gain needed job training, as well as a series of recommendations aimed at increasing City oversight of the biotechnology industry to allay community concerns about health and safety.

Arts Task Force

In December 2004, the Board of Supervisors passed legislation establishing the Arts Task Force to investigate the Arts in San Francisco, and to make recommendations to the Board of Supervisors and the Mayor "whether and how to update or restructure the various elements of the City's agencies, programs and policies concerning the Arts in San Francisco." The objectives of the Task Force were to better achieve the goals of sustaining community-based non-profit arts organizations, to build on the City's existing arts economy and increase employment, and to expand City resources for affordable housing and studio/workspaces to help retain artists in San Francisco.

The San Francisco Arts Task Force Report makes a number of recommendations concerning the arts in San Francisco related to land use and physical planning, which could be considered by decision-makers in the context of the proposed Eastern Neighborhoods Rezoning project. A summary of the Report's recommendations include: providing enhanced revenue to support for the arts in San Francisco; expanding arts resources in the City, programming and services to the arts and to the public; strengthening infrastructure and management for the arts in San Francisco, including establishing a Department of Arts and Culture and an Arts Planning Council; and, preparing a plan to implement recommendations contained in the Arts Task Force Report in the short and long-term.

All of the above reports, studies, and documentation will be taken into account by decision-makers, including the Planning Commission and the Board of Supervisors, as they consider the proposed Eastern Neighborhoods rezoning and the proposed area plans.

CHAPTER II

Summary

A. Project Description (p. 1)

Introduction

To encourage new housing while preserving sufficient lands for necessary production distribution and repair (PDR) (generally, light industrial) businesses and activities, the San Francisco Planning Department proposes changes in the Planning Code (zoning) controls, as well as amendments to the General Plan, for an area of approximately 2,200 gross acres on the eastern side of San Francisco. The proposal would cover the eastern portion of the South of Market (“East SoMa”), the Mission, Showplace Square/Potrero Hill, and the Central Waterfront. In this EIR, these four subareas are referred to collectively as the “Eastern Neighborhoods” or the “project area.”

In 2002, the City had imposed temporary land use controls in response to conflicts between market-rate residential and other uses in the project area. In 2003, the Planning Department published a draft document entitled *Community Planning in the Eastern Neighborhoods: Rezoning Options Workbook*, which included some areas not part of the current project, such as the Bayview-Hunters Point neighborhood and Visitacion Valley, both now the subject of separate Redevelopment Agency planning, and the western portion of the South of Market Area (Western SoMa), which is undergoing a separate community-based planning process. Meanwhile, in December 2002, the Planning Department published the draft Central Waterfront Neighborhood Plan as part of the Better Neighborhoods 2002 planning process. Because many of the concerns that affect the Eastern Neighborhoods are also applicable to the Central Waterfront, and because of the Central Waterfront’s proximity to the Eastern Neighborhoods study area, the Planning Department has determined that a single EIR that will encompass planned rezoning and land use changes in both the remaining Eastern Neighborhoods and the Central Waterfront area. The Central Waterfront thus is considered one of the Eastern Neighborhoods for purposes of the EIR.

At present, the four Eastern Neighborhoods that are the subject of this EIR are governed by temporary zoning policies enacted by the Planning Commission. In general, the temporary zoning policies follow the spirit of the proposed rezoning project, in that they recognize the need for new housing opportunities and a mix of housing types, while acknowledging that a balanced economy requires retaining sufficient land for PDR businesses that provide business services to the City, as

well as relatively higher-wage employment. The resolutions outlining these interim controls and policies are summarized in Section IV.B., Plans and Policies.

Planning Department staff and the Planning Commission continue working to refine the proposed rezoning and area plans during preparation of this EIR. Because the intent of this EIR is to analyze a broad range of potential effects associated with the rezoning options in the *Rezoning Options Workbook* in order to provide adequate CEQA review for the proposal that eventually emerges as the preferred option. The analysis in this EIR is, therefore, generally based on the three options presented in the *Workbook*, with certain modifications made by Planning staff based on community input. This EIR does not evaluate any project-level proposals, but rather is programmatic in its analysis.

The project is intended to permit housing development in some areas currently zoned for industrial use while protecting an adequate supply of land and buildings for PDR employment and businesses. PDR uses are, generally, light industrial in nature. The Planning Department broad goals and objectives for the rezoning options and area plan project are to develop a rezoning proposal that reflects the land use needs and priorities of each neighborhoods' stakeholders and that meets citywide goals for residential and industrial land use; identify appropriate locations for housing in the City's industrially zoned land to meet a citywide need for more housing, and affordable housing in particular; retain an adequate supply of industrial land to meet the current and future needs of the City's production, distribution, and repair businesses and the city's economy; and improve the quality of the residential and nonresidential places that future development will create over that which would occur under the existing zoning. (See Appendix B for the draft objectives and policies from each of the four draft area plans.)

Project Components

The project would involve the introduction of new use (zoning) districts, including districts that would permit at least some PDR uses in combination with commercial uses, districts mixing residential and commercial uses, residential and PDR uses, and new residential-only districts. The new districts would generally replace existing industrial, commercial, and residential single-use districts. In addition to zoning changes, the project would include revisions to the existing Central Waterfront and South of Market Area Plans within the San Francisco General Plan and the preparation and adoption of new area plans for East SoMa, the Mission, Showplace Square/Potrero Hill and the Central Waterfront. As well, there may be other changes to the General Plan to bring it in conformance with any proposed plans.

Proposed Use Districts and Height Limits

For East SoMa, the Mission, and Showplace Square/Potrero Hill the Planning Department has developed three rezoning options, designated Options A, B, and C in the *Rezoning Options Workbook*. (The draft Central Waterfront neighborhood proposes a single rezoning option.)

Options A, B, and C vary by the degree to which they would permit lands currently zoned for industrial uses to be converted to residential and mixed-use districts: in general, Option A would permit the least amount of such conversion, while Option C would permit the greatest conversion. Under all three options, new single- and mixed-use zoning districts would be introduced to the Planning Code. Most of the existing Heavy Industrial (M-2) and Light Industrial (M-1) use districts in the Eastern Neighborhoods would be replaced with either mixed-use residential districts (MUR), new Urban Mixed-Use (UMU) Districts that would permit residential and PDR uses, or with new Employment and Business Development (EBD) Districts that would permit PDR uses only. These districts would encourage the retention and expansion of PDR uses while in some cases also allowing limited commercial or residential uses. Some existing commercial districts would be replaced, where commercial activity would continue to be permitted, with new mixed-use residential/commercial districts or with mixed-use PDR/commercial districts, although some areas would be designated neighborhood commercial as currently defined in the Planning Code. Finally, existing residential districts could be replaced, generally with new single-use residential districts. Proposed new zoning districts include:

- **Employment and Business Development (EBD)**, in which new construction would be limited to PDR space, housing would be prohibited, and only small office and retail uses would be allowed;
- **Residential-Transit Oriented (RTO)**, which would allow generally moderate-scale residential buildings, with no maximum permitted residential density and reduced parking requirements;
- **Mixed-Use Residential (MUR)**, to promote high-density housing and a flexible mix of smaller neighborhood-serving retail and commercial uses, including some PDR uses;
- **Neighborhood Commercial Transit (NC-T)**, similar to MUR, but would not permit most PDR uses;
- **Neighborhood Commercial (Moderate Scale)**, similar to the existing NC-3 (Neighborhood Commercial-Moderate Scale) district; and
- **Urban Mixed-Use (UMU)**, which would encourage transitional development patterns between EBD and predominantly residential districts, thereby buffering potentially incompatible land uses. Non-PDR development would be required to also provide PDR space, at specified ratio(s).

In addition, the Central Waterfront would include a **Heavy PDR** district, mostly covering land under Port of San Francisco Jurisdiction that is intended to remain in heavy commercial and industrial use, and a **Pier 70 Mixed-Use District**.

The *Rezoning Options Workbook* included a potential Design PDR Use Area overlay zone in the central portion of Showplace Square, where only design-related PDR uses would be permitted, to help preserve the existing cluster of design uses. Further, subsequent drafts of the Showplace Square/Potrero Hill plan delineated a separate Arts District in part of the Seventh Street corridor, near the California College of the Arts campus, to encourage compatible arts (PDR) activities.

Existing height limits are primarily 40 and 50 feet, with areas of East SoMa allowing buildings up to 220 feet tall. The proposed rezoning options would not substantially change existing height limits. However, some increases and decreases are proposed.

Planning staff and the community continue to refine the rezoning proposal and associated neighborhood area plans. It is assumed that the ultimate rezoning proposal would fall within the range of the three options analyzed herein.

Area Plans and Proposed Policies

In conjunction with the proposed rezoning, the Planning Department is developing Area Plans for East SoMa, the Mission, Showplace Square/Potrero Hill, and the Central Waterfront for inclusion in the General Plan. (Included would be revisions to the existing Central Waterfront and South of Market Area Plans.) These plans go beyond establishing new use districts to address policy-level issues pertaining to transportation, urban design (including building heights and urban form), open space, historic preservation, housing and community facilities. While the retention of existing and establishment of new PDR uses is a critical aspect of the Eastern Neighborhoods Rezoning effort, a key goal of the rezoning process is to encourage the creation of cohesive neighborhoods, particularly where new housing is being encouraged. The plans also propose public benefits and other implementation programs to address physical impacts identified by this EIR and socioeconomic impacts addressed in related studies. Building on the community planning process to date, the Department has undertaken a public process to develop these plans.

In September 2006, Ordinance No. 265-06 amended the San Francisco Administrative Code by adding mechanisms to provide for inter-agency cooperation in implementing community improvements in the Eastern Neighborhoods. The amendment calls for the Planning Department, upon adoption of each Area Plan, to prepare a “Community Improvements Plan” and an “Implementation Program” based on findings from a separate Public Benefits analysis being undertaken for the project area. Each neighborhood-specific Implementation Program will summarize estimated costs, propose specific funding strategies and identify responsible agencies required to implement such strategies. Agencies identified in this program, for example the County Transportation Authority, the Municipal Transportation Agency (which includes Muni and the Department of Parking and Traffic), the Public Utilities Commission, and the Recreation and Park Department, would participate in a committee charged with preparation of a Progress Report which would be publicly heard and submitted to the Board of Supervisors annually. Ultimately, a consolidated version of this report would be incorporated into the City’s annual budget until full implementation of the community improvements is under way. Draft policies for each neighborhood are included in Appendix B.

This Program EIR embodies consideration of a number of potential physical changes that are anticipated under the range of proposed rezoning controls. However, in as much as the draft area plans and policies are evolving, the details of which could change, project-level analysis of

specific implementation programs is considered speculative at this time. Therefore, the EIR will not evaluate or serve as approval for any project-level proposals, or for any specific alterations of infrastructure such as changes in traffic lanes, bus routes, or bicycle lanes, or other changes to circulation patterns, development of new open spaces, or creation of new community facilities.

Areas of Greatest Change

Within the study area, new residential development can reasonably be anticipated in certain areas, based on where the zoning would change to allow and/or encourage residential development that is currently discouraged or, in some cases, not allowed. Increases in height limits also would be expected to encourage development. For example, where the zoning designation of an area is proposed to change from M-1 (Heavy Industry) to MUR (Mixed-Use Residential), and especially if the height limit were to increase, the likelihood of new residential development would be relatively greater than elsewhere in the project area where these conditions are not present.

Thus, the areas of greatest change are anticipated to be within the seven-block area of the Seventh Street corridor, immediately to the east of Showplace Square and in a two- to three-block-wide strip along Illinois, Third, Tennessee, and Minnesota Streets, between Mariposa and 25th Streets in the Central Waterfront, where new residential and mixed-use development would be permitted under all three options. New residential and mixed-use development could also be anticipated in much of East SoMa under all three options, with the greatest change under Option C. Also under Option C, new residential and mixed-use development would be anticipated in the heart of Showplace Square itself and in the Northeast Mission. In contrast, minimal change in zoning is proposed in most of the Mission (other than in the NEMIZ and along the primary transit corridors such as Mission and Valencia Streets) and on Potrero Hill (from approximately Mariposa Street south), except along the former railroad right of way between Carolina and Arkansas streets and at the base of the hill at the southeast corner of that portion of the study area.

Approvals Required

This Draft EIR will undergo an approximately 60-day public review period, including a public hearing before the Planning Commission, during which comments on the information presented herein will be accepted. Following the public review period, responses to written and oral comments received from the public and agencies will be prepared in a Comments and Responses document. The Comments and Responses document will also include any staff initiated changes to the Draft EIR. The Draft EIR, together with the Comments and Responses document, make up the Final EIR and will be taken together to the Planning Commission. The Commission will then consider certification of the Final EIR; no approvals may be issued before the city certifies the EIR as final. Certification of the Final EIR may be appealed to the Board of Supervisors.

Approval and implementation of the proposed Eastern Neighborhoods Rezoning and Area Plans would require the following actions, with acting bodies shown in italics:

- Adoption of new neighborhood-level Area Plans within the *San Francisco General Plan*, including amendment of the *General Plan* [various elements and Area Plans] to conform to the concepts of the proposed rezoning program (the project), as outlined above. *Planning Commission recommendation; Board of Supervisors Approval*
- Determination of consistency of the proposed rezoning with the General Plan and Planning Code Section 101.1 Priority Policies. *Planning Commission recommendation; Board of Supervisors Approval*
- Amendment of the Planning Code Zoning Maps to change mapped use districts and height limits throughout the Plan area. *Planning Commission recommendation; Board of Supervisors Approval*

B. Main Environmental Effects

Land Use (p. 35)

Land use changes are expected in the Eastern Neighborhoods under all three rezoning options, as well as in the Future 2025 No-Project scenario. Changes in land use would not directly be caused by the zoning itself, but indirectly by subsequent projects—including changes in the use of existing buildings, additions, new construction, and demolition—that could occur on individual sites within the project area after a specific zoning option is adopted. However, because zoning establishes which land uses are permitted, prohibited, or limited in each district, and also establishes maximum heights and floor-area ratios, it determines how much land and potential building space is available in the city for each type of use. The amount of PDR space is expected to decrease under each of the three rezoning options as well as a No-Project scenario, although the declines would be less under Options A and B than under projected 2025 No-Project conditions. Overall decreases are due to projected losses in East SoMa, the Mission, and Showplace Square/Potrero Hill combined with less growth of PDR space in the Central Waterfront. On a citywide basis, PDR uses are expected to concentrate in three main areas: Western SoMa, Hunters Point, and the NEMIZ (within the project area).

In general, Option A would result in greater maintenance of land devoted to PDR uses and smaller increases in the number of housing units, compared to the other rezoning option, although the addition to Option A of potential residential reuse of the existing Potrero Power Plant site for housing dramatically increases the projected number of new housing units under Option A, to approximately 9,000 new units. A net decrease of PDR floor area would occur under Option A, but the decrease would be the least anticipated of all PDR decreases amongst the rezoning options analyzed in this EIR, including the future No-Project scenario. Under Option A, there would be a net decrease of approximately 525,000 square feet of PDR floor area, or only three percent of the 2000 total. By comparison, under the baseline No-Project scenario, there PDR floor area decreases of more than 4.5 million square feet, or 27 percent of the year 2000 total, are anticipated.

Under Option B, the Eastern Neighborhoods is expected to experience a net increase of 7,385 residential units, a 29 percent increase over the period from 2000 to 2025. A net decline of more than two million square feet, or 13 percent of PDR floor space, is projected under Option B, more than under Option A but less than Option C or a future scenario with no rezoning project.

Option C would permit the greatest potential increase in housing development in the Eastern Neighborhoods, with almost 9,900 additional units projected, an increase of 39 percent over year 2000, substantially more than the No-Project scenario. Option C would also result in the greatest decrease in PDR floor area— 4.9 million square feet, or a 29 percent, from the 2000 base.

The 2025 No-Project scenario for household growth is reflective of a lower growth assumption for citywide housing growth based on ABAG's *Projections 2002*. Therefore, the future No-Project scenario indicates less housing growth than the rezoning options, with a net of 2,871 additional units. The land use pattern under the 2025 No-Project scenario would be less cohesive (absent controls and area plans), with scattered, *ad hoc* residential development expected to occur within areas with PDR uses, rather than concentrating in defined residential or mixed-use neighborhoods that could be expected to provide localized services to area residents. Under a future No-Project scenario, the amount of floor space devoted to PDR uses is expected to decrease nearly as much as under Option C, with a net decline of 4.6 million square feet of floor area, or 27 percent, over the period from 2000 to 2025. Without districts that could act to stabilize land values for PDR uses by restricting higher-value uses such as office and retail, many existing PDR businesses in the project area would be subject to outbidding by these uses, thereby causing displacement either to other lower-priced areas within the city, region or elsewhere.

The proposed project is a regulatory program, not a physical development project. It would not create any new physical barriers in the Eastern Neighborhoods. There are no major planned roadways, such as freeways, that would disrupt or divide the project area or individual neighborhoods or subareas. Consequently, the project would not physically disrupt or divide an established community in any direct sense.

The project would indirectly affect established communities by altering the land use characteristics of the Eastern Neighborhoods. In general, it can be anticipated that future development under project conditions would result in more cohesive neighborhood subareas that would exhibit greater consistency in land use and building types, and would include more clearly defined residential neighborhoods and commercial corridors. By delineating EBD (PDR-focused), residential, and neighborhood commercial districts, the rezoning options would tend to concentrate these uses in designated areas and corridors to a greater degree than under the existing M-1 and M-2 zoning, which is spread across a broad geographic area and allows more variability in use. UMU and MUR districts would serve as a transition zones between PDR and non-PDR uses. Moreover, requirements to construct new PDR space in mixed-use districts and prohibitions on housing development in EBD districts would discourage the type of incompatible

residential development that has been the pattern throughout much of the Eastern Neighborhoods, reducing potential land use conflicts.

Alternately, under a future No-Project scenario, incremental, opportunistic residential development in industrial districts would be expected to continue. More large-scale retail or office uses would be likely on the edges of existing residential neighborhoods where site conditions were advantageous.

The character of historically industrial districts is likely to shift along with the changes in land use. Where residential and mixed-use buildings replace existing PDR uses, the activities that typically occur in the area, as well as the building styles, heights, and frontages may change. Areas with many PDR businesses tend to have more truck or utility vehicle movement and less pedestrian activity than do residential/mixed-use areas. Where ground-floor commercial space is included in new residential buildings, it is likely to include display windows and thus provide more transparency and visual interaction at the pedestrian level than is typical with buildings occupied by PDR uses, which often have solid walls and roll-up doors that accommodate vehicle rather than pedestrian access. Some neighborhoods would be expected to become more active in the evening hours, with shops and restaurants activating the street past PDR business hours.

While the expected land use changes may alter the existing character of many discrete areas in the Eastern Neighborhoods, the changes would not be detrimental or adverse, and in many instances, the rezoning options could serve to enhance the pedestrian realm and the overall character of the neighborhood, by attracting services and directing public improvements to address existing deficiencies as well as new neighborhood needs.

Under all options, the proposed Eastern Neighborhoods Rezoning would result in less land available for PDR use than is currently the case. However, unlike current conditions, in which industrial land can be devoted to nearly any use, including housing (with Conditional Use authorization), land designated for PDR use under the proposed project would be available almost exclusively to PDR uses, with housing not permitted and only relatively small non-PDR uses (such as office or retail space accessory to the PDR use) would be permitted. Thus, the range of rezoning options could provide clearer definition between land uses in PDR zones where such definition does not now exist. In addition, the proposed project would include UMU districts where new PDR space would be required to be built as part of new residential projects. However, the effect of the proposed project, to a greater or lesser degree among options, would be that a greater concentration of the City's PDR land than at present would be located in the Central Waterfront and Bayview-Hunters Point neighborhoods, because the project would convert some industrial and heavy commercial zoning districts to residential mixed-used districts in East SoMa, Showplace Square, and the Mission. As a result, a 2005 study for the Planning Department by Economic and Planning Systems (EPS) found that, under Option B, using current FAR (building density), while there would be adequate supply of *land* for PDR uses, only about 10.2 million

square feet of PDR *building space* would be available, whereas the future demand for PDR *building space* would be 16.7 million square feet. Thus, to accommodate the additional 6.5 million square feet of PDR building space, both PDR land in the Eastern Neighborhoods and PDR land in West SoMa and Bayview-Hunters Point, as well as at the former Hunters Point Shipyard and, to some extent, on Port of San Francisco land, would have to be used more intensively, meaning that new buildings would have to be constructed, in some cases replacing existing buildings used at a lower FAR. (Existing FAR for PDR uses in the Mission, Showplace Square/Potrero, and Central Waterfront is generally about 25 to 40 percent less than in the South of Market, while FAR in the Bayview-Hunters Point is about two-thirds less.)

Because the proposed project would reduce the land supply for PDR uses in parts of the Eastern Neighborhoods, it would likely result in the eventual displacement of some existing PDR business activity and employment from those areas proposed to be rezoned Mixed-Use Residential. While some existing PDR businesses on future non-PDR land (particularly those that own their buildings) could remain, and as would some others that could pay higher rents, many existing PDR businesses on land not zoned for PDR in the future would likely leave these areas due to competition from residential, retail, and other higher-value uses. Some PDR businesses would move elsewhere in San Francisco, while others would leave or go out of business. Higher density development is not always an option for PDR businesses that require adequate circulation space, truck parking, service/storage yards, and that depend on proximity to suppliers or customers and/or that may have some negative effects on neighboring uses (e.g., noise, fumes, dust). Once “industrial” land is given over to residential and mixed-use development, it can be very difficult to reclaim it for light industrial or some other PDR uses. Those businesses most likely to relocate outside the City include those that require large single-story warehouses or open yards, produce or distribute commodity products or provide services that have numerous low-cost substitutes, have relatively low transportation costs, serve a more regional market area, are not reliant on short delivery lead times, and those for whom proximity to customers and suppliers is not as important as other aspects of operations. However, some PDR businesses in PDR-only zones could gain advantages over existing conditions, as controls on the loss of PDR space and prohibitions on residential, large retail, and large office development, would result in more retention of existing PDR space and potentially more development of new PDR space.

Continuing decline in building space and land available to PDR businesses would further the loss of PDR businesses and jobs in San Francisco, contributing to what has been an ongoing trend. Depending on the rezoning option, relatively more or fewer PDR businesses and jobs could be displaced from the Eastern Neighborhoods, and from Western SoMa, depending on the outcome of a separate planning process now under way for that neighborhood. Continuing loss of PDR businesses and employment would decrease better-paying job opportunities for some Eastern Neighborhoods residents with limited formal education and/or language skills, some of whom would face longer commutes to retain their jobs. There would be losses in PDR activity under all three rezoning options, as well as under the No-Project scenario. The differences between options

can be characterized as a matter of degree and location, which, in turn, would affect which PDR businesses and clusters of businesses would be subject to displacement.

In general, “Economic or social effects of a project shall not be treated as significant effects on the environment” (California CEQA Guidelines, Sec. 15131(a)). However, “Economic or social effects of a project may be used to determine the significance of physical changes caused by the project” (CEQA Guidelines, Sec. 15131(b)). That is, a physical change brought about by a project may be determined to be significant if it results in substantial adverse social or economic changes.

In the case of the proposed Eastern Neighborhoods Rezoning and Area Plans project, no direct physical changes would occur with adoption of the rezoning and area plans. However, project implementation is anticipated to result in physical changes in the building stock in some heretofore industrial areas of San Francisco. The project would also indirectly result in changes in the potential to physically accommodate PDR uses, whether in existing or new buildings, in these neighborhoods because of the potential for land use conflicts due to restrictions on noise, air pollutant emissions, and truck traffic and parking that could be expected to result from development of new housing in these industrial areas.

Based on the EPS report, Option C, which would result in less PDR-only land than Options A or B and would rezone more existing PDR land and displace more existing PDR uses than the other two options, would result in a clear mismatch between the supply of and demand for PDR land and building space, with neither adequate land nor adequate building space being available without substantial changes in land use controls on Port land to allow non-maritime uses to be sited there. Option C would result in the loss of nearly 5 million square feet of PDR building space, compared to baseline conditions. This change would result in a decrease in PDR employment that could substantially affect, in an adverse manner, both the PDR businesses and segments of the employed population of San Francisco, and, potentially, the City’s economy. While the displacement of PDR businesses and the loss of PDR jobs would not, in themselves, be considered significant, this loss would occur as a result of the physical changes that would indirectly result from implementation of the proposed project. Therefore, it is concluded, in the interest of a conservative assessment, that the magnitude of economic and social changes engendered by Option C would mean that the physical loss of PDR land and building space under Option C would constitute a potentially significant impact on the cumulative supply of land for PDR uses. Given the magnitude of the loss of PDR building space, this impact would not be mitigable without, as stated, substantial change in use controls on land under Port control. Additionally, because Western SoMa is such an important component of the PDR land supply in San Francisco, the significant effect of Option C on the cumulative supply of land for PDR uses could be reduced, although not fully mitigated to a less-than-significant level, by the City developing and implementing a rezoning scheme for Western SoMa—as a separate project—that would ensure, insofar as possible, the long-term viability of PDR business in that neighborhood. However, because the outcome of the rezoning process for Western SoMa is not known, this EIR

takes the conservative approach of identifying the effect of Option C on the cumulative supply of land for PDR uses to be a significant, unavoidable impact.

This impact would result from the reduction in land (and, ultimately, building space) available to PDR uses. However, this significant impact could be avoided under rezoning Options A and B. The EPS study found that Option B would at least potentially provide for an adequate supply of PDR land, if land at the former Hunters Point Shipyard is considered and if some increased amount of Port land could be used for non-maritime PDR uses, and assuming that both the Bayview-Hunters Point and Western SoMa neighborhoods were to remain key sources of land for PDR uses. While Option B would result in the loss of 2.1 million square feet of PDR building space, compared to baseline conditions, this change would represent less than half the PDR loss of Option C. While an adequate supply of building space would be contingent on economic forces beyond the proposed rezoning or area plans, the Eastern Neighborhoods *Socioeconomic Impacts* report found that stabilization of PDR land supply would potentially result in more job opportunities in a more diverse range of activities than would otherwise be the case. The report found that without the rezoning and its potentially stabilizing effects on PDR land use supply, competition for land with no attendant regulation of PDR displacement would result in less PDR land and building space than would otherwise be the case. Moreover, the proposed rezoning includes measures in certain proposed zones, such as requiring replacement of displaced PDR building space and inclusion of PDR space in new projects, that could potentially increase the supply of PDR building space compared to what might exist without the proposed project. Further, ongoing planning for the Bayview-Hunters Point neighborhood would provide for a substantial amount of PDR land and building space in that district. Option B would result in the loss of more than 2.1 million square feet of PDR building space, compared to baseline conditions. Therefore, because Option B would provide an adequate supply of land for PDR uses, and because other ongoing planning efforts would assist in ensuring an adequate supply of PDR land and building space, Option B would result in a less-than-significant impact on the cumulative supply of land for PDR uses.

Option A would retain the most existing industrial land as PDR-only land, and would also result in a less-than-significant impact on the cumulative supply of land for PDR uses.

The No-Project scenario (No-Project alternative) would result in a significant impact on the cumulative supply of land for PDR uses, because, while it would avoid rezoning existing industrial and heavy commercial land to zones such as MUR and RTO that would permit housing as of right, it would also not create EBD districts that would be more protective of existing PDR uses than is the case for existing M and CM zones, which allow housing with Conditional Use authorization and where encroachment by housing and other “incompatible” uses would be expected to continue to adversely affect, in economic terms, PDR businesses. The loss of PDR building space, compared to baseline conditions, under the No-Project scenario would approach that under Option C. Moreover, the No-Project scenario would be expected to result in greater

land use conflicts between PDR and some non-PDR uses due to noise, air pollutant emissions, and truck traffic and parking (discussed in the applicable technical sections of this EIR) than would the proposed project, because the No-Project scenario would not include the project's provisions for exclusive use districts to accommodate PDR uses. Therefore, as with Option C, this impact is considered significant and unavoidable for the No-Project scenario, and even Mitigation Measure A-1 (Western SoMa rezoning) would not be anticipated to retain a sufficient supply of PDR land under the No-Project scenario.

As with Options B and C, Improvement Measures D-4 and D-5 (Support for PDR Businesses and Employees, respectively) in Chapter V would reduce the severity of the impact to some degree.

Plans and Policies (p. 83)

Section IV. B of this EIR describes the major land use and development objectives, policies, and regulations embodied in the *San Francisco General Plan* and San Francisco Planning Code that pertain to the Eastern Neighborhoods Rezoning and Area Plans project. It includes a discussion of how the proposed zoning changes and adoption of new area plans relate to existing plans and policies. The project's relationship to applicable Redevelopment Area Plans that overlap the project area, as well as established planning areas immediately adjacent to the plan area is also discussed. The section also describes citywide planning initiatives and programs that continue to shape the proposed project's underlying goals and implementation strategies.

As part of the review and approval process, the proposed rezoning options and each of the neighborhood area plans would be reviewed by the Planning Commission, and the Board of Supervisors would make findings of consistency with objectives, policies and principles of the *General Plan* at the program level and/or to amend the *General Plan* (particularly existing area plans) to reflect the final zoning, policies and to incorporate the neighborhood area plans.

It is noted that conflict with a *General Plan* policy does not, in itself, indicate a significant effect on the environment within the meaning of CEQA. To the extent that physical environmental impacts may result from such conflicts, such impacts are analyzed in this EIR, in the applicable topic sections. The *General Plan* contains many policies that may address different goals. In addition to consideration of inconsistencies affecting environmental issues, other potential inconsistencies with the *General Plan* may be considered by the Planning Commission and other decision-makers, including the Board of Supervisors, independently of the environmental review process, as part of the decision to approve or disapprove a proposed project. Any potential conflict not identified in this environmental document would be considered in that context, and would not alter the physical environmental effects of the proposed project, which are analyzed in this EIR.

Visual Quality and Urban Design (p. 129)

Under all rezoning options, the view angle to the sky could decrease in some street corridors. Most views from streets and publicly accessible parks within the project area are not panoramic; rather, they are urban views down developed corridors already flanked by buildings. While proposed height increases and use district changes could facilitate taller development in some locations, and thus decrease the view angle to the sky, taller buildings would not generally obstruct other currently visible elements. The rezoning project would not substantially degrade the views. New development up to the proposed height limits may even help define the street edge and better frame these urban views.

In a few locations adjacent to the San Francisco Bay—such as along the Embarcadero in East SoMa, and from Warm Water Cove in the Central Waterfront—there are relatively wide-angle views of the Bay. However, the project would not affect any development bayward of these vantage points and hence would not affect the openness of the bay views. On Potrero Hill, where there are sweeping views of the city and more distant landscape features, the existing use and height districts would not change; views would not be adversely affected by the rezoning project.

While individual development projects that occur under the proposed rezoning project could generate additional night lighting in the future, the project would not result in obtrusive light or glare that would adversely affect views or substantially affect other properties.

With implementation of the design policies proposed as part of the Eastern Neighborhoods area plans, none of the proposed re-zoning options would substantially degrade the visual character or quality of the area, have a substantial adverse effect on a scenic vista, substantially damage scenic resources that contribute to a scenic public setting, or create a new source of substantial light or glare which would adversely affect day or nighttime views in the area or which would substantially impact other people or properties. All of the proposed rezoning options, as well as the No-Project scenario, would result in visual changes over time. As noted, visual quality is subjective. With all options, the degree of change perceived by observers will vary. For example, some observers could be more keenly aware of any increase in building height or overall density, and these observers could find the changes to be substantially disruptive. On the other hand, it is likely that some observers would not consider the changes in the existing visual setting to be substantial, while still others would see a benefit in certain alteration of the built environment. No direct change in visual quality would occur under the proposed rezoning project, and all of the indirect visual effects of development that could occur through implementation of the proposed project are likely to occur over a fairly lengthy period time.

Given that aesthetic impacts are inherently subjective, and given that the changes would occur within a highly developed urban environment and would be guided by the urban design principles contained within the associated area plans, it cannot be concluded that the range of proposed

rezoning options or the No-Project Alternative would result in a significant adverse effect on visual quality and urban design.

Population, Housing, Business Activity, and Employment (Growth Inducement) (p. 175)

The project would induce substantial growth and concentration of population in San Francisco. In fact, as stated in Chapter III, Project Description, one of the four citywide goals that serve as the “project sponsor’s objectives” for the proposed Eastern Neighborhood Rezoning and Area Plans project is:

Increase Housing: To identify appropriate locations for housing in the City’s industrially zoned land to meet a citywide need for more housing, and affordable housing in particular.

As is shown here and elsewhere in this EIR, the increase in population that would be expected to occur as a secondary effect of the proposed rezoning and adoption of the proposed area plans would not, in itself, result in adverse effects, and would serve to advance some key City policy objectives, such as decreasing the air quality impacts of development by coordination of land use and transportation decisions (*General Plan Air Quality Element Objective 3*); provision of new housing, especially permanently affordable housing, in appropriate locations which meets identified housing needs and takes into account the demand for affordable housing created by employment demand (*Housing Element Objective 1*); encouragement of higher residential density in areas adjacent to downtown, in underutilized commercial and industrial areas proposed for conversion to housing, and in neighborhood commercial districts where higher density will not have harmful effects, especially if the higher density provides a significant number of units that are affordable to lower income households (*Housing Element Policy 1.1*); identification of opportunities for housing and mixed-use districts near downtown and former industrial portions of the City (*Housing Element Policy 1.2*); identification of opportunities for housing and mixed-use districts near downtown and former industrial portions of the City (*Housing Element Policy 1.3*); establishment of public transit as the primary mode of transportation in San Francisco and as a means through which to guide future development and improve regional mobility and air quality (*Transportation Element Objective 11*); and giving first priority to improving transit service throughout the city, providing a convenient and efficient system as a preferable alternative to automobile use (*Transportation Element Objective 20*).

Moreover, implementation of any one of the proposed project options would result in more housing options and a broader range of housing prices and rents, compared to conditions under the No-Project scenario without implementation of the proposed rezoning and area plans, potentially resulting in a better match between housing supply and demand in San Francisco while potentially providing benefits such as a reduction in traffic and vehicle emissions if San Francisco workers could live closer to their jobs. Option C would provide the greatest number of additional housing units, and Option A, the least, with Option B in the middle of the

range. The proposed population increase could also generate economic growth by increasing demand for neighborhood-serving retail and personal services, although some existing businesses could be displaced by other businesses that might better serve new residents. Furthermore, the additional population would increase demand for other City services (parks, libraries, health care and human services, police and fire protection, schools, and child care), which are the subject of a separate community needs assessment and public benefits recommendations proposed to be included in the area plans.

None of the proposed project options would directly result in displacement of residents. As stated above, each of the proposed rezoning options would result in less displacement as a result of housing demand than otherwise expected under the No-Project scenario, because the addition of more new housing in the Eastern Neighborhoods would provide some relief for housing market pressures without directly affecting existing residents. Option C, with the most new housing units, would potentially provide the greatest such market relief, and Option A, the least, with Option B in the middle of the range.

However, residential displacement is not solely a function of housing supply, and the proposed project could result in indirect, secondary effects on neighborhood character—through gentrification—that could result in some displacement of existing residents over time. In particular, under Option C, which would add the most new housing and would also displace the greatest amount of PDR use, newly rezoned districts have the potential to evolve into higher-value housing areas than would be the case under Options A or B. The associated demand could result in gentrification of existing nearby residential areas and displacement of lower income households. Moreover, lower-income residents of the Eastern Neighborhoods, who also disproportionately live in crowded conditions and in rental units, are among the most vulnerable to displacement resulting from neighborhood change. The proposed rezoning project would, however, help to ameliorate the potential effects of residential displacement by, for example, a requirement that on-site affordable dwelling units, sized to accommodate families, be provided in new residential and mixed-use construction.

Likewise, none of the proposed project options would directly result in displacement of businesses or employment. However, all of the proposed rezoning options would reduce the land supply otherwise available under existing zoning and No-Project conditions for PDR uses, contributing to eventual displacement of some existing PDR business activity and employment. Option A would result in the least amount of this PDR business displacement, and Option C would result in the most, with Option B in the middle. Over time, the real estate market would favor residential, retail, and other higher-value uses, leading to PDR displacement, either to other locations in the City or outside San Francisco, and to some business closures. While this has been an existing trend, it would be expected to accelerate in areas rezoned for non-PDR uses. Some of PDR businesses, particularly those on land they own and those for whom proximity to

San Francisco customers is important, would continue to operate while development patterns changed around them.

Displacement of PDR businesses would, in turn, result in some San Franciscans, including Eastern Neighborhoods residents, with limited education, skills, and language abilities losing opportunities for local, higher wage jobs that offer good opportunities for advancement. Residents who lost their PDR jobs in PDR businesses would add to the need for lower-cost and affordable housing in San Francisco.

Over the longer term, rezoning under Options A or B would offer the possibility of more location advantages for PDR activity in parts of the Eastern Neighborhoods and therefore more PDR business activity and jobs than under the No-Project scenario, as EBD and UMU districts would be established where PDR use would be a priority. Option C, on the other hand, would not establish any such districts except in the Central Waterfront, and would be expected to result in substantially greater PDR displacement than Options A or B. Much existing PDR activity in the new EBD and UMU districts would be expected to remain, and possibly even increase under these options in the heart of the Northeast Mission Industrial Zone, the Central Waterfront south of 25th Street, and the Bayview (outside the Eastern Neighborhoods), which would be formalized as San Francisco's PDR business districts and, potentially along with Western SoMa (depending on the outcome of the community planning process there), would become more suitable locations for the City's PDR activity. Under the No-Project scenario, in contrast, competition for land, incompatible land uses, and no regulation of demolition and displacement of PDR activity would result in an even lesser supply of land and building space for PDR activities, as *ad hoc* conversion of industrial land to housing and other uses would be expected to continue in accordance with recent trends.

The project would not create a substantial demand for additional housing in San Francisco, or substantially reduce the housing supply. As stated above, the proposed project would not substantially increase the overall economic growth potential in San Francisco and would not result in substantially more primary employment growth than otherwise expected in the City or the region, because most of the employment growth that would result from new housing in the Eastern Neighborhoods would be in neighborhood-serving retail and services, which are employment categories that tend to respond to increased population, not employment that precedes or leads to population growth.

Instead, implementation of the proposed rezoning and area plans would increase the housing supply potential in the Eastern Neighborhoods and citywide, compared to conditions under the No-Project scenario without implementation of the proposed rezoning and area plans, resulting in more supply relative to demand, more housing choices, and more (relatively) affordable housing units developed than without the project, because the Inclusionary Affordable Housing Program would require below-market-rate units be developed in conjunction with market-rate projects of

five or more units. Therefore, housing prices and rents for both new and existing housing would generally be lower than would be the case with the more limited housing supply potential in these areas under existing zoning and continuation of existing market trends. Additionally, the project would reduce pressure to convert existing rental housing stock to relatively affordable for-sale housing (such as through condominium conversions and the tenants-in-common process), compared to No-Project conditions.

Still, for-sale housing in the Eastern Neighborhoods (and citywide) is likely to remain too expensive for most residents, underscoring the importance of providing and maintaining “affordable” (below-market-rate, or BMR) housing. A possible secondary impact of the proposed project would be a reduction in the number of sites where City-funded and other subsidized BMR housing units could be built, particularly in regard to new development sites. However, continuation of the existing less-restrictive zoning would result in continued increase in land values in the Eastern Neighborhoods, which would also result in elimination of potential BMR housing sites, albeit on a more *ad hoc* basis.

It is noted that the proposed area plans each include objectives and policies that would encourage the production of more affordable housing through means such as identification of appropriate sites, including publicly owned sites, for below-market-rate housing, requiring a certain percentage of residential units be family-sized, promoting alternative homeownership models, and taking specific steps to reduce the cost of housing production, such as through separating the cost of parking from that of housing by revising or eliminating parking requirements, encouraging accessory dwelling units in certain areas, and clarifying zoning rules to encourage housing production.

In summary, it is concluded that, on balance, the anticipated increase in population and density under each of the three proposed rezoning options would not result in significant adverse physical effects on the environment. This EIR identifies several Improvement Measures in Chapter V that could serve to further reduce the less-than-significant physical effects of the proposed project with regard to potential indirect displacement of local-serving businesses, production and retention of affordable housing, and support for PDR businesses in the Eastern Neighborhoods.

Transportation (p. 253)

Traffic. Under 2025 No-Project conditions, 18 of the 40 study intersections would operate at LOS E or LOS F during the p.m. peak hour, including three of the four in East SoMa (compared with one under baseline conditions); three of 13 in the Mission (compared with two under baseline conditions); nine of 15 in Showplace Square/Potrero Hill (compared with two under baseline conditions); and three of four in the Central Waterfront (compared with none under baseline conditions). In general, the poor operating conditions would occur along the primary access routes to and from the I-80/U.S. 101 and I-280 ramps. As previously noted, intersections leading

to freeway ramps are congested during the evening commute hours, and this congestion is projected to increase in the future.

With the proposed project, 20 of 40 study intersections would operate at unacceptable conditions (LOS E or F) under Option A, 24 under Option B, and 23 under Option C. The three East SoMa intersections that would operate at LOS E or F under 2025 No-Project conditions would continue to operate at unacceptable LOS conditions under all three rezoning options. Of the 13 study intersections in the Mission, three intersections would operate at LOS E or F during the weekday p.m. peak hour under Option A (the same number as under 2025 No-Project conditions), five would operate at LOS E or F under Option B, and four would do so under Option C. In Showplace Square/Potrero Hill, 10 of 15 study intersections would operate at LOS E or F during the weekday p.m. peak hour under Option A, 11 intersections under Option B, and 12 intersections under Option C. And in the Central Waterfront, four of eight study intersections would operate at LOS E or F during the weekday p.m. peak hour under Option A, five intersections under Option B, and four intersections under Option C.

Mitigation measures for the above impacts would include implementation Intelligent Traffic Management Systems (“ITMS”) strategies, improvement and enhancement of streets, promotion of alternative means of travel, and parking management to discourage driving. However, it is not anticipated that the significant adverse effects at local intersections could be fully mitigated, and thus these impacts are considered significant and unavoidable.

Transit. By 2025, growth in Muni ridership Citywide, without implementation of the Eastern Neighborhoods project, would increase about 20 percent over baseline conditions. While some of this increase in transit demand would be accommodated within the existing service, additional service (greater frequency and line extensions and/or new lines) would be required, as would additional equipment (buses and light rail vehicles) and storage facilities. Under 2025 No-Project conditions, ridership demand at the four Muni screenlines is projected to increase by about 22 percent, while capacity is projected to increase by about 14 percent. While the Northeast screenline would operate below capacity levels, the Northwest, Southwest and Southeast screenlines would operate at more than capacity, and there would be significant transit impacts at these screenlines under 2025 No-Project conditions. In the Eastern Neighborhoods, without increases in peak-hour capacity, the majority of Muni lines would exceed Muni’s 85 percent threshold at their maximum load points. In particular, ten of the 11 lines serving the Mission, seven of the eight lines serving Showplace Square/Potrero Hill, and two of the three lines serving the Central Waterfront would operate at more than 85 percent capacity in the inbound and/or outbound directions. (While capacity would generally not exceed Muni’s standard within the Eastern Neighborhoods themselves, many of the Muni lines serving the Eastern Neighborhoods have maximum load points outside the study area, and capacity utilization would exceed Muni’s 85 percent threshold, as is the case under 2000 baseline conditions.) Lines where the 85 percent

threshold would be newly exceeded under 2025 No-Project conditions include the 10-Townsend, 26-Valencia, 33-Stanyan, 47-Van Ness, and 67-Bernal Heights.

Based upon the change from 2025 No-Project conditions, increases in transit ridership under each of the three rezoning options would result in significant cumulative impacts on Muni service affecting lines 9, 10, 12, 14, 22, 26, 27, 47, 49, and 67. Mitigation would necessitate the identification of new funding source(s), to supplement the City's Transit Impact Development Fee program for non-residential uses, to enable Muni to accommodate projected transit demand within the Eastern Neighborhoods and the remainder of the City, including meeting capital needs such as bus storage. Additionally, further mitigation identified in Chapter V would include additional and enhanced Muni service, transit priority on certain streets, improvement of transportation demand management, establishment of a coordinated planning process to link land use planning and development in the Eastern Neighborhoods to transit and other alternative transportation mode planning in the eastern portion of the City. However, it is not anticipated that the significant adverse effects on Muni service could be fully mitigated, and therefore the project's effect on Muni service is considered to be a potentially significant impact.

Pedestrian and Bicycle Conditions. Under 2025 No-Project conditions, the anticipated increase in pedestrian traffic would be accommodated by existing sidewalks. Some of the existing sidewalk deficiencies (e.g., Townsend Street in East SoMa, limited areas of the NEMIZ, some streets in Showplace Square that still reflect the earlier industrial nature of the area, and much of the Central Waterfront except the Dogpatch residential neighborhood and major streets like Third and 20th Streets) would be eliminated as a result of individual development projects and potentially as part of larger planned improvements such as the proposed extension of Caltrain to downtown, which would reconstruct the Townsend Street right-of-way. Further improvements to the pedestrian infrastructure (such as crosswalks and pedestrian signals) would be implemented in response to requirements part of individual development projects. Additionally, the City is currently developing a Better Streets Plan, including the Streetscape Master Plan and the Pedestrian Transportation Master Plan, with a goal of improving the pedestrian environment. Development under 2025 No-Project conditions would result in an increase in pedestrian, bicycle and vehicle trips in the four neighborhoods, with the potential for pedestrian-vehicle conflicts, and a resultant increase in pedestrian injury collisions. Community-supported planning efforts would need to occur to identify specific improvements to enhance pedestrian travel and safety in the Eastern Neighborhoods. The *Southeast Mission Pedestrian Safety Plan* is one example of such an effort conducted as part of Metropolitan Transportation Agency's Livable Streets program, and includes location-specific pedestrian improvements such as bulb outs, ladder crosswalks, pedestrian countdown signals, and red-light photo-enforcement cameras. Once a program of specific improvements within the four neighborhoods are identified, the City's Proposition K transportation sales tax funding, and regional and federal grant funding could be pursued by MTA to implement these projects. In addition, the draft *2005 Bicycle Plan* identifies 13 streets and corridors within the Eastern Neighborhoods where bicycle lanes are proposed.

Under the proposed Eastern Neighborhoods project, growth in pedestrian and bicycle trips would be greatest under Option C, and least under Option A, except in the Central Waterfront, where the growth assumptions from the Better Neighborhoods program would result in the greatest increase under Option A and the least under Option C. Of the four study neighborhoods, the Mission would experience the greatest increase in pedestrian activity due to the proposed project, although the overall increase from baseline conditions—primarily due to other, cumulative, development would be greatest in East SoMa. The addition of vehicle trips associated with development with each rezoning option would increase the potential for pedestrian-vehicle conflicts by the greatest degree in these two neighborhoods.

Site-specific pedestrian and bicycle impact analyses would be conducted for future development, and individual development projects would make localized sidewalk improvements and improvements to reduce pedestrian-vehicle and bicycle conflicts. However, such development projects would not typically be required to improve systemwide or areawide deficiencies. The San Francisco Department of Public Works and Metropolitan Transportation Agency (MTA) would be responsible for the systemwide or areawide deficiencies. Both of these departments have ongoing pedestrian improvements projects, such as installation of pedestrian signal heads and pedestrian countdown timers. Other improvements that could be implemented by these two agencies include crosswalk improvements, corner bulb-outs, pedestrian-scale lighting and decorative pavement. Additional funding for the systemwide or areawide improvements would likely be sought.

New bicycle trips resulting from development subsequent to implementation of the proposed rezoning and area plans would use the existing and planned system of bicycle routes. Individual development projects would be required to comply with provisions of the Planning Code pertaining to bicycle parking spaces in off-street parking facilities, and other support facilities, such as showers and lockers.

Increases in pedestrian, bicycle and vehicle trips associated with new development would result in an increase in the potential for pedestrian-bicycle-vehicle conflicts. Community-supported planning efforts would need to occur to identify specific improvements to enhance pedestrian travel and safety in the Eastern Neighborhoods. These planning efforts (e.g., the *Southeast Mission Pedestrian Safety Plan*) would include a combination of traffic engineering, pedestrian safety, and traffic calming strategies to enhance pedestrian travel and safety. Examples of measures could include bulbouts, ladder crosswalks, pedestrian signals, pedestrian countdown/audible signals, red-light enforcement cameras, intersection vehicle and pedestrian controls, intersection/roadway geometry changes (e.g., narrow travel lanes), and pedestrian scale lighting.

The individual plans for the four Eastern Neighborhoods include objectives and policies that would serve to encourage travel by public transit, and other non-auto modes, and would enhance

pedestrian travel and safety. In addition, all three rezoning options would include changes to the Planning Code parking requirements for residential and non-residential uses, to eliminate minimum parking supply requirements, and instead specify maximum permitted parking supply (the existing Planning Code requirements currently require the provision of car-sharing spaces). Chapter V identifies improvement measures for pedestrians, as well as mitigation and improvement measures for traffic and transit, which, if implemented, would be expected to improve pedestrian safety in the Eastern Neighborhoods.

The San Francisco Department of Public Health (“DPH”) has analyzed pedestrian injuries in traffic accidents a public health perspective. According to data prepared by DPH, the four Eastern Neighborhoods have a substantially greater rate of pedestrian injury collisions, on a population-weighted basis, than does the City as a whole: whereas the number of accidents involving pedestrian injury citywide is approximately 100 per 100,000 population, the comparable rates in the Eastern Neighborhoods range from approximately 150 per 100,000 population in the Mission District to approximately 415 per 100,000 population in East SoMa. The rate in the Central Waterfront is approximately 170 per 100,000 population, while in Showplace Square/Potrero Hill, it is about 240 per 100,000 population. San Francisco as a whole also has a substantially greater number of pedestrian injury accidents on a population-weighted basis than the national average, largely because there is much more pedestrian activity than most comparably-sized cities. Further, four of the five intersections in San Francisco where 10 or more vehicle-pedestrian collisions occurred during the period from 2001-2005 are in the study area.

There are a number of factors that contribute to increased pedestrian-vehicle collisions, and the number of collisions at an intersection is a function of the traffic volume, travel speeds, intersection configuration, traffic control, surrounding land uses, location, and number of pedestrians. DPH has developed a “pedestrian injury model” that attempts to predict the change in accidents involving pedestrian injury on the basis of a number of different factors, including vehicular traffic volume, resident population, proportion of occupied housing units without auto access, proportion of the population that uses transit to travel to and from work, proportion of arterial streets without Muni access in the neighborhood, and land area of the neighborhood. Based on this model, DPH projects that the number of pedestrian injury collisions in the project area could increase, from 2000 conditions, by 17 percent under Option B, about the same as the 16 percent increase in residential population. The DPH pedestrian injury model is one approach to evaluating pedestrian hazards, and is intended to compliment more traditional methods of pedestrian hazards analysis, which are focused more closely on specific locations; that is, traffic engineers tend to examine specific locations (generally, intersections) where a relatively large number of accidents are noted and to examine potential operational solutions (e.g., installation of new traffic signals, signal re-timing, sidewalk widening (bulbouts), and the like) in an effort to alleviate site-specific traffic hazards. Because the City has not established criterion of significance and has not thoroughly evaluated various analysis tools for pedestrian injury

collisions, it cannot be concluded that the proposed project would result in a significant effect with regard to pedestrian conditions.

In summary, pedestrian and bicycle impacts would be less than significant.

Parking. Under 2025 No-Project conditions, the number of residential units within the Eastern Neighborhoods are projected to increase (from 2000 baseline conditions) by 2,871 units, with the greatest amount of development projected to occur within East SoMa (1,581 units). The parking demand associated with these residential units would range from about 2,650 to about 4,300 spaces. Under the existing Planning Code provisions, most new residential developments would be required to provide a minimum of one parking space per unit. Assuming the existing Code requirement, new residential development would provide a minimum of 2,871 parking spaces, which would result in a residential parking shortfall of up to 1,436 parking spaces, depending on the actual demand. Non-residential development under No-Project conditions is projected to increase (from 2000 baseline conditions) by about 3.4 million square feet, with the greatest amount of growth projected to occur within Showplace Square/Potrero Hill (about 2.0 million square feet) and East SoMa (about 718,000 square feet). New development would likely provide off-street parking to meet the existing Planning Code minimum requirements for the various uses. However, it is anticipated that the new supply would not accommodate the entirety of the projected demand associated with the new development, and there would be a parking shortfall.

Under the proposed project, the increase in overall parking demand in the study area, compared to 2025 No-Project conditions, would range from about 6,000 to almost 8,800 spaces under Option A. Parking demand under Option B would be between about 4,400 and 6,700 spaces, while under Option C, demand would be between about 11,000 and 15,000 spaces. Under all three rezoning options, the residential parking demand would represent the majority of the parking demand, except under Option C in the Mission District, where a large amount of new office, retail/entertainment, and cultural/educational/institutional use is projected under this option. Because many of the new use districts would eliminate minimum parking requirements and instead impose parking maximums for both residential and non-residential uses, it is anticipated that there would be a substantially greater shortfall in parking supply versus demand under each of the proposed rezoning options, compared to the No-Project Alternative, which would not reduce parking requirements. However, parking supply is not considered to be a part of the permanent physical environment in San Francisco, as parking conditions are changeable. Parking deficits are considered to be social effects, rather than impacts on the physical environment as defined by CEQA. Therefore, the anticipated parking shortfall would be a less-than-significant effect.

Noise (p. 303)

Based on traffic projections, baseline and future noise levels were estimated for several representative major streets within the project area. The greatest noise increases (up to 3 dBA)

would occur from future (2025) growth that would occur without the proposed rezoning (i.e., 2025 No-Project conditions). The proposed rezoning under all options would increase these future No-Project noise levels by 1 dBA or less. In general, traffic noise increases of less than 3 dBA are not perceptible to most people, while a 5-dBA increase is readily noticeable. Therefore, permanent increases in ambient noise levels of less than 3 dBA are considered to be less than significant, and implementation of the proposed Eastern Neighborhoods Rezoning and Area Plans would have a less-than-significant noise impact due to noise created by project-generated traffic. Cumulative noise levels, including other future development not related to the proposed project, would increase by up to 3.3 dBA under Option A, 3.5 dBA under Option B, and 3.6 dBA under Option C. Although the cumulative noise increase would be greater than the 3-dBA threshold, none of the proposed rezoning options' contributions would be "considerable" within the meaning of CEQA, because the cumulative peak-hour noise levels would, in each case where the cumulative increase would exceed 3 dBA, be less than 70 dBA, which is the exterior noise level at which it is typically possible to maintain acceptable residential interior noise levels without special noise attenuation features, and because the contribution under each of the proposed rezoning options would be less than 1 dBA in each case, which is not a perceptible change. Therefore, the cumulative noise increases are considered to be less than significant.

The *San Francisco General Plan* noise guidelines indicate that any new residential construction or development in areas with noise levels above 60 dBA (Ldn) should be undertaken only after a detailed analysis of noise reduction requirements is made and needed noise insulation features are included in the design. In areas where noise levels exceed 65 dBA (Ldn), new residential construction or development is generally discouraged, but if it does proceed, a detailed analysis of noise reduction requirements must be done and needed noise insulation features included in the design. Therefore, a detailed analysis of noise reduction requirements should be completed for all future residential and hotel uses proposed in areas subject to noise levels above 60 dBA (Ldn). Since noise measurements indicate noise levels exceed 60 dBA (Ldn) along almost all streets in the project area and in areas where most new residential development is expected to occur with implementation of the proposed rezoning, noise compatibility impacts would be potentially significant and a detailed noise analysis would be required for residential development proposed in the project area to reduce these impacts to a less-than-significant level.

However, because most new residential development that would be allowed within the project area by the proposed rezoning would be attached, multi-family residential units, most new residential development in the Eastern Neighborhoods would be subject to Title 24 Noise Insulation requirements. This state regulation requires meeting an interior standard of 45 dBA (Ldn) in any habitable room and, where such units are proposed in areas subject to noise levels greater than 60 dBA (Ldn), demonstrating how dwelling units have been designed to meet this interior standard. Therefore, compliance with the state noise standards would ensure consistency with the *General Plan* noise standards for most new residential development in the project area.

For residential development not subject to the California Noise Insulation Standards (e.g., single-family dwellings), traffic noise in the study area could potentially result in a significant effect if interior noise were not adequately reduced, consistent with the state standards for multi-family housing. Mitigation identified in this EIR would require that residential development not subject to the California Noise Insulation Standards would undergo appropriate noise analysis prior to approval and construction, thereby avoiding the potential significant impact of exposure to noise levels in excess of *General Plan* recommendations. It should be noted that in areas with noise levels up to 70 dBA (Ldn), conventional construction but with closed windows and fresh air supply systems or air conditioning will normally be adequate to maintain acceptable interior noise levels (45 dBA, Ldn). Additional noise attenuation features may need to be incorporated into the building design where noise levels exceed 70 dBA (Ldn) to ensure that acceptable interior noise levels can be achieved.

Other noise-sensitive land uses, such as schools, libraries, churches and hospitals, where the *General Plan*-recommended threshold for detailed noise reduction analysis is 65 dBA (Ldn), would be subject to this noise recommendation at many locations in the in the study area. Because such special-purpose uses are frequently subject to particular design and construction standards, it is similarly anticipated that consistency with the *General Plan* recommendations would occur as a matter of course, in many instances. To avoid the potential significant impact of exposure of such uses to noise levels in excess of *General Plan* recommendations, mitigation would ensure that such uses would undergo appropriate noise analysis prior to approval and construction. Likewise, mitigation would avoid potentially significant noise impacts to other new development in the project area by ensuring appropriate noise analysis, consistent with the *General Plan* noise guidelines for land use compatibility.

In general, the proposed rezoning and area plans would tend to rationalize the arrangement of land use in the Eastern Neighborhoods so that new residential uses would be less likely to locate in proximity to new noise-generating PDR uses than is the case under baseline conditions or under future No-Project conditions absent the proposed rezoning. This is because the rezoning would more clearly delineate Employment and Business Development (EBD), mixed-use residential, and neighborhood commercial districts and would tend to concentrate these uses in designated areas and corridors to a greater degree than under the existing M-1 and M-2 zoning, which is more permissive in that it allows all major land use categories. Because the proposed controls would more clearly define areas intended for residential and PDR uses, the rezoning would tend to result, over time, in fewer land use conflicts between noise generators and residential and other more noise-sensitive uses. The project would also create buffers between residential and non-residential areas through the UMU district. However, because the proposed rezoning would permit existing uses to remain where they are, existing PDR uses would remain, to a greater or lesser degree, in some areas newly zoned for mixed residential and other uses. Thus, particularly in the short term, the project would facilitate some residential development in proximity to a mix of uses including PDR uses that can generate operational noise, as well as

other non-residential uses such as retail and entertainment, cultural/institutional/educational uses, and offices. Sources of noise typically associated with such non-residential uses can include loading/unloading activities, truck noise, and noise from stationary sources, which during nighttime hours can result in noise conflicts between residential and commercial uses.

Residential development in proximity to existing noisy uses could result in health effects associated with exposure to chronic high levels of environmental noise and with exposure to short term incidences in noise occurring during the typical hours of sleep, including sleep disturbance, annoyance, impaired speech comprehension, and possible changes in cognitive function. Moreover, the interior noise protections required by Title 24 will not protect the entire population from the health effects (e.g. sleep disturbance) of short-term exceedances of ambient noise levels, because Title 24 standards are based on 24-hour noise levels and short-term noise sources often have little effect on these day-night average noise levels. Mitigation identified in this EIR would reduce such potential conflicts between existing noise-generating uses and new sensitive receptors by requiring evaluation of the noise environment around any site where a noise-sensitive use is proposed, in advance of the first approval of such use, as well as conflicts between new noise-generating uses and existing noise-sensitive uses, and would reduce noise impacts of potentially incompatible uses to a less-than-significant level.

Air Quality (p. 323)

In accordance with Bay Area Air Quality Management District (BAAQMD) guidance, this EIR judges the significance of the overall impact of operational emissions of criteria air pollutants generated as a result of the proposed Eastern Neighborhood rezoning and area plans on the basis on the consistency of the proposed project with the *Bay Area 2005 Ozone Strategy*, which is the most recently adopted regional air quality plan. According to the BAAQMD, a planning document's consistency with the *2005 Ozone Strategy* is established through 1) a comparison of the plan's projections of population and vehicle use (vehicle miles traveled) with those upon which the *2005 Ozone Strategy* is based; 2) the extent to which the plan implements transportation control measures identified in the *2005 Ozone Strategy*; and 3) whether the plan provides buffer zones around sources of odors and toxics. Inasmuch as growth rates anticipated under the proposed Eastern Neighborhoods Rezoning and Area Plans would not exceed ABAG's projected growth rate for San Francisco or for the Eastern Neighborhoods study area, project implementation under all options would not result in a significant impact on regional air quality planning efforts. Another way of stating this conclusion is that the proposed Eastern Neighborhoods Rezoning and Area Planning Project would generally be consistent with the smart growth principles upon which ABAG's *Projections* have been based since 2003, in that the proposed project would encourage "smart growth." In addition, the number of daily vehicle trips would increase at a lesser rate than would the population, this suggests that the proposed Eastern Neighborhoods Rezoning and Area Plans project would be consistent with the goal of the *2005 Ozone Strategy* to reduce vehicle usage, relative to population, and thereby reduce VMT. It

should also be noted that projected growth in the Eastern Neighborhoods would occur in an urban area. Therefore, emissions increases from projected growth and development within the project area could be less than would result if the same amount of growth occurred in outlying areas of the air basin (where trip lengths would be longer, on average). Although the proposed rezoning does not include any specific traffic improvements, proposed transportation policies of the area plans would be consistent with pertinent TCMs outlined in the *Bay Area 2005 Ozone Strategy*.

Finally, in terms of toxic air contaminants, where DPM is the key TAC of concern, while the risk from DPM will decrease over time as cleaner technologies are phased into use, until there is sufficient fleet turnover and retrofitting of older trucks to reduce DPM emissions, sensitive land uses would be subject to cancer-related health risks associated with proximity to freeways and major roadways with large volumes of truck traffic within the Eastern Neighborhoods. DPM-related health risks to residents and employees of new development in the Eastern Neighborhoods could be minimized by provision of upgraded ventilation systems where modeling of DPM concentrations indicates such filtration is warranted. Along with regulations already in place to reduce DPM emissions, such interior air filtration, where warranted, would be required by mitigation identified in this EIR, and would be expected to reduce the impact to a less-than-significant level. In light of the above, the proposed project would be consistent with the *Bay Area 2005 Ozone Strategy*, and project impacts on air quality would be less than significant.

Certain other uses that could locate in the project area could result in emissions of DPM and other TACs. These include, for DPM, warehousing and distribution centers and commercial, industrial, or other uses that generate substantial truck traffic. For other TACs, uses would include, among others, dry cleaners, drive-through restaurants, gas stations, auto body shops, metal plating shops; photo processing, furniture upholstery, appliance repair, printing, hospitals and clinics, biotechnology research, warehousing and distribution centers, and processing of textiles and

- leather. Mitigation identified in this EIR would require that uses generating substantial DPM emissions be located no less than 1,000 feet from residential units and other sensitive receptors,
- and would require a site survey to identify existing residential or other sensitive uses where other new TAC-generating uses are proposed. This mitigation would reduce impacts of uses generating DPM and other TACs to a less-than-significant level.

The project's incremental increases in GHG emissions associated with traffic increases, residential and commercial space heating, and increased energy demand would contribute to regional and global increases in GHG emissions and associated climate change effects. Neither the BAAQMD nor any other agency has adopted significance criteria or methodologies for estimating a project's contribution of GHGs or evaluating its significance. However, the proposed rezoning would encourage use of transit and alternative transportation modes, which could help reduce transportation-related GHG emissions, relative to the same amount of population and employment growth elsewhere in the Bay Area, where transit service is generally less available than in the central city of San Francisco. In addition, GHG emissions increases from projected

growth and development within the project area could be less than would result if this growth occurred in outlying areas of the air basin, where trip lengths would be longer. Moreover, the project's emphasis on creating relatively higher-density, mixed-use neighborhoods would be expected to make walking and other non-vehicular travel more viable than would be the case for similar population and employment growth in lower-density, single use neighborhood. New construction within the project area will also be required to meet California Energy Efficiency Standards for Residential and Nonresidential Buildings, requirements of pertinent City ordinances such as the Residential Energy Conservation Ordinance, and emissions reduction actions included in the San Francisco Climate Action Plan, helping to reduce future energy demand as well as reduce the project's contribution to regional GHG emissions.

Thus, it can be fairly stated that GHG emissions related to the proposed Eastern Neighborhoods Rezoning and Area Plans would likely be of lesser intensity than for residential and commercial development of comparable magnitude in a less dense, more sprawling environment. It can be stated with equal clarity that enhancements to transit service in the project area and vicinity, provision of other alternatives to automobile travel, and measures to permit employees to live closer to their workplaces and to provide employment opportunities for nearby residents would all combine to reduce GHG emissions that would otherwise be generated by increased vehicle travel. Given all these factors to minimize vehicle trip lengths and energy demand increases, the proposed rezoning options would not conflict with the State's goals of reducing GHG emissions to 1990 levels by 2020, and the project's impact on GHG emissions would be less than significant.

Parks, Recreation and Open Space (p. 363)

The *General Plan's* guideline of 5.5 acres per 1,000 residents for city-serving spaces is currently met under existing conditions, and would continue to be met under each of the three rezoning options. The Eastern Neighborhoods are collectively served by about 50 acres of neighborhood parks and facilities (district- neighborhood- and subneighborhood-serving parks). With a baseline (2000) population of approximately 67,000 residents, the existing resources provided approximately 0.75 acres of neighborhood parks per 1,000 residents under baseline conditions, which is slightly less than the citywide average for park acreage (excluding the largest citywide parks) of approximately 1.1 acres per 1,000 residents. Each of the rezoning options would accommodate more residential development within the Eastern Neighborhoods, thereby increasing the demand for parks and recreational facilities. An unmet demand for parks and recreational resources, in itself, would not be considered a significant impact on the environment. Based on the CEQA significance criteria, the proposed project would have an adverse environmental impact if it were to cause the deterioration of existing recreational resources through increased use or require the construction or expansion of recreational facilities that may have an adverse effect on the environment. It can be anticipated that increases in the number of permanent residents without development of additional recreational resources could result in

proportionately greater use of parks and recreational facilities in and near portions of the Eastern Neighborhoods, which could may result in physical deterioration. In particular, the Mission District, with an existing shortfall in both neighborhood parks and recreational facilities, some physical degradation of both parks and recreational facilities may occur due to the cumulative demands on those facilities. However, the rate of deterioration depends on a number of factors including park design, age, infrastructure, how the park is being used, as well as whether adequate levels of upkeep are maintained.

Although the proposed area plans do not include specific parks or recreational facilities that would be developed as part of the rezoning effort, the draft area plans for each neighborhood seeks to address the potential future open space and recreational facility space needs through a set of goals, objectives and policies, including a proposal to convert to open space surplus rights-of-way on streets, alleys and sidewalks. The policies also provide guidance in terms of location, size, accessibility, landscape design and maintenance guidelines. The draft area plans encourage additional Planning Code requirements for new development including the provision of publicly accessible open space. All of the draft area plans include a policy to “identify [open space] sites for possible acquisition” and indicate in an illustrative manner, where future park, open space and recreational facilities should be developed based on neighborhood needs. The Planning Department has begun an effort with the Recreation and Parks Department as well as interested members of the public to further this policy by examining potential sites for future open space and/or recreation facility development.

The Planning Code requires a specified amount of new usable open space (either private or common) for each new residential unit. Draft area plan policies indicate that the code’s minimum of 36 square feet of private open space per unit (for most residential districts) could in some instances increase to a minimum of 80 square feet, thereby increasing the amount of on-site open space required as part of private development projects compared to existing conditions, which would offset some open space needs generated by the development of new residential uses. Future uses could also be required to provide privately owned, publicly accessible open spaces. While future private open spaces may not alleviate the existing deficiencies in each or any of the neighborhoods, proposed changes to the Planning Code would offset some of the additional need generated by increase population to the project area.

Although open space is not currently required for non-residential uses outside the existing South of Market mixed-use districts (and in downtown and Chinatown), it is anticipated that open space requirements for non-residential development could be adopted as part of the proposed Eastern Neighborhoods rezoning in certain new use districts so that new development would provide either on-site publicly accessible open space, or would contribute to an open space fund. This approach would be similar to that now employed in the South of Market mixed-use districts. The intent would be to compensate for the fact that portions of the project area proposed for new

residential or mixed-use (including residential) zoning have historically been in non-residential use and therefore were not expected to, and did not, provide substantial open space.

The draft area plans include policies which would “require minimum ecological standards for urban landscaping for all new development and provide incentives for existing development to meet these standards,” which would essentially function as a landscaping ordinance. This would be achieved through implementation of a “San Francisco Green Factor,” which is a flexible system that provides project sponsors with a range of options to meet minimum standards related to onsite landscaping that “incorporates rainwater retention and filtration through permeable surfaces, green roofs, semi-open surfaces and vertical greenery.” Implementation of such a program in the Eastern Neighborhoods would comport with the basic tenets of the City’s Sustainability Plan and could result in incremental, beneficial effects related to a reduction in stormwater runoff, increases in groundwater recharge, reductions in the urban heat island effect, increased carbon sequestration, as well as potential aesthetic benefits related to increases in neighborhood greenery.

Implementation of the aforementioned goals for new park and open space development, existing park renovation, and public realm improvements would require funding sources beyond what currently exist today. The separate Public Benefits Analysis includes a compilation of tools that could potentially meet some future community needs, including for recreational resources. Among the tools are planning policies, zoning requirements, taxes and impact fees, establishment of service and/or assessment districts, and direct provision of facilities by developers. Additionally, the planned update of the *General Plan’s* Recreation and Open Space Element will focus on identification of opportunity areas for the acquisition of new park and recreational facilities, to examine methods to acquire future and to maintain existing facilities, such as through the development of impact fees or through public/private partnerships as well as to link open space and recreation planning to ongoing greening efforts in other city departments along public streets and right-of-ways (“living streets”). It should be noted that future proposals for the development of park and/or recreational facilities would undergo site-specific environmental review.

The Implementation Plan and Funding Strategy produced from the Public Benefits Analysis, along with the product of the Recreation and Open Space Element update process, are anticipated to describe additional potential contributions to the City’s existing Open Space Fund and other bond measures supporting the Recreation and Park Department Capital Improvement Plan. Together, these efforts should establish a variety of tools to achieve the open space objectives set forth in each of the Eastern Neighborhoods draft area plans. Additionally, implementation of draft area plan policies geared toward amending Planning Code requirements of new development would implement the appropriate controls to ensure existing and future neighborhood workers, visitor and permanent residents would be served with parks and open spaces. In light of the above, it can be concluded that none of the proposed rezoning options, nor the No-Project scenario, would result in substantial or accelerated deterioration of existing recreational resources

or require the construction or expansion of recreational facilities that may have an adverse effect on the environment.

Shadow (p. 380)

In some instances, existing development near publicly accessible parks and open space is not as tall as the current height limit would allow. The rezoning project itself would not directly lead to an increase in the height of, or the shadows cast by, existing buildings. However, in areas where the proposed rezoning would allow for changes to permitted land uses, additions to existing buildings and redevelopment of parcels may be more likely to occur, as the incentive for development would potentially be greater due to the additional permitted heights. New buildings could be constructed up to the applicable height limit, unless restrictions were imposed by Section 295 or other applicable controls under the Planning Code. (Section 295, the Sunlight Ordinance, generally prohibits buildings greater than 40 feet tall that would shade parks under the jurisdiction of the Recreation and Park Department, except during early morning and late afternoon hours, if the shadow would adversely affect use of the park, unless the Planning Commission determines that the effect would be insignificant.)

Of the 24 parks in the project area, nine are surrounded by parcels and blocks in which the existing height limits would remain the same or decrease under all three of the Eastern Neighborhoods rezoning options. The majority of these parks are also located in residential neighborhoods where the use regulations are not expected to substantively change, so the project would not likely to result in any development pressure on properties not currently built to the maximum height. These parks include: South Beach Park (East SoMa), Mission Center (Mission), Jose Coronado Playground (Mission), Parque Ninos Unidos (Mission), Juri Commons (Mission), Garfield Square (Mission), McKinley Square (Showplace Square/Potrero Hill), Potrero Hill Recreation Center (Showplace Square/Potrero Hill), and Tulare Park (Central Waterfront). Because no changes to the height limits surrounding these parks and open spaces are proposed, none of the rezoning options are expected to result in increases in the extent or duration of daily shadow cast on them. Additionally, no changes to existing height limits are proposed surrounding the non-Recreation and Park Department open spaces along the Embarcadero in East SoMa, and thus these spaces would not be adversely affected by the project.

Some of the above parks could be shaded by development pursuant to existing height limits (i.e., under the No-Project scenario). Those in the Mission District would have the greatest potential for new shadow under existing height limits, as many of these parks are relatively small and some are nestled within city blocks. In particular, Juri Commons, on the block bounded by 25th, 26th, Guerrero, and Valencia Streets, could be shaded by new buildings but within the current 40-foot height limit. However, the effect would be limited because the narrowness of the space means existing buildings already cast substantial shadows except at midday, and the park is heavily landscaped.

Increased height limits around 15 parks could result in additional shadow indirectly attributable to the proposed project, although two parks, Victoria Manalo Draves Park (East SoMa) and Esprit Park (Central Waterfront), are near elevated roadways that already cast shadow that would not change in the future. Twelve of the 15 parks are under the jurisdiction of the Recreation and Park Department and therefore subject to Planning Code Section 295. All future development greater than 40 feet in height would be subject to the Section 295 review process and the potential shadow impacts would be evaluated based on the guidelines of that code section.

All potential increases in the extent or duration of shadow would be somewhat ameliorated by the fact that all proposed development would be subject to site-specific environmental review and any additions or new development over 40 feet in height to the provisions of Planning Code Section 295. Under Section 295, the Planning Commission could not approve a project determined to have significant shadow impacts on the use of a park property.

Three parks within the project area—the Alice Street Community Gardens in East SoMa and the Warm Water Cove and Wood Yard Mini-Park in the Central Waterfront—are under the jurisdiction of other agencies and hence not subject to Section 295 of the Planning Code. However, the height limit around Alice Street Community Gardens is already up to 130 feet, and the proposed five-foot height limit increase would not noticeably increase the duration of shadow or detract from the use of the space. The extent and duration of shadows on Warm Water Cove could increase with the proposed 15-foot height limit increase on the park's western and southern sides, but the park would still experience substantial sunlight throughout the day, particularly along the shoreline, and its usability would not be significantly affected. Neither would the increase in shadow duration and extent on Woods Yard Mini-Park have a significant adverse impact on the use of the park as it would remain in full sun for most of the day.

The extent and duration of shadow on public sidewalks could increase along street corridors where the project includes an increase in the maximum building height. However, this new shadow would not be in excess of that which would be expected in a highly urban area.

None of the potential increases in shadow would alter temperatures in such a way to substantially affect public areas or change the climate in the community or region.

Nevertheless it cannot be stated with certainty that compliance with Section 295 would always mitigate any potential significant effects under CEQA. Moreover, sites surrounding many of these parks could be redeveloped with taller buildings without triggering Section 295. Therefore, under both existing height limits (the No-Project Alternative) and with implementation of the project, there could potentially be significant shadow impacts in the project area parks. It cannot be concluded that this impact would be less than significant because of the potential existing for new shadow, possibly in substantial amounts depending on subsequent individual proposal(s) that may be put forth, and because the feasibility of complete mitigation for potential new shadow impacts

of currently unknown development proposals cannot be determined at this time. Therefore the project impact with respect to shadow is judged to be significant and unavoidable for all three rezoning options and for the No-Project Alternative.

Archeological Resources (p. 419)

Based on previous archeological research and historical documentation, various archeological resources are expected to be present within the project area. These include: prehistoric resources, Spanish/Mexican period adobe structures, early boat construction/repair yards, industrial facilities, deposits related both domestic and commercial uses and to such notable institutions and establishments as the original San Francisco County (now General) the original St. Luke's Hospital, Hospital, the Willows and Woodward's Gardens amusement parks, the Union Race Course, the Pacific Mail Steamship Co., the Magdalen Asylum and Female Industrial School, and remains associated with the early Butchertown district and the Mission Dolores Archeological District.

Under any of the proposed rezoning options, the proposed changes in Planning Code use and height controls and amendments to the General Plan for the project area would create a regulatory context for new private land improvements that could result in a greater potential for the disturbance of soils below the existing surface than exists under the current zoning, which could disturb archeological resources potentially eligible for the California Register. Major portions of the project area are within Liquefaction Hazard Zones in which new residential development or adaptation of industrial/commercial/institutional buildings for residential use would frequently require geotechnical support in the form of pilings or soils improvement techniques. Increased residential capacity would likely result in increased disturbance of soils over baseline conditions from residential project activities such as foundation support, excavation for sub-grade levels, and, in some cases, utilities installation. Since a wide range of potentially California Register-eligible archeological properties may be present within the project area, the proposed revision in land use regulations and policies would result in an increased level of soils disturbance and, thus, could adversely affect California Register-eligible archeological resources. In addition, soils-disturbing activities resulting from subgrade basement/garage excavation, foundation support, and utilities installation associated with the increase in residential and commercial development allowed under proposed land use policies of the Project could adversely affect California Register-eligible archeological resources within the Mission Dolores Archeological District.

Archeological research has been completed for portions of the project area. For subsequent development projects within these areas, mitigation in the form of preparation and implementation of an addendum to a previously prepared archeological research design and treatment plan (ARDTP) would reduce potential program-level effects of the proposed Plan on archeological resources to a less-than-significant level. Where no such ARDTP has been prepared, mitigation would require preparation of a site-specific Preliminary Archeological

Sensitivity Study and, where warranted, an ARDTP for subsequently proposed projects in the study area. This mitigation would reduce potential impacts to a less-than-significant level. Finally, for projects within the Mission Dolores Archeological District that would result in soils disturbance 2.5 feet or more below grade, mitigation that would involve pre-construction testing and, potentially, archeological monitoring during ground-disturbing activities would likewise reduce potential effects to a less-than-significant level.

Historic Architectural Resources (p. 441)

As would be the case with archeological resources (discussed above), implementation of any of the three proposed rezoning options could indirectly result in increased development pressure on certain sites where Planning Code use and/or height controls could encourage redevelopment and new construction. In some instances, these sites are occupied by historical resources, potential resources, or age-eligible resources that could therefore be threatened with demolition or substantial alteration. Mitigation measures identified in this EIR could reduce the severity of potential effects on historical resources. However, it is likely that at least some future development proposals in the Eastern Neighborhoods would result in demolition, alteration, or other changes to one or more historical resources such that the historical significance of those resources would be “materially impaired.” Therefore, for purposes of a conservative analysis, and pending completion of historical resources surveys for the entire project area, each of the proposed rezoning options’ indirect effect on historical resources is judged to be significant and unavoidable.

The No-Project Alternative would not result in the kind of development pressure, described above, that would be brought about by each of the three rezoning options. However, given the loss of many potential historical resources and/or potential historic district contributors in the project area—particularly in East SoMa—and given the continuing development pressure in the Eastern Neighborhoods, it is unlikely that the No-Project scenario would see a halt in demolition of historical resources and potential resources. In light of these recent trends, it can be reasonably anticipated that other, future projects will be proposed in the Eastern Neighborhoods that could threaten additional historical resources and potential resources even under the No-Project Alternative. Although it could reasonably be expected that the impacts might be somewhat less substantial than with the proposed project, this impact is judged to be significant and unavoidable for the No-Project Alternative, as well.

Depending on the degree to which individual buildings and/or districts that are known historical resources are adversely affected, the proposed rezoning project would contribute to the above-described loss of historical resources and potential resources resulting from actions other than the proposed Eastern Neighborhoods Rezoning and Area Plans project, both within the study area, as well as elsewhere in San Francisco. Given the degree of change that can reasonably be anticipated in the study area and citywide over the period when the proposed project would be implemented,

and the concomitant anticipated loss of a certain number of historical resources, this cumulative impact would be significant and unavoidable.

Hazards (p. 475)

Rezoning under the proposed project could result in a reduction in the amount of currently zoned industrial (PDR) land in the Mission, East SoMa and Showplace Square/Potrero Hill neighborhoods. In all areas, some land currently zoned for industrial purposes would no longer allow any PDR uses. In addition, the number of nonconforming businesses would be expected to gradually decline, potentially replaced by residential, commercial or open space uses.

These changes would ultimately involve the closure of some industrial business, the conversion of land uses and the introduction of new businesses and residential uses, with the effects varying by degree among the three rezoning options. Without measures to ensure adequate cleanup of closed facilities and cleanup of soil and groundwater to appropriate cleanup levels, future site occupants could be exposed to unacceptable levels of hazardous materials. In addition, at sites where remediation has been completed or in the cases where closure has been granted, regulatory agencies may have approved health-based cleanup levels that are based on current land uses and in some cases closure may have included containment controls such as a cap as adequate to prevent unacceptable exposure to hazardous materials for a given land use. (Such measures allow the site owner to leave hazardous materials in the soil and/or groundwater at concentrations higher than otherwise applicable cleanup levels.)

If land uses change to a more sensitive use as a result of implementation of the project, such as changing from an existing industrial use to new residential units, stricter cleanup levels would apply. Without additional remediation, new site occupants could be exposed to unacceptable levels of hazardous materials in the soil and/or groundwater. However, compliance with facility closure requirements specified in Article 21 of the San Francisco Health Code, and site assessment and remediation requirements that may be triggered by Article 22A or the California Land Reuse and Revitalization Act, would ensure that the potential for hazardous materials to be present is addressed and that further remediation would be conducted under the oversight of the appropriate regulatory agency, if required. Further, a deed restriction would be placed on any property where hazardous materials are left in place, and in accordance with this restriction, new site owners would be required to comply with any approved plans, such as a Risk Management Plan, Health and Safety Plan, or Cap Maintenance Plan, specifying procedures to be followed to prevent unacceptable exposure to hazardous materials left in place. Because of the well-established regulatory framework for site assessment and remediation, impacts related to exposure to hazardous materials due to land use changes are considered less than significant.

Portions of the project area are likely to have contaminated soil or groundwater and/or hazardous building materials (among them, asbestos, lead-based paint, PCBs) as a result of the placement of 1906 earthquake fill, previous and current land uses associated with the use of hazardous

materials, other known or suspected instances environmental contamination, such as leaking underground storage tanks, and the age of buildings in the project area. In general, compliance with existing laws and regulations, appropriate site-specific review and, where warranted, remediation, and guidance by appropriate regulatory authorities such as the San Francisco Department of Public Health, Regional Water Quality Control Board, and California Department of Toxic Substances Control, along with mitigation that would require proper removal and disposal of any equipment containing PCBs or DEPH, such as fluorescent light ballasts, would ensure protection of workers and public health and safety, and reduce any potentially significant effects to a less-than-significant level.

C. Mitigation Measures (p. 501)

Land Use

Mitigation Measure A-1: Western SoMa Rezoning

The Planning Commission and Board of Supervisors could ensure that the community planning process currently under way in Western SoMa places a priority on the maintenance of land use to controls to accommodate PDR uses and restricts potentially incompatible uses, such as residential and office development, to minimize conflicts with existing and potential future PDR businesses. Specifically, the land use controls adopted for Western SoMa could incorporate, at a minimum, no net loss of land currently designated for PDR uses, restrict non-PDR uses on industrial (or other PDR-designated) land, and incorporate restrictions on potentially incompatible land uses proximate to PDR zones. (See also Improvement Measure D-4, p. 524.)

The above measure is judged to be infeasible, because the outcome of the community-based Western SoMa planning process cannot be known at this time. Moreover, the above measure could be seen to conflict with other City policy goals, including the provision of affordable housing.

Transportation

Traffic

Mitigation Measure E-1: Traffic Signal Installation

De Haro/Division/King. To mitigate the 2025 No Project traffic impacts, a traffic signal would need to be installed. With a new signal, the average delays at the intersection would decrease, and the intersection would operate at LOS C.

Rhode Island/16th Streets. To mitigate the 2025 No Project impacts, a traffic signal would need to be installed. With this change, the average vehicle delay would decrease, and the intersection would operate at LOS A.

Rhode Island/Division Streets. To mitigate the 2025 No Project impacts, a traffic signal would need to be installed. With this change, the average vehicle delay would decrease, and the intersection would operate at LOS C. There are a number of proposed developments in the immediate vicinity of this intersection that would contribute to growth in future traffic volumes and increased delays, most noticeably the proposed 801 Brannan Street project, and the One Henry Adams Street project. Implementation of a signal at this intersection could be linked to these and other proposed development projects.

25th/Indiana. Installation of a traffic signal at this intersection would mitigate the 2025 No Project impacts. Weekday p.m. peak hour operating conditions would improve at this intersection to LOS B. It is anticipated that implementation of a signal at this intersection would be linked to development that is anticipated to occur within the Eastern Neighborhoods area, or would be signalized by the MTA when warranted if signalization is not required as mitigation for new development in the area.

Mitigation Measure E-2: Intelligent Traffic Management

As a mitigation measure to reduce congestion with the Eastern Neighborhoods, particularly during peak periods, implement Intelligent Traffic Management Systems (“ITMS”) strategies. Examples of potential measures include:

- Prioritize and expand the implementation of San Francisco’s Integrated Transportation Management System (SFGO) program in critical Eastern Neighborhood corridors.
- Promote the use of smart parking technology to reduce excessive driving in search of parking spaces.
- Establish progressive metering of traffic through coordination of traffic lights and signals.

Mitigation Measure E-3: Enhanced Funding

As a mitigation measure to adequately address the growth in automobile traffic generated by the Eastern Neighborhoods rezoning, ensure that sufficient operating and capital funding is secured for congestion management programs to make more efficient use of ramps, streets and parking, as well as funding to sustain alternative transportation (transit, bicycle, pedestrian) networks and programs that provide incentives for drivers to use these modes. Potential funding strategies are described in Mitigation Measure E-5.

Mitigation Measure E-4: Intelligent Traffic Management

As a mitigation measure to reduce the incentive to drive to destinations within the Eastern Neighborhoods, manage parking programs and supply of on-street and off-street parking. Mitigation may be achieved through some or all of the following measures:

- Implement parking policies that favor short-term parking and progressive parking rate structures to discourage commuter and long-term parking.
- Manage on-street parking through a residential permit process to discourage long-term employee and visitor parking in residential areas of the Eastern Neighborhoods.

- Reduce the provision of off-street parking for commercial, institutional and recreational uses by addressing demand through cash-out parking programs, car-sharing, bike-sharing, station cars, emergency-ride-home programs, peak parking pricing, and unbundled commercial or institutional parking to facilitate and reduce the relative cost of using alternative modes of transportation.

Additional measures that would reduce traffic impacts are described below in mitigation measures for transit, including Mitigation Measures E-7, E-11, and E-12.

Transit

Mitigation Measure E-5: Enhanced Transit Funding

As a mitigation measure to adequately serve increased transit demand generated by the Eastern Neighborhoods rezoning, ensure that sufficient operating and capital funding is secured. Mitigation may be achieved through some or all of the following measures:

- Establish an impact fee to supplement the current Transit Impact Development Fee on all new residential and non-residential development in the Eastern Neighborhoods.
- Establish other fee-based sources of revenue such as, for example, parking benefit districts.
- Establish a congestion-charge scheme for downtown San Francisco, with all or a portion of the revenue collected going to support improved transit service on lines that serve downtown and the Eastern Neighborhoods.
- Seek grant funding for specific capital improvements from regional, state and federal sources.

Mitigation Measure E-6: Transit Corridor Improvements

As a mitigation measure to accommodate project transit demand, provide improved transit service in corridors that are affected by new transit trips generated by the Eastern Neighborhoods rezoning and area plans. Corridors may include Mission Street between 14th and Cesar Chavez Streets, 16th Street between Mission and Third Streets, Bryant Street or other parallel corridor between Third and Cesar Chavez Streets, a north-south corridor through portions of SoMa west of Fifth Street, and service connecting Potrero Hill with SoMa and downtown. Mitigation may be achieved through some or all of the following measures:

- Reduce headways on transit lines serving the Eastern Neighborhoods, so that capacity utilization factors meet Muni's capacity utilization standard of 85 percent. Candidate lines for changes to headways include those along the east-west corridors in the Mission District, especially where these corridors connect with BART and connect with the Showplace Square/Potrero Hill and Central Waterfront neighborhoods (such as the 22-Fillmore and 48-Quintara), along the north-south corridors that serve the eastern half of the Mission District and Showplace Square/Potrero Hill neighborhoods (such as the 9-San Bruno and the 27-Bryant), and lines linking the Market Street subway with East SoMa, with Mission Bay, and with Showplace Square. On some

lines where peak load demand would be the greatest, peak period headways may be reduced by half (for example, on the 22-Fillmore and 9-San Bruno).

- Decrease travel times and improve reliability on transit lines through a variety of means, including transit-only lanes, transit signal priority, transit “queue jumps,” lengthening of spacing between stops, and establishment of limited or express service.
- On key routes expected to carry a significant portion of new ridership generated by the Eastern Neighborhood rezoning and area plans (such as the 22-Fillmore between Market Street and the Central Waterfront, and the 9-San Bruno along Potrero Avenue) develop “premium” service such as a Bus Rapid Transit line or a corridor enhanced with high-level transit preferential treatments.

Mitigation Measure E-7: Transit Accessibility

As a mitigation measure to enhance transit accessibility, establish a coordinated planning process to link land use planning and development in the Eastern Neighborhoods to transit and other alternative transportation mode planning in the eastern portion of the City.

Mitigation may be achieved through some or all of the following measures:

- Implement the service recommendations from the Transit Effectiveness Project (TEP), which is currently in progress. The TEP will focus on near-term and medium-term transit improvements.
- Implement recommendations of the Better Streets Plan that are designed to make the pedestrian environment safer and more comfortable for walk trips throughout the day, especially in areas where sidewalks, crosswalks and other realms of the pedestrian environment are notably unattractive and intimidating for pedestrians and discourage walking as a primary means of circulation. This includes traffic calming strategies in areas with fast-moving, one-way traffic, long blocks, narrow sidewalks and tow-away lanes, as may be found in much of South of Market.
- Implement building design features that promote primary access to buildings from transit stops and pedestrian areas, and discourage the location of primary access points to buildings through parking lots and other auto-oriented entryways.
- Implement key portions of the 2005 Bicycle Plan when it is ready for implementation, particularly along segments called out in the 2005 Bicycle Plan that close gaps in the bicycle network in the Eastern Neighborhoods.
- Develop Eastern Neighborhoods transportation implementation programs that manage and direct resources brought in through pricing programs and development-based fee assessments, as outlined above, to further the multimodal implementation and maintenance of these transportation networks.

Mitigation Measure E-8: Muni Storage and Maintenance

As a mitigation measure to ensure that Muni is able to service additional transit vehicles needed to serve increase demand generated by development in the rezoned areas in the Eastern Neighborhoods, provide maintenance and storage facilities. Mitigation may be achieved through some or all of the following measures:

- Provide a portion of the cost of expanding or constructing a bus facility that may be linked to the increased demand created by land use development pursuant to the Eastern Neighborhoods rezoning and area plans.
- Employ transit-preferential treatments for non-revenue service where transit vehicle volumes are high, and where access to these facilities may be impaired by other traffic.

Mitigation Measure E-9: Rider Improvements

As a mitigation measure to make it easy and comfortable to use transit service in the Eastern Neighborhoods, provide improved passenger information and amenities. Mitigation may be achieved through some or all of the following measures:

- Provide “Next Bus” type passenger information for all lines at key stops.
- Provide for facilities that allow cross-agency sharing of real time arrival information for transit vehicle operators where regional and local feeder transit agencies connect, but where operators do not have visual contact with each other or with the complete connection path that transferring passengers must make (for example, between BART and feeder buses, such as the 53-Southern Heights, which terminates at the 16th Street BART station and the 67-Bernal Heights, which terminates at the 24th Street BART station).
- Provide accurate and usable passenger information and maps.
- Provide adequate light, shelter and spaces to sit at all stops, with enhanced amenities at key stops.
- Encourage the consolidation of sheltered, well-lit, Next-Bus-served ground floor land uses open to the public for extended hours (e.g., cafes, bookstores and institutional building lobbies) within immediate sightline/walking distance of major surface transit stations and stops to allow waiting transit customers options to sit in sheltered comfort, and to increase pedestrian activity and casual monitoring around the transit stations.

Mitigation Measure E-10: Transit Enhancement

As a mitigation measure to minimize delays to transit vehicles due to projected traffic congestion, provide improved transit service in corridors that are subject to traffic congestion induced at least in part by the land use growth due to Eastern Neighborhoods rezoning and area plans. Mitigation may be achieved through some or all of the following measures:

- Reduce headways on transit lines serving Eastern Neighborhoods, including those corridors that connect with BART, AC Transit, SamTrans, Golden Gate Transit and Caltrain, to reduce the overall transit travel time for regional trips that when made by automobiles add to the congestion in the street grid and freeway ramp system in the Eastern Neighborhoods.
- Prioritize and expand the use of Transit Preferential Street technologies to prioritize transit circulation in the Eastern Neighborhoods.

- Improve and expand the use of programs that increase transit rider awareness, real-time connectivity and transfer reliability, such as Next Bus, and the display of schedules and maps.

Mitigation Measure E-11: Transportation Demand Management

As a mitigation measure to minimize delays to transit vehicles due to projected traffic congestion and to encourage use of alternative modes of travel, including transit, implement collaborative management of workplace facilities, work hours, and transportation resources. Mitigation may be achieved through some or all of the following measures:

- • Establish a Transportation Demand Management (TDM) program in the Eastern Neighborhoods that could be designed to expand citywide, and that would coordinate programs promoting alternative means of transportation and reducing dependence on the automobile. Such a TDM program could support growth in transit usage where capacity is available and/or existing service appears to be underused, such as in the Folsom Street, Valencia Street, and South Van Ness Avenue corridors, and in the Mission Bay North area. A TDM program could include one or more of the following strategies:
 - • Require cash-out policies for all employers who are providing on-site parking or subscribe to a parking facility to provide employee parking.
 - • Require car-sharing and bike-sharing in developments near transit centers as a means of increasing incentives for residents and employees not to own or depend on automobiles.
- • Promote the creation of on-site Transportation Management Associations at work sites to restrict employee parking, facilitate and encourage the use of transit passes, emergency-ride-home policies, and other promotions for alternative means of commuting, and to promote alternative work schedules for drivers that focus on making better use of off-peak roadway capacity.

Noise

Mitigation Measure F-1: Construction Noise (from Initial Study)

For subsequent development projects within proximity to noise-sensitive uses that would include pile-driving, individual project sponsors shall ensure that piles be pre-drilled wherever feasible to reduce construction-related noise and vibration. No impact pile drivers shall be used unless absolutely necessary. Contractors would be required to use pile-driving

equipment with state-of-the-art noise shielding and muffling devices. To reduce noise and vibration impacts, sonic or vibratory sheetpile drivers, rather than impact drivers, shall be used wherever sheetpiles are needed. Individual project sponsors shall also require that contractors schedule pile-driving activity for times of the day that would minimize disturbance to neighbors.

Mitigation Measure F-2: Construction Noise (from Initial Study)

Where environmental review of a development project undertaken subsequent to the adoption of the proposed zoning controls determines that construction noise controls are necessary due to the nature of planned construction practices and the sensitivity of proximate uses, the Planning Director shall require that the sponsors of the subsequent development project develop a set of site-specific noise attenuation measures under the supervision of a qualified acoustical consultant. Prior to commencing construction, a plan for such measures shall be submitted to the Department of Building Inspection to ensure that maximum feasible noise attenuation will be achieved. These attenuation measures shall include as many of the following control strategies as feasible:

- Erect temporary plywood noise barriers around a construction site, particularly where a site adjoins noise-sensitive uses;
- Utilize noise control blankets on a building structure as the building is erected to reduce noise emission from the site;
- Evaluate the feasibility of noise control at the receivers by temporarily improving the noise reduction capability of adjacent buildings housing sensitive uses;
- Monitor the effectiveness of noise attenuation measures by taking noise measurements; and
- Post signs on-site pertaining to permitted construction days and hours and complaint procedures and who to notify in the event of a problem, with telephone numbers listed.

Implementation of Mitigation Measures F-1 and F-2 would reduce construction noise effects to a less-than-significant level.

Mitigation Measure F-3: Interior Noise Levels

- For new development including noise-sensitive uses located along streets with noise levels above 60 dBA (Ldn), as shown in Figure 18, where such development is not already subject to the California Noise Insulation Standards in Title 24 of the California Code of Regulations, the project sponsor shall conduct a detailed analysis of noise reduction requirements. Such analysis shall be conducted by person(s) qualified in acoustical analysis and/or engineering. Noise insulation features identified and recommended by the analysis shall be included in the design, as specified in the *San Francisco General Plan Land Use Compatibility Guidelines for Community Noise* to reduce potential interior noise levels to the maximum extent feasible.
-

Mitigation Measure F-4: Siting of Noise-Sensitive Uses

- To reduce potential conflicts between existing noise-generating uses and new sensitive receptors, for new development including noise-sensitive uses, the Planning Department shall require the preparation of an analysis that includes, at a minimum, a site survey to
- identify potential noise-generating uses within 900 feet of, and that have a direct line-of-sight to, the project site, and including at least one 24-hour noise measurement (with maximum noise level readings taken at least every 15 minutes), prior to the first project approval
 - action. The analysis shall be prepared by persons qualified in acoustical analysis and/or engineering and shall demonstrate with reasonable certainty that Title 24 standards, where applicable, can be met, and that there are no particular circumstances about the proposed project site that appear to warrant heightened concern about noise levels in the vicinity. Should such concerns be present, the Department may require the completion of a detailed noise assessment by person(s) qualified in acoustical analysis and/or engineering prior to the first project approval action, in order to demonstrate that acceptable interior noise levels consistent with those in the Title 24 standards can be attained.

Mitigation Measure F-5: Siting of Noise-Generating Uses

- To reduce potential conflicts between existing sensitive receptors and new noise-generating uses, for new development including commercial, industrial or other uses that would be
- expected to generate noise levels in excess of ambient noise, either short-term, at nighttime, or as a 24-hour average, in the proposed project site vicinity, the Planning Department shall require the preparation of an analysis that includes, at a minimum, a site survey to identify potential noise-sensitive uses within 900 feet of, and that have a direct line-of-sight to, the project site, and including at least one 24-hour noise measurement (with maximum noise level readings taken at least every 15 minutes), prior to the first project approval action. The analysis shall be prepared by persons qualified in acoustical analysis and/or engineering and shall demonstrate with reasonable certainty that the proposed use would comply with the use compatibility requirements in the general plan and Police Code 2909, would not adversely affect nearby noise-sensitive uses, and that there are no particular circumstances about the proposed project site that appear to warrant heightened concern about noise levels that would be generated by the proposed use. Should such concerns be present, the Department may require the completion of a detailed noise assessment by person(s) qualified in acoustical analysis and/or engineering prior to the first project approval action.

Mitigation Measure F-6: Open Space in Noisy Environments

To minimize effects on development in noisy areas, for new development including noise-sensitive uses, the Planning Department shall, through its building permit review process, in conjunction with noise analysis required pursuant to Mitigation Measure F-4, require that open space required under the Planning Code for such uses be protected, to the maximum feasible extent, from existing ambient noise levels that could prove annoying or disruptive to users of the open space. Implementation of this measure could involve, among other things, site design that uses the building itself to shield on-site open space from the greatest noise sources, construction of noise barriers between noise sources and open space, and appropriate use of both common and private open space in multi-family dwellings, and implementation would also be undertaken consistent with other principles of urban design.

Implementation of Mitigation Measures F-3 through F-6 would reduce noise effects of project traffic and potential noise-related incompatibility impacts to a less-than-significant level.

Air Quality

Mitigation Measure G-1: Construction Air Quality (from Initial Study)

The City shall condition approval of individual development proposals under the proposed project upon implementation of an appropriate dust abatement program, patterned after the Bay Area Air Quality Management District (BAAQMD) approach described below.

The BAAQMD approach to dust abatement, as put forth in the BAAQMD CEQA Guidelines, calls for “basic” control measures that should be implemented at all construction sites, “enhanced” control measures that should be implemented at construction sites greater than four acres in area, and “optional” control measures that should be implemented on a case-by-case basis at construction sites that are large in area, located near sensitive receptors or which, for any other reason, may warrant additional emissions reductions.

Elements of the “basic” dust control program for project components that disturb less than four acres shall include, but not necessarily be limited to the following:

- Water all active construction areas at least twice daily. Watering should be sufficient to prevent airborne dust from leaving the site. Increased watering frequency may be necessary whenever wind speeds exceed 15 miles per hour. Reclaimed water should be used whenever possible.
- Cover all trucks hauling soil, sand, and other loose materials or require all trucks to maintain at least two feet of freeboard (i.e., the minimum required space between the top of the load and the top of the trailer).
- Pave, apply water (reclaimed if possible) three times daily, or apply (non-toxic) soil stabilizers on all unpaved access roads, parking areas and staging areas at construction sites.
- Sweep streets (with water sweepers using reclaimed water if possible) at the end of each day if visible soil material is carried onto adjacent paved roads.

Elements of the “enhanced” dust abatement program for project components that disturb four or more acres are unlikely to be required, in that no sites anticipated for development in the Plan area are as large as four acres. Should a site this size be proposed for development, dust control shall include all of the “basic” measures in addition to the following measures to be implemented by the construction contractor(s):

- Hydroseed or apply (non-toxic) soil stabilizers to inactive construction areas (previously graded areas inactive for one month or more).
- Enclose, cover, water twice daily or apply (non-toxic) soil stabilizers to exposed stockpiles (dirt, sand, etc.).
- Limit traffic speeds on unpaved roads to 15 miles per hour.
- Limit the amount of the disturbed area at any one time, where possible.
- Pave all roadways, driveways, sidewalks, etc. as soon as possible. In addition, building pads should be laid as soon as possible after grading unless seeding or soil binders are used.

- Replant vegetation in disturbed areas as quickly as possible.
- Designate a person or persons to monitor the dust control program and to order increased watering, as necessary, to prevent transport of dust offsite. Their duties shall include holidays and weekend periods when work may not be in progress. The name and telephone number of such persons shall be provided to the BAAQMD prior to the start of construction.

The “optional” dust-control measures supplement the “basic” and “enhanced” programs to address site-specific issues. They include:

- Install wheel washers where vehicles enter and exit unpaved roads onto streets, or wash off trucks and equipment leaving the site.
- Install windbreaks, or plant tree/vegetative wind breaks at windward side(s) of construction areas.
- Suspend excavation and grading activity when winds (instantaneous gusts) exceed 25 mph.

Ordinance 175-91, passed by the San Francisco Board of Supervisors on May 6, 1991, requires that non-potable water be used for dust control activities. Therefore, project sponsors would require that construction contractors obtain reclaimed water from the Clean Water Program for this purpose.

The City would also condition project approval such that each subsequent project sponsor would require the contractor(s) to maintain and operate construction equipment so as to minimize exhaust emissions of particulates and other pollutants, by such means as a prohibition on idling motors when equipment is not in use or when trucks are waiting in queues, and implementation of specific maintenance programs to reduce emissions for equipment that would be in frequent use for much of the construction period.

Implementation of Mitigation Measure G-1 would reduce construction-related air quality effects to a less-than-significant level.

Mitigation Measure G-2: Air Quality for Sensitive Land Uses

- Within the Eastern Neighborhoods, new residential development that is proposed within
- 500 feet of the I-80, US 101, and I-280 freeways, or at any other location where total
 - daily traffic volumes from all roadways within 500 feet of such location exceed
 - 100,000 vehicles, shall, as part of its CEQA review, include an analysis of PM_{2.5}
 - and shall, if warranted based on the results, incorporate upgraded ventilation systems to
 - minimize exposure of future residents to PM_{2.5} (which includes DPM and other pollutant
 - emissions, as well as odors. The analysis shall employ either site-specific modeling of
 - PM_{2.5} concentrations or other acceptable methodology to determine whether the average
 - annual concentration of PM_{2.5} from the roadway sources within 500 feet would exceed the
 - threshold, or action level, of 0.2 micrograms per cubic meter. For the purpose of this
 - mitigation measure, PM_{2.5} serves as a proxy for pollutant exposures

from roadway vehicles that is amenable to both exposure analysis and the setting of a significance threshold. According to the Department of Public Health, this threshold, or action level, has been shown to result in an increase of approximately 0.28 percent in non-injury mortality, or an increase of approximately 20 “excess deaths” per year (e.g., deaths that would occur sooner than otherwise expected) per one million population in San Francisco. If the incremental

- annual average concentration of PM_{2.5} (from roadway sources only) were to exceed
- 0.2 micrograms per cubic meter at the project site, the project sponsor shall be required to install a filtered air supply system to maintain all residential units under positive pressure when windows are closed. The ventilation system, whether a central HVAC (heating, ventilation and possibly air conditioning) or a unit-by-unit filtration system, shall include high-efficiency filters meeting minimum efficiency reporting value (MERV) 13, per American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) Standard 52.2 (equivalent to approximately ASHRAE Standard 52.1 Dust Spot 85%). Air intake systems for HVAC shall be placed based on exposure modeling to minimize roadway air pollution sources. The ventilation system shall be designed by an engineer certified by ASHRAE, who shall provide a written report documenting that the system offers the best available technology to minimize outdoor to indoor transmission of air pollution. In addition to installation of air filtration, the project sponsor shall present a plan that ensures ongoing maintenance plan for the ventilation and filtration systems. The project sponsor shall also ensure the disclosure to buyers and renters regarding the findings of the analysis and consequent and inform occupant’s proper use of any installed air filtration. If active recreation areas such as playgrounds are proposed as part of any future residential development, such areas shall be located at least 500 feet from freeways, if feasible.

- Within the Eastern Neighborhoods, new residential development that is proposed within 1,000 feet of warehousing and distribution centers or other uses served by at least 100 trucks per day or 40 refrigerated trucks per day, or uses that generate toxic air contaminants (TACs) as part of everyday operations, the Planning Department shall require a screening-level health risk assessment or other comparable analysis prior to approval of such new residential development to ensure that the lifetime cancer risk from DPM or other TACs emitted from the uses described above is less than 10 in one million, or that the risk can be reduced to less than 10 in one million through mitigation, such as air filtration described above.
- The above standard shall also apply to other sensitive uses such as schools, daycare facilities, and medical facilities. (It is noted that such facilities are somewhat more likely to employ central air systems than are residential developments.)

Mitigation Measure G-3: Siting of Uses that Emit DPM

To minimize potential exposure of sensitive receptors to diesel particulate matter (DPM), for new development including warehousing and distribution centers, commercial, industrial, or other uses that would be expected to be served by at least 100 trucks per day or 40 refrigerated trucks per day, based on the ARB *Air Quality and Land Use Handbook*, the Planning Department shall require that such uses be located no less than 1,000 feet from residential units and other sensitive receptors, including schools, children's day care centers, parks and playgrounds, hospitals, nursing and convalescent homes, and like uses.

Mitigation Measure G-4: Siting of Uses that Emit Other TACs

For new development including commercial, industrial or other uses that would be expected to generate toxic air contaminants (TACs) as part of everyday operations, the Planning Department shall require the preparation of an analysis that includes, at a

- a minimum, a site survey to identify residential or other sensitive uses within 1,000 feet of the project site, prior to the first project approval action. This measure shall be applicable, at a minimum, to the following uses: dry cleaners; drive-through restaurants; gas dispensing facilities; auto body shops; metal plating shops; photographic processing shops; textiles; apparel and furniture upholstery; leather and leather products; appliance repair shops; mechanical assembly cleaning; printing shops; hospitals and medical clinics; biotechnology research facilities; warehousing and distribution centers; and any use served by at least 100 trucks per day.

Implementation of Mitigation Measures G-2 through G-4 would reduce operational air quality impacts to a less-than-significant level, both with respect to diesel particulate and to other fine particulate matter (PM_{2.5}).

Archeological Resources

Based on prior archeological documentation and the results of yet unpublished archeological field projects, it can be concluded that archeological resources eligible for the California Register of

Historical Resources may be present within the study area and that the proposed project and its implementing regulations have a substantially greater potential to result in adverse effects to these resources than would be possible under the existing land use regulations. Implementation of the following mitigation measures can reduce the potential adverse effect on archeological resources of the project area to a less-than-significant level. Since this programmatic EIR does not analyze specific development projects in the project area, specific physical project evaluations would undergo individual environmental review in accord with these proposed mitigation measures.

The three archeological mitigation measures are described below together with the portion of the study area where they would be applicable.

Mitigation Measure J-1: Properties With Previous Studies

This measure would apply to those properties within the project area for which a final archeological research design and treatment plan (ARDTP) is on file at the Northwest Information Center and the Planning Department (Archeological Mitigation Zone A as shown in Figure 29 in Chapter IV). Properties (listed by Assessor Block) within the project area subject to this measure include the following:

East SoMa

- 3749 (bounded by Folsom, Harrison, Essex, Second Streets)
- 3762 (bounded by Harrison, Bryant, Fourth, Third Streets)
- 3763 (bounded by Harrison, Bryant, Third, Second Streets)
- 3764 (bounded by Harrison, Bryant, Second, First Streets)
- 3765 (bounded by Harrison, Bryant, First, Fremont Streets)
- 3766 (bounded by Harrison, Bryant, Beale, Fremont Streets)

Mission District

- 3531 (bounded by Division, 14th, Mission Street, South Van Ness Ave.)

Showplace Square/Potrero Hill

- 3780 (bounded by Seventh, Bryant, Brannan, Eighth Streets)
- 3781 (bounded by Eighth, Bryant, Brannan, Ninth Streets)
- 3782 (bounded by Ninth, Brannan, Division, Eighth Streets)
- 3783 (bounded by Eighth, Brannan, Townsend, Seventh Streets)
- 3910 (bounded by San Bruno, Division, Alameda Avenues, Vermont Street)
- 3915 (bounded by San Bruno, Alameda Avenues, Vermont, 15th Streets)
- 3935 (bounded by San Bruno Avenue, Vermont, 15th, 16th Streets)

Any project resulting in soils-disturbance of 2.5 feet or greater below existing grade proposed within the AMM-A shall be required to submit to the Environmental Review Officer (ERO) for review and approval an addendum to the respective ARD/TP prepared by a qualified archeological consultant with expertise in California prehistoric and urban historical archeology. The addendum to the ARD/TP shall evaluate the potential effects of the project on CEQA-significant archeological resources with respect to the site- and project-specific information absent in the ARD/TP. The addendum report to the ARD/TP should have the following content:

- 1) Summary: Description of subsurface effect of the proposed project and of previous soils-disturbing activities;
- 2) Historical Development: If demographic data for the project site is absent in the discussion in the ARD/TP, the addendum shall include new demographic data regarding former site occupants;
- 3) Identification of potential archeological resources: Discussion of any identified potential prehistoric or historical archeological resources;
- 4) Integrity and Significance: Eligibility of identified expected resources for listing to the CRHR; Identification of applicable Research Themes/Questions (in the ARD/TP) that would be addressed by the expected archeological resources that are identified;
- 5) Impacts of Proposed Project;
- 6) Potential Soils Hazards: Update discussion for proposed project;
- 7) Archeological Testing Plan (if archeological testing is determined warranted): the Archeological Testing Plan (ATP) shall include:
 - A) Proposed archeological testing strategies and their justification
 - B) Expected archeological resources
 - C) For historic archeological resources
 - a) Historic address or other location identification
 - b) Archeological property type
 - D) For all archeological resources
 - a) Estimate depth below the surface
 - b) Expected integrity
 - c) Preliminary assessment of eligibility to the CRHR
 - E) ATP Map
 - a) Location of expected archeological resources
 - b) Location of expected project sub-grade impacts
 - c) Areas of prior soils disturbance
 - d) Archeological testing locations by type of testing
 - e) Base map: 1886/7 Sanborn Fire Insurance Co. map

Mitigation Measure J-2: Properties With No Previous Studies

This measure would apply to those properties within the project area for which no archeological assessment report has been prepared or for which the archeological documentation is incomplete or inadequate to serve as an evaluation of potential effects on archeological resources under CEQA (CEQA Guidelines § 15064.5(a)(1)(3) and (c)(1)(2)),⁴ with the exception of those properties within Archeological Mitigation Zone B as shown in Figure 29 in Chapter IV, for which Mitigation Measure J-3, below, is applicable). That is, this measure would apply to the entirety of the study area outside of Archeological Mitigation Zones A and B.

For projects proposed outside Archeological Mitigation Zones A and B, a Preliminary Archeological Sensitivity Study must be prepared by an archeological consultant with expertise in California prehistoric and urban historical archeology. The Sensitivity Study should contain the following:

⁴Incomplete archeological documentation may lack site-specific identification of potential archeological resources, a historical context or site history discussion, an assessment of prior soils disturbance, an evaluation of eligibility to the California Register of Historical Resources (CRHR) of potential archeological resources, or specific information about site occupants.

- 1) Determine the historical uses of the project site based on any previous archeological documentation and Sanborn maps;
- 2) Determine types of archeological resources/properties that may have been located within the project site and whether the archeological resources/property types would potentially be eligible for listing in the CRHR;
- 3) Determine if 19th or 20th century soils-disturbing activities may adversely affected the identified potential archeological resources;
- 4) Assess potential project effects in relation to the depth of any identified potential archeological resource;
- 5) Conclusion: assessment of whether any CRHP-eligible archeological resources could be adversely affected by the proposed project and recommendation as to appropriate further action.

Based on the Sensitivity Study, the Environmental Review Officer (ERO) shall determine if an Archeological Research Design/Treatment Plan (ARD/TP) shall be required to more definitively identify the potential for CRHP-eligible archeological resources to be present within the project site and determine the appropriate action necessary to reduce the potential effect of the project on archeological resources to a less than significant level. The scope of the ARD/TP shall be determined in consultation with the ERO and consistent with the standards for archeological documentation established by the Office of Historic Preservation for purposes of compliance with CEQA, in Preservation Planning Bulletin No. 5).

Mitigation Measure J-3: Mission Dolores Archeological District

This measure would apply to any project within the Mission Dolores Archeological District (Archeological Mitigation Zone B as shown in Figure 29 in Chapter IV) involving installation of foundations, construction of a sub-grade or partial sub-grade structure including garage, basement, etc, grading, soils remediation, installation of utilities, or any other activities resulting in soils disturbance of 2.5 feet or greater below existing grade.

Based on the presence of archeological properties of a high level of historical, ethnic, and scientific significance within the Mission Dolores Archeological District, the following measure shall be undertaken to avoid any significant adverse effect from soils disturbing activities on buried archeological resources. The project sponsor shall retain the services of a qualified archeological consultant having expertise in California prehistoric and urban historical archeology. At the direction of the ERO, the archeology consultant may be required to have acceptable documented expertise in California Mission archeology. The scope of the archeological services to be provided may include preparation of an ARD/TP. The archeological consultant shall undertake an archeological testing program as specified herein. In addition, the consultant shall be available to conduct an archeological monitoring and/or data recovery program if required pursuant to this measure. The archeological consultant's work shall be conducted in accordance with this measure at the direction of the Environmental Review Officer (ERO). All plans and reports prepared by the consultant as specified herein shall be submitted first and directly to the ERO for review and comment, and shall be considered draft reports subject to revision until final approval by the ERO. Archeological monitoring and/or data recovery programs required by this measure could suspend construction of the project for up to a maximum of four weeks. At the direction of

the ERO, the suspension of construction can be extended beyond four weeks only if such a suspension is the only feasible means to reduce to a less than significant level potential effects on a significant archeological resource as defined in CEQA Guidelines Sect. 15064.5 (a)(c).

Archeological Testing Program. The archeological consultant shall prepare and submit to the ERO for review and approval an archeological testing plan (ATP). The archeological testing program shall be conducted in accordance with the approved ATP. The ATP shall identify the property types of the expected archeological resource(s) that potentially could be adversely affected by the proposed project, the testing method to be used, and the locations recommended for testing. The purpose of the archeological testing program will be to determine to the extent possible the presence or absence of archeological resources and to identify and to evaluate whether any archeological resource encountered on the site constitutes an historical resource under CEQA.

At the completion of the archeological testing program, the archeological consultant shall submit a written report of the findings to the ERO. If based on the archeological testing program the archeological consultant finds that significant archeological resources may be present, the ERO in consultation with the archeological consultant shall determine if additional measures are warranted. Additional measures that may be undertaken include additional archeological testing, archeological monitoring, and/or an archeological data recovery program. If the ERO determines that a significant archeological resource is present and that the resource could be adversely affected by the proposed project, at the discretion of the project sponsor either:

- A) The proposed project shall be re-designed so as to avoid any adverse effect on the significant archeological resource; or
- B) A data recovery program shall be implemented, unless the ERO determines that the archeological resource is of greater interpretive than research significance and that interpretive use of the resource is feasible.

Archeological Monitoring Program. If the ERO in consultation with the archeological consultant determines that an archeological monitoring program shall be implemented the archeological monitoring program shall minimally include the following provisions:

- The archeological consultant, project sponsor, and ERO shall meet and consult on the scope of the AMP reasonably prior to any project-related soils disturbing activities commencing. The ERO in consultation with the archeological consultant shall determine what project activities shall be archeologically monitored. In most cases, any soils- disturbing activities, such as demolition, foundation removal, excavation, grading, utilities installation, foundation work, driving of piles (foundation, shoring, etc.), site remediation, etc., shall require archeological monitoring because of the risk these activities pose to potential archaeological resources and to their depositional context;
- The archeological consultant shall advise all project contractors to be on the alert for evidence of the presence of the expected resource(s), of how to identify the evidence of the expected resource(s), and of the appropriate protocol in the event of apparent discovery of an archeological resource;

- The archeological monitor(s) shall be present on the project site according to a schedule agreed upon by the archeological consultant and the ERO until the ERO has, in consultation with project archeological consultant, determined that project construction activities could have no effects on significant archeological deposits;
- The archeological monitor shall record and be authorized to collect soil samples and artifactual/ecofactual material as warranted for analysis;
- If an intact archeological deposit is encountered, all soils-disturbing activities in the vicinity of the deposit shall cease. The archeological monitor shall be empowered to temporarily redirect demolition/excavation/pile driving/construction activities and equipment until the deposit is evaluated. If in the case of pile driving activity (foundation, shoring, etc.), the archeological monitor has cause to believe that the pile driving activity may affect an archeological resource, the pile driving activity shall be terminated until an appropriate evaluation of the resource has been made in consultation with the ERO. The archeological consultant shall immediately notify the ERO of the encountered archeological deposit. The archeological consultant shall make a reasonable effort to assess the identity, integrity, and significance of the encountered archeological deposit, and present the findings of this assessment to the ERO.

Whether or not significant archeological resources are encountered, the archeological consultant shall submit a written report of the findings of the monitoring program to the ERO.

Archeological Data Recovery Program. The archeological data recovery program shall be conducted in accord with an archeological data recovery plan (ADRP). The archeological consultant, project sponsor, and ERO shall meet and consult on the scope of the ADRP prior to preparation of a draft ADRP. The archeological consultant shall submit a draft ADRP to the ERO. The ADRP shall identify how the proposed data recovery program will preserve the significant information the archeological resource is expected to contain. That is, the ADRP will identify what scientific/historical research questions are applicable to the expected resource, what data classes the resource is expected to possess, and how the expected data classes would address the applicable research questions. Data recovery, in general, should be limited to the portions of the historical property that could be adversely affected by the proposed project. Destructive data recovery methods shall not be applied to portions of the archeological resources if nondestructive methods are practical.

The scope of the ADRP shall include the following elements:

- *Field Methods and Procedures.* Descriptions of proposed field strategies, procedures, and operations.
- *Cataloguing and Laboratory Analysis.* Description of selected cataloguing system and artifact analysis procedures.
- *Discard and Deaccession Policy.* Description of and rationale for field and post-field discard and deaccession policies.
- *Interpretive Program.* Consideration of an on-site/off-site public interpretive program during the course of the archeological data recovery program.

- *Security Measures.* Recommended security measures to protect the archeological resource from vandalism, looting, and non-intentionally damaging activities.
- *Final Report.* Description of proposed report format and distribution of results.
- *Curation.* Description of the procedures and recommendations for the curation of any recovered data having potential research value, identification of appropriate curation facilities, and a summary of the accession policies of the curation facilities.

Human Remains and Associated or Unassociated Funerary Objects. The treatment of human remains and of associated or unassociated funerary objects discovered during any soils disturbing activity shall comply with applicable State and Federal laws. This shall include immediate notification of the Coroner of the City and County of San Francisco and in the event of the Coroner's determination that the human remains are Native American remains, notification of the California State Native American Heritage Commission (NAHC) who shall appoint a Most Likely Descendant (MLD) (Pub. Res. Code Sec. 5097.98). The archeological consultant, project sponsor, and MLD shall make all reasonable efforts to develop an agreement for the treatment of, with appropriate dignity, human remains and associated or unassociated funerary objects (CEQA Guidelines. Sec. 15064.5(d)). The agreement should take into consideration the appropriate excavation, removal, recordation, analysis, custodianship, curation, and final disposition of the human remains and associated or unassociated funerary objects. If non-Native American human remains are encountered, the archeological consultant, the ERO, and the Office of the Coroner shall consult on the development of a plan for appropriate analysis and recordation of the remains and associated burial items since human remains, both Native American and non-Native American, associated with the Mission Dolores complex (1776-1850s) are of significant archeological research value and would be eligible to the CRHR.

Final Archeological Resources Report. The archeological consultant shall submit a Draft Final Archeological Resources Report (FARR) to the ERO that evaluates the historical significance of any discovered archeological resource and describes the archeological and historical research methods employed in the archeological testing/monitoring/data recovery program(s) undertaken. Information that may put at risk any archeological resource shall be provided in a separate removable insert within the final report.

Once approved by the ERO, copies of the FARR shall be distributed as follows: California Archaeological Site Survey Northwest Information Center (NWIC) shall receive one (1) copy and the ERO shall receive a copy of the transmittal of the FARR to the NWIC. The Major Environmental Analysis division of the Planning Department shall receive three copies of the FARR along with copies of any formal site recordation forms (CA DPR 523 series) and/or documentation for nomination to the National Register of Historic Places/California Register of Historical Resources. In instances of high public interest in or the high interpretive value of the resource, the ERO may require a different final report content, format, and distribution than that presented above.

Implementation of one of the above mitigation measures, as applicable to a particular subsequent development project, would ensure that any potential effects on subsurface archeological resources would be reduced to a less-than-significant level.

Historical Resources

Mitigation Measure K-1: Interim Procedures for Permit Review in the Eastern Neighborhoods Plan Area

Below is a set of proposed interim building permit review policies developed to provide additional protection for potential historic resources within the Plan Area while the historic resources survey is being completed. Once the historic resources survey is endorsed and the Plan is amended to incorporate the results these policies described below will expire and the Preservation Policies in the Area Plan would become effective. These policies are intended to outline how the Neighborhood Planning Unit of the Planning Department will review building permit applications and other permit applications reviewed by the Planning Department and/or Commission for projects within the Plan Area during this interim period.

- A.** All proposed new construction within the entire Plan Area over 50 feet, or 10 feet taller than adjacent buildings, built before 1963 shall be forwarded to the Landmarks Preservation Advisory Board for review and comment.

This applies to all construction that will result in an increased building envelope with a height that is equal to or exceeds 50 feet or an increased building envelope with a height 10 feet taller than adjacent age-eligible buildings as measured by the Planning Code. The Landmarks Board will review proposals at their regularly scheduled public hearings occurring on the first and third Wednesday of every month. The Board's comments will be forwarded to Planning Department for incorporation into the project's final submittal and in advance of any required final hearing before the Planning Commission.

- B.** All cases for properties constructed prior to 1963 that propose demolition or major alteration within the Plan Area shall be forwarded to the Landmarks Board.

When a proposed building permit application may affect a potential or known historic resource, the Department requires the applicant to file an Environmental Evaluation Application or an Environmental Exemption Evaluation. The purpose of said evaluation is to comply with the California Environmental Quality Act (CEQA). For the purpose of implementing this provision, a "major alteration" is defined as one for which the Department requires the applicant to file either an Environmental Exemption Evaluation or an Environmental Evaluation Application. A summary of the process is found in the Planning Department's *Preservation Bulletin 16*. When an application is filed with the Major Environmental Analysis Unit of the Planning Department (MEA), the supporting Historic Resource Evaluation (HRE) prepared by a qualified professional consultant is forwarded to a Preservation Technical Specialist within the Neighborhood Planning Unit for review. At that time copies of the application and HRE will be forwarded to the members of the Landmarks Board for comment. The Board's comments will be forwarded to Planning Department for incorporation into the project's final environmental evaluation document.

- C.** All permit applications that propose exterior modifications to the street facade(s) of historic resources (as defined in *Preservation Bulletin 16*) within the Plan Area will be presented to the Landmarks Preservation Advisory Board.

All building permit applications for exterior modifications to historic resources (exclusive of maintenance or repair permits as defined in Planning Code Section 1005(e)(3), meaning: “any work, the sole purpose and effect of which is to correct deterioration, decay or damage, including repair of damage caused by fire or other disaster”), such as re-roofing, or replacement front stairs) within the Plan Area will be reviewed by a Preservation Technical Specialist, or will be reviewed and approved under their supervision. Depending on the amount of the proposed change some permits might be able to be approved at the Planning Information Center (PIC) by a Preservation Technical Specialist. Commercial storefront alterations are included in this requirement.

- D.** A Preservation Technical Specialist shall review or be consulted on all applications for proposed alterations to buildings constructed before 1963 within the Plan Area.

In cases where major alterations are proposed for age-eligible structures within the Plan Area, review by a Preservation Technical Specialist will be required. Review will take into consideration policies of the Plan Area, as well as the preservation of significant architectural features, significant trees, as well as other code-mandated regulations.

- E.** Neighborhood Association Block Book Notations (BBN) for all building permit activities reviewed by Planning Department.

The Planning Department will register all of the neighborhood associations affected by the Area Plan for Block Book Notations (BBN). Each association will be asked to select the block(s) of their interest within the plan area, and the Department will notify them by mail or phone when a permit application is submitted to the Department for review. The Department will hold the building permit application for a period of 10 days for review by all interested parties.

Mitigation Measure K-2: Amendments to Article 10 of the Planning Code Pertaining to Vertical Additions in the South End Historic District (East SoMa)

The proposed amendments to Appendix I to Article 10 of the Planning Code would reduce potential adverse effects to contributory structures within the South End Historic District.

Vertical additions proposed for individual buildings within the South End Historic District must reflect an understanding of the relationship of the buildings with the other contributing buildings within the District. Where allowable, vertical additions should be compatible with the historic building, yet not imitate or replicate existing features. Every effort should be made to minimize the visibility of any addition proposed on a structure within the District and property owners should consult early in the process with a Planning Department Historic Preservation Technical Specialist when developing a proposal.

- Additions will be reviewed on a case-by-case basis and any proposed addition should be located in an inconspicuous location and not result in a substantial change to the form or character of the historic building. A vertical addition may be approved, depending on how the addition impacts the building and its relative visibility from the surrounding public rights-of-way within the District. The Planning Department evaluates all proposals for properties identified under Article 10 of the Planning Code for compliance with the

Secretary of the Interior's *Standards*. Based on these Standards, Department staff uses the following criteria when reviewing proposals for vertical additions:

The structure respects the general size, shape, and scale of the features associated with the property and the district and the structure is connected to the property in a manner that does not alter, change, obscure, damage, or destroy any of the character-defining features of the property and the district.

- The design respects the general historic and architectural characteristics associated with the property and the district without replicating historic styles or elements that will result in creating a false sense of history. For more information regarding the character-defining features of the South End historic District, please refer to Appendix I of Article 10, Section 6 (Features) of the Planning Code.
-

The materials are compatible with the property or district in general character, color and texture.

As part of the Planning Department review process the project sponsor should conduct and submit an analysis that illustrates the relative visibility of a proposed vertical addition from within the District. As part of this analysis, sightline cross-sections and perspective drawings illustrating the proportionality and scale, as well as the visible extent of the addition from prescribed locations should be submitted.

When a district provides an opportunity for new construction through existing vacant parcels or by replacing non-contributing buildings, a sensitive design is of critical importance. Designers should look to the historic buildings within the district for design context. Contemporary design that respects the District's existing character-defining features without replicating historic designs is encouraged. The Department uses the following criteria when reviewing proposals for infill construction:

The structure respects the general size, shape, and scale of the character-defining features associated with the district and its relationship to the character-defining features of the immediate neighbors and the district.

The site plan respects the general site characteristics associated with the district.

The design respects the general character-defining features associated with the district
The materials are compatible with the district in general character, color, and texture.

Mitigation Measure K-3: Amendments to Article 10 of the Planning Code Pertaining to Alterations and Infill Development in the Dogpatch Historic District (Central Waterfront)

The proposed amendments to Appendix L to Article 10 of the Planning Code would reduce potential adverse effects to contributory structures within the Dogpatch Historic District.

Additions to existing buildings and new infill construction proposed within the Dogpatch Historic District must reflect an understanding of the relationship of the buildings with the contributing buildings within the District. Where allowable, additions and infill

construction should be compatible with the historic building(s), yet not imitate or replicate existing features. For additions, every effort should be made to minimize the visibility of the new structure within the District. Infill construction should reflect the character of the district, including the prevailing heights of contributing buildings without creating a false sense of history. Property owners should consult early in the process with a Planning Department Historic Preservation Technical Specialist when developing a proposal.

- Additions will be reviewed on a case-by-case basis and any proposed addition should be located in an inconspicuous location and not result in a substantial change to the form or character of the historic building. A vertical addition may be approved, depending on how the addition impacts the building and its relative visibility from the surrounding public rights-of-way within the District. The Planning Department evaluates all proposals for properties identified under Article 10 of the Planning Code for compliance with the Secretary of the Interior's *Standards*. Based on these Standards, Department staff uses the following criteria when reviewing proposals for vertical additions:

The structure respects the general size, shape, and scale of the features associated with the property and the district and the structure is connected to the property in a manner that does not alter, change, obscure, damage, or destroy any of the character-defining features of the property and the district.

- The design respects the general historic and architectural characteristics associated with the property and the district without replicating historic styles or elements that will result in creating a false sense of history. For more information regarding the character-defining features of the Dogpatch Historic District, please refer to Appendix I of Article 10, Section 6 (Features) of the Planning Code.
-

The materials are compatible with the property or district in general character, color and texture.

As part of the Planning Department review process the project sponsor should conduct and submit an analysis that illustrates the relative visibility of a proposed vertical addition from within the District. As part of this analysis, sightline cross-sections and perspective drawings illustrating the proportionality and scale, as well as the visible extent of the addition from prescribed locations should be submitted.

When a district provides an opportunity for new construction through existing vacant parcels or by replacing non-contributing buildings, a sensitive design is of critical importance. Designers should look to the historic buildings within the district for design context. Contemporary design that respects the District's existing character-defining features without replicating historic designs is encouraged. The Department uses the following criteria when reviewing proposals for infill construction:

The structure respects the general size, shape, and scale of the character-defining features associated with the district and its relationship to the character-defining features of the immediate neighbors and the district.

The site plan respects the general site characteristics associated with the district.

The design respects the general character-defining features associated with the district.

The materials are compatible with the district in general character, color, and texture.

The only instance where a replication of an original design may be appropriate is the replacement of a missing structure in a row of identical houses.

While the preceding mitigation measures may reduce some potential impacts to historic resources implementation of these measures would not reduce the significant adverse impacts of the proposed Eastern Neighborhoods Rezoning and Area Plans project to a less-than-significant level. CEQA Guidelines Section 15126.4 states that, “In some circumstances, documentation of an historical resource, by of historic narrative, photographs or architectural drawings, as mitigation for the effects of demolition of the resource will not mitigate the effects to a point where clearly no significant effect on the environment would occur.”

Hazardous Materials

● **Mitigation Measure L-1—Hazardous Building Materials**

The City shall condition future development approvals to require that the subsequent project sponsors ensure that any equipment containing PCBs or DEPH, such as fluorescent light ballasts, are removed and properly disposed of according to applicable federal, state, and local laws prior to the start of renovation, and that any fluorescent light tubes, which could contain mercury, are similarly removed and properly disposed of. Any other hazardous materials identified, either before or during work, shall be abated according to applicable federal, state, and local laws.

Implementation of Mitigation Measure K-1 would reduce effects related to hazardous building materials to a less-than-significant level.

Improvement Measures

Population, Housing, Business Activity, and Employment

Improvement Measure D-1: Support for Local, Neighborhood-Serving Businesses

To help meet the housing needs of businesses in the Eastern Neighborhoods due to changing economic conditions brought about as a result of the proposed project and to offset changes in neighborhood character that contribute to gentrification and resultant displacement of existing residents, the City could develop programs to support locally owned or operated businesses, businesses that contribute to the cultural character of the area, and organizations and businesses that serve the needs of lower-income households may be required as part of a complementary plan—outside of land use regulations—to manage neighborhood economic development without a loss in valued neighborhood character in the Eastern Neighborhoods.

Improvement Measure D-2: Affordable Housing Production and Retention

To help offset the potential displacement of Eastern Neighborhoods residents who could sustain loss of employment as PDR businesses are displaced as an indirect effect of the proposed project, the City could undertake measures that require public investment to prioritize the City's response to affordable housing needs: identifying sites for permanently affordable housing and providing financial resources to acquire and develop that housing; increasing financial resources for subsidizing low and very low income housing in San Francisco.

Additional efforts to contend with potential residential displacement impacts would focus on increasing the housing supply for those such as larger households and families whose needs are not adequately met by the private market. Measures to be implemented as part of the proposed rezoning or new area plans could include: targeting new units, especially below-market-rate units, to families and larger households by requiring a minimum number of bedrooms for a percentage of units in larger housing development projects; identifying areas where only affordable housing would be allowed; where new zoning regulations would increase density or height, requiring a higher percentage of affordable housing than otherwise required through the City's Inclusionary Affordable Housing Program; requiring off-site inclusionary affordable housing to be built within the same plan area in areas designated for housing; and increasing the incentives to build affordable housing on-site.

Improvement Measure D-3: Affordable Housing Sites

To help avoid the loss of potential sites in the Eastern Neighborhoods that could be feasible locations for future development of below-market-rate (BMR) housing, the Planning Commission could direct the creation of a process of regular reporting to the Planning Commission concerning such sites. Such a process could involve the Planning Department and the Mayor's Office of Housing, along with the Redevelopment Agency, presenting a quarterly report to the Planning Commission identifying a current inventory of locations within the Eastern Neighborhoods (and elsewhere in San Francisco, if feasible) that are under active consideration, with the agreement of the site owner, for development of affordable housing with City subsidy, either directly by a City agency or by a for-profit or non-profit housing developer. Based on the reported information, the Planning Commission could institute a policy under which the sponsor of any private development proposed on such a site would be requested to confer with the Mayor's Office of Housing (or other applicable City entity) to determine the feasibility of the City proceeding with the publicly subsidized BMR housing project, including through purchase or exchange of the site, and to report the results of such discussions to the Planning Commission. Implementation of this measure could lead to a reduction in the loss of sites on which development of City-subsidized BMR dwelling units would be feasible, while also providing some level of certainty that sites not listed on the current inventory were not likely candidates for City-funded BMR housing development.

Improvement Measure D-4: Support for PDR Businesses

To reduce potential PDR displacement from the Eastern Neighborhoods, the City could ensure that planning efforts are undertaken to establish PDR use as a priority in other parts of the City: making land and affordable PDR building space part of the development plan

for the Hunters Point Shipyard; securing surplus Port backlands for long-term PDR use; retaining PDR land and building supply in Western SoMa.

Other efforts to support PDR businesses and jobs in San Francisco would involve the Mayor's Office of Economic and Workforce Development and other appropriate partners. Recommendations of the Back Streets Advisory Board for methods of providing affordable PDR building space and other tools to retain PDR business activity in San Francisco would be important components of a business support plan. Outreach efforts could be targeted to businesses in locations proposed for rezoning.

Improvement Measure D-5: Support for PDR Workers

To reduce the effects of job loss on PDR employees displaced as a result of the project indirectly causing displacement of PDR businesses, the City could undertake efforts under the coordination of the Mayor's Office of Economic and Workforce Development, working with appropriate state agencies and local community-based service providers. The intent of these efforts would be to identify and increase resources for workforce development that focus on appropriate job search, education, and training for displaced PDR workers. Because the locations of rezoning would be known, specific workforce development outreach efforts could be targeted to PDR businesses and workers in areas designated for rezoning.

Transportation

Improvement Measure E-1: Pedestrian Circulation

E.1.a.As an improvement measure to improve pedestrian conditions in the Eastern Neighborhoods, community-supported planning efforts as part of MTA's Livable Streets program should be conducted to identify specific improvements to enhance pedestrian travel and safety in each neighborhood.

E.1.b.As an improvement measure to facilitate completion of the sidewalk network in areas where substantial new development is projected to occur, property owners should be encouraged to develop improvement or assessment districts to fund improvements to the sidewalk network adjacent to parcels where new development is not anticipated to occur.

Noise

Improvement Measure F-1: Revision of City Noise Ordinance

To ensure congruency between the proposed mixed-use zoning districts that would permit residential uses alongside commercial and PDR uses, the City could update and revise its existing noise ordinance (Chapter 29 of the San Francisco Police Code) to encompass the proposed (and existing) mixed-use, neighborhood commercial, and Residential Transit-Oriented use districts, as well as the proposed Employment and Business Development (EBD) use district. Consistent with the provisions of the 1972 noise ordinance, the revisions might include a phase-in period for more stringent noise standards in districts being rezoned from industrial and heavy commercial to mixed-use districts. As part of the amendments to the noise ordinance, the City could evaluate whether receiving noise levels

additional to or different than those currently included in the noise ordinance should be incorporated. The intent of this measure is not to lessen or weaken regulatory protections for environmental noise for new residential areas.

● **Improvement Measure F-2: Pre-Occupancy Noise Measurements**

- To ensure that noise assessment of new residential projects is adequately completed and, where applicable, noise attenuation features incorporated into project design are sufficient to reduce ambient noise to acceptable indoor noise levels, the City could develop a protocol to require sponsors/developers of residential projects to conduct pre-occupancy noise level measurements that would be submitted to the City for review and approval prior to issuance of a certificate of occupancy. This protocol would apply, at a minimum, to development of noise-sensitive uses along streets with noise levels above 60 dBA (Ldn), as shown in DEIR Figure 18, where such development is not already subject to the California Noise Insulation Standards in Title 24 of the California Code of Regulations, and to new development that includes noise-sensitive uses where noise-generating uses are within 900 feet of, and have a direct line-of-sight to, the site of the noise-sensitive use. The protocol could be developed cooperatively by the Planning Department, Department of Building Inspection, and Department of Public Health, with review and/or enforcement, as appropriate, to be the responsibility of one or more of these departments.

● **Parks, Recreation and Open Space**

● **Improvement Measure H-1: Support for Upgrades to Existing Recreation Facilities**

- To help offset the potential for an accelerated deterioration of existing park and recreation facilities in Eastern Neighborhoods due to projected increases in population, the City should undertake measures to implement funding mechanisms for an ongoing program to repair, upgrade and adequately maintain park and recreation facilities to ensure the safety of the users.

● **Improvement Measure H-2: Support for New Open Space**

- To avoid the effects of overcrowding, overuse, and conflicts in recreational uses to existing park and recreation facilities in Eastern Neighborhoods, the City should set concrete goals for the purchase of sufficient land for public open space use in Eastern Neighborhoods. The City should set a goal of purchasing one neighborhood park in each Eastern Neighborhood.

D. Alternatives (p. 531)

Unlike most EIRs, this EIR contains no separate chapter analyzing alternatives to the proposed project. This is because this EIR does not analyze a preferred project; instead, this EIR evaluates Rezoning Options A, B, and C, as well as a future No-Project scenario (i.e., the circumstance in

which none of the rezoning options is adopted), at an equal level of detail, as EIR alternatives, throughout this document.

Additional alternatives were considered and rejected during development of the rezoning options. As discussed further in Section III.B, Background (in Chapter III, Project Description), the *Rezoning Options Workbook* when published in 2003 included portions of the original Eastern Neighborhoods area that have been removed from the project as currently proposed. Both the western part of SoMa and the Bayview-Hunters Point neighborhood were part of this larger area. However, Western SoMa was removed from the project area by the Planning Commission in 2004, at the request of some members of that community, and is currently undergoing a separate planning process. Meanwhile, a separate planning effort was undertaken by the San Francisco Redevelopment Agency for the Bayview-Hunters Point neighborhood, which culminated in the adoption by the Board of Supervisors in 2006 of the Bayview Hunters Point Area B Redevelopment Plan, following certification of an EIR on that plan. Accordingly, these areas are not included in the project area.⁵

These areas removed from consideration essentially constitute the alternatives considered during the planning process and rejected from further consideration.

As described in Chapter IV, the three rezoning options would have similar impacts, generally varying by degree. As identified in Chapter VI, Significant Unavoidable Effects, the key impact for which different significance conclusions are drawn is the issue of the supply of land for PDR uses. This EIR identifies a significant unavoidable land use impact relative to land supply for PDR uses for Option C and for the No-Project Alternative, while Options A and B are found to have a less-than-significant land use impact in this regard. In terms of other significant unavoidable impacts, Option A would result in significant effects at fewer intersections than would Options B or C (or the No-Project Alternative), and would result in lesser transit impacts than would Options B or C (or the No-Project Alternative). Option A would also result in potentially significant impacts on fewer historical resources than Options B or C.

As required by CEQA Guidelines Section 15126.6(e)(2), Option A is therefore identified as the Environmentally Superior Alternative.

⁵ Information on Western SoMa is provided separately in Section IV.C, Population, Housing, Business Activity, and Employment because planning for this neighborhood is still under way.



SAN FRANCISCO PLANNING DEPARTMENT

1650 Mission St.
Suite 400
San Francisco,
CA 94103-2479

Community Plan Exemption Checklist

Case No.: 2015-001314ENV
Project Address: **Crane Cove Park – East of Illinois between 19th and Mariposa Streets at Pier 70**
Zoning: P (Public) and M-2 (Heavy Industrial) Use Districts
40-X and 65-X Height and Bulk District
Block/Lot: 4046/001, 002, 9900/068, 3941/001
Lot Size: Approximately 11 acres
Plan Area: Eastern Neighborhoods Area Plan
Project Sponsor: David Beaupre, Port of San Francisco, (415) 274-0539,
david.beaupre@sfport.com
Staff Contact: Melinda Hue, (415) 575-9041, Melinda.Hue@sfgov.org

Reception:
415.558.6378

Fax:
415.558.6409

Planning
Information:
415.558.6377

PROJECT DESCRIPTION

Project Site

The project site (Crane Cove) is an approximately 11-acre area located at Pier 70 in San Francisco's Potrero Hill neighborhood and within the Central Waterfront area of the Eastern Neighborhoods Area Plans. The general boundaries of the project site are Illinois Street to the west, San Francisco Bay (Bay) to the east, Mariposa Street to the north, and 19th Street to the south. (See Figure 1: Project Location) To the east of the project site is a ship repair facility (BAE Shipyard) operating under a lease with the Port of San Francisco (Port) by BAE Systems. To the north of the site are commercial uses, including the Kneass building and Ramp Restaurant, and recreational boating uses. To the east is a mixture of residential, commercial and educational uses. The area to the south is the 20th Street Historic Core of Pier 70 (aka Orton), which is currently being redeveloped with office, commercial and light industrial uses. Further south is the Pier 70 Mixed-Use District project site, where new residential, commercial-office and retail-light industrial-arts uses are being proposed.

The project site includes six buildings (Buildings 49, 30, 50, 110, 248, 249) and a portion of Building 109 (Building 109 West), Slipways 1 through 4, and Cranes 30 and 14. The majority of the project site (south and east of Building 49) is located within the boundaries of the Union Iron Works National Register Historic District. (See Figure 2: Project Site)

Project Summary

The proposed project would involve 1) the construction of a new, approximately 9.8-acre shoreline park (Crane Cove Park), 2) an extension of 19th Street for park access and circulation, 3) creation of Georgia Street which would connect 20th Street to the 19th Street extension, 4) the relocation of the BAE Shipyard entrance from 20th Street to the terminus of the 19th Street extension and rerouting BAE Shipyard truck traffic from 20th Street to the 19th Street extension, and 5) street improvements along the eastern side of Illinois Street.

Figure 1: Project Location

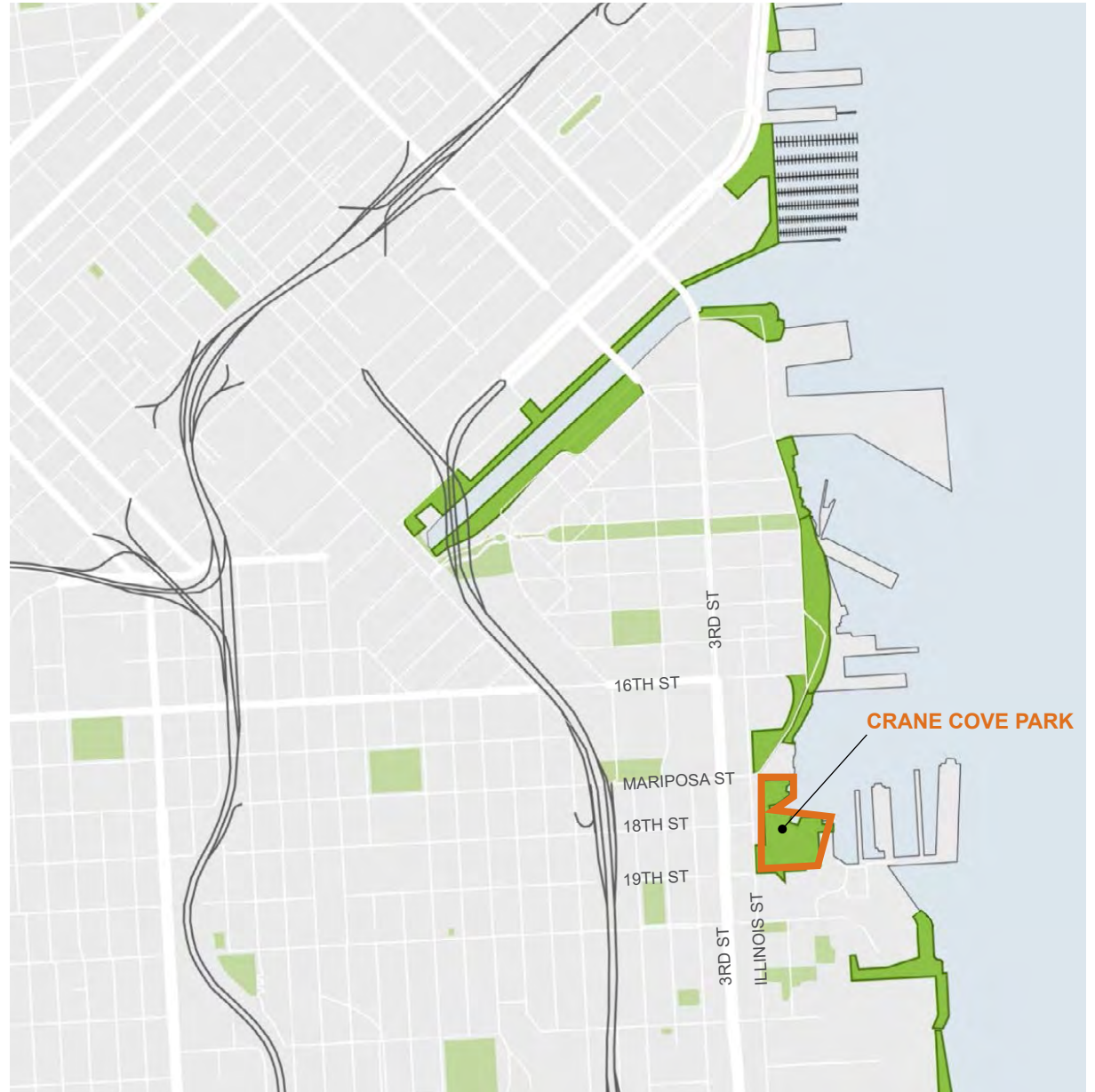
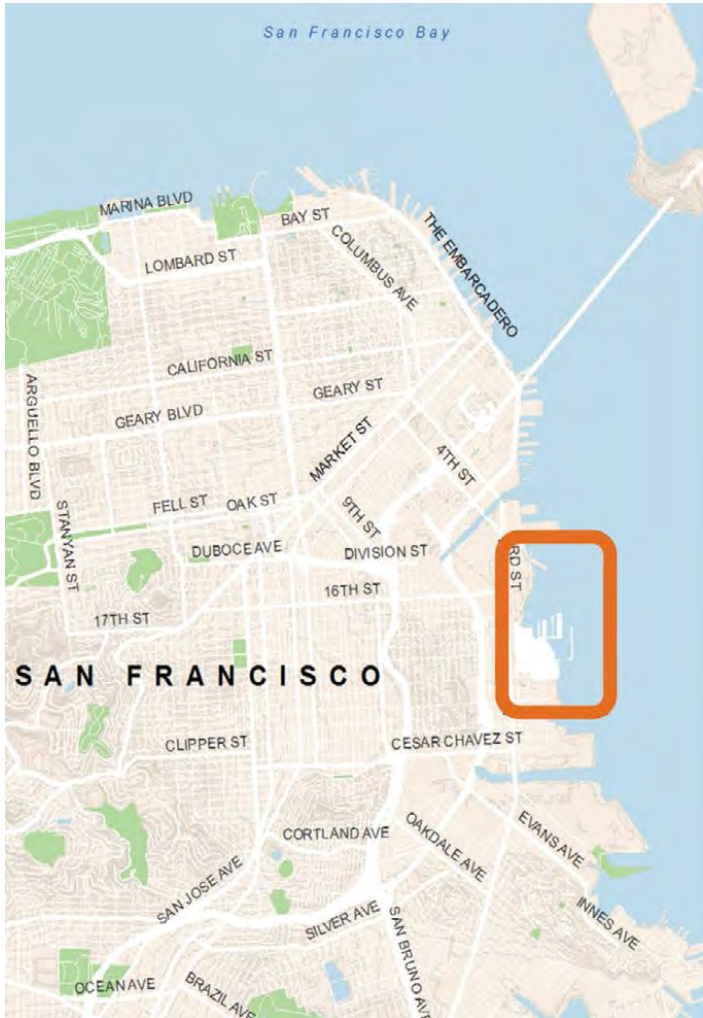
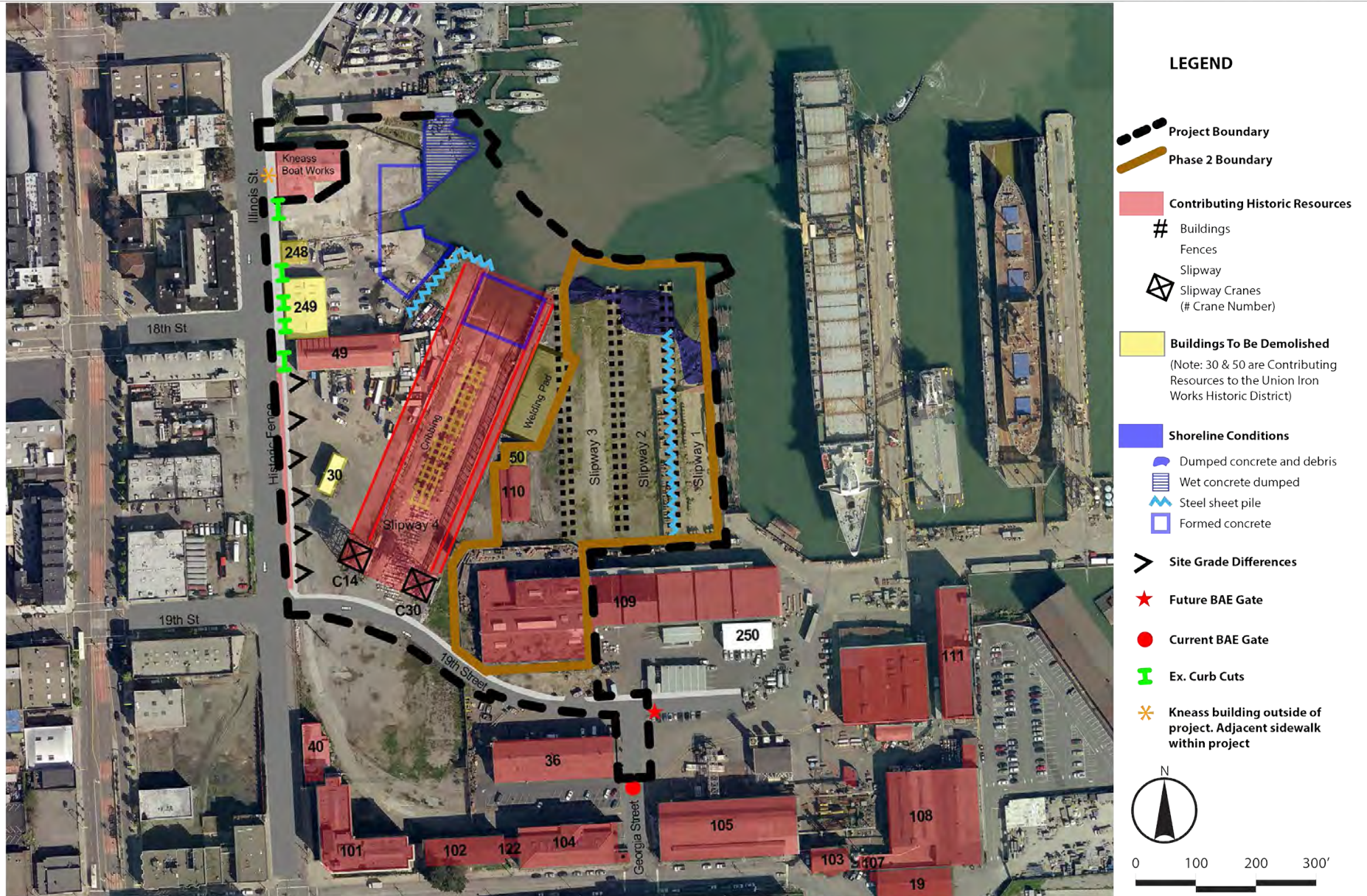


Figure 2: Existing Project Site



Proposed Project Elements**Crane Cove Park**

The proposed project would involve the creation of a new park, would include the following: a new sandy shoreline edge to allow access to the Bay for human powered boats (e.g. kayaks and canoes) and swimmers; ancillary park uses such as café uses; multi-purpose lawn areas; a children's play area; shoreline paths; pile-supported look-out piers; site furnishings; and site interpretation elements. The project would involve the rehabilitation of Building 109 West, Building 49, and Building 110, while Buildings 30, 50, 248, and 249 would be demolished. See Table 1 for a summary of the existing and proposed building uses. Slipway 4 would be rehabilitated as a public plaza and Crane 14 would be relocated to the end of Slipway 4 while Crane 30 would remain in its current location. (See Figure 3: Proposed Project) The park would generally be open from sunrise to one hour after sunset, while the ancillary park uses (e.g. cafe) would generally operate between 11:00 a.m. to 6:00 p.m.

Table 1: Existing and Proposed Building Uses

<i>Building #</i>	<i>Square Feet</i>	<i>Existing Use</i>	<i>Proposed Use</i>	<i>Depth of Excavation for Demolition</i>
30	991	vacant	demolish	1 foot
49	8,039	warehouse/storage	aquatic center; park restrooms; retail (café)	n/a
50	678	vacant	demolish	2 feet
109	23,400	ship repair storage	pavilion; visitor parking	n/a
110	1,356	vacant	retail (café); park restrooms	n/a
248	1,025	vacant	demolish	0 feet
249	5,900	towing company and yard	demolish	0 feet

Source: San Francisco Port, 2015.

Northern Shoreline

The northern shoreline subarea currently consists of non-engineered bay fill comprised of formed and dumped concrete. This area is paved with some landscaping and is currently used as open space, but currently does not provide access to the Bay for human powered boats. As part of the project, most of the fill along the shoreline would be removed (between a depth of two to six feet)¹ and replaced with a combination of armored rip-rap stone, coarse aggregate and sand to create a sandy shoreline edge. This shoreline area would be utilized for access to the Bay for human powered boats, and a new pile-supported look-out pier would be installed south of the Ramp Restaurant. New seating areas and a new path would be installed along the shoreline area.

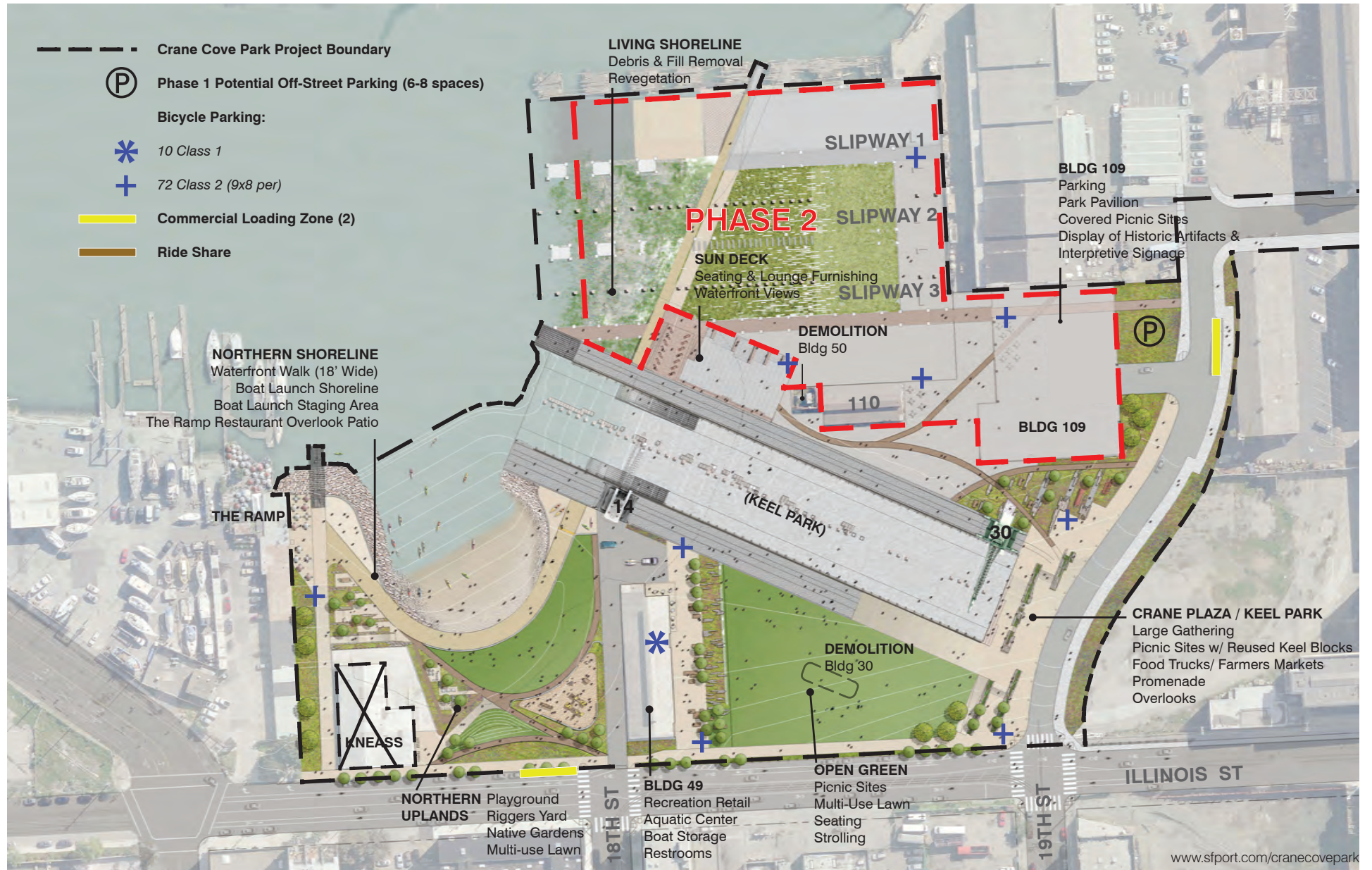
Northern Uplands, Open Green, and Building 49

Buildings 248 and 249 would be demolished and the area would become a children's play area with landscaping. Approximately two to six feet of fill² would be placed in this area. Building 49 would be rehabilitated and would accommodate public restrooms, small boat storage, and a café. Existing curb cuts would be consolidated into one curb cut at 18th and Illinois Streets to provide vehicle access to Building 49

¹ San Francisco Port, Crane Cove Park – Schematic Design, Exhibit 17. January 26, 2015. This document is available for review at the San Francisco Planning Department, 1650 Mission Street, Suite 400, as part of Case File No. 2015-001314ENV.

² Ibid.

Figure 3: Proposed Project



for boat loading/unloading. (See Circulation, Access, Parking section below.) A walkway and seating area directly south of Building 49 would be provided. Building 30 would be demolished to create a large “open green” area that would serve as a multi-use area. The northern part of the open green would involve approximately two feet of excavation while the southern part would involve the placement of fill between two to nine feet to meet the existing grade at Illinois and 19th Streets.³

Slipway 4 (Keel Park), Cranes 14 and 30, Crane Cove Plaza

Existing Slipway 4 and Cranes 14 and 30 (and their associated runways) are nonoperational and would be improved as part of the project to function as plaza space. The primary entry into the park would be directly south of Slipway 4 at the proposed Crane Cove Plaza which would be created with the extension of 19th Street eastward. (See Circulation, Access, Parking subsection below.) Crane Cove Plaza would include steps down onto Slipway 4 (Keel Park), with access onto the slipway also provided at-grade near Crane 30. Crane 30 would remain in its current location and a new approximately 1,200-square-foot pile-supported look-out pier would be constructed at the terminus of the Crane 30 runway. Crane 14 would be relocated from its current location west of Crane 30 and moved north to align with the 18th Street view corridor. Additionally, ramps would be installed at the end of the crane runways to provide access onto Slipway 4. The runways would be paved with concrete and would become park pathways.

Slipways 1-3, Building 110, Building 109 West

Slipway 1 (nonoperational) is a pile-supported over-water concrete structure that slopes into the water, Slipways 2 and 3 (both nonoperational) are pile-supported wooden structures that have been filled over with soil and other debris. The shoreline at the end of Slipway 2 and 3 would be excavated approximately one to four feet in depth and graded to allow the bay to reclaim a portion of the site. The shoreline would include a planted edge. South of the shoreline would be a path that would extend from the end of the Crane 30 runway to Slipway 1 and connect to a new pile-supported pier that would be constructed on the eastern side of Slipway 1. The area south of the shoreline path or the “upland area” would be landscaped, have informal pathways, and the existing welding pad east of Slipway 4 would become a patio/sun deck area. Building 50 would be demolished while Building 110 would be renovated to accommodate a café and public restrooms. Building 109 West would be renovated to provide 25 off-street parking spaces, accessed from the 19th Street extension.

Crane Cove Park Circulation, Access, Parking Improvements

Several circulation and access improvements would be made to support the new park, as described below.

19th Street Extension and Georgia Street

The intersection at 19th and Illinois streets is currently a three-way intersection. The proposed 19th Street extension would turn this intersection into a four-way intersection. The extension would begin at the western side of Illinois and 19th streets and extend eastward 600 feet to the proposed new entry to the BAE Shipyard and would intersect a street (Georgia Street) proposed to be constructed as part of this proposed project. Georgia Street would connect 20th Street to the 19th Street extension along the BAE ship Shipyard, and would include a 8- to 12-foot-wide sidewalk on the east side and a 14- to 16-foot wide shared use bicycle/pedestrian pathway on the east side, two 13-foot-wide travel lanes, street lighting, and utilities. The new intersection of Georgia Street and 20th Street would consist of stop control only for the

³ Ibid.

southbound direction of 20th Street. Americans with Disabilities Act (ADA)-compliant curb ramps would be provided at the new crosswalk to be installed across the new north leg of Georgia Street. Also, the new intersection of Georgia Street and the 19th Street extension would form a three-way intersection consisting of all-way stop control and crosswalks with ADA-compliant curb ramps across all intersection approaches.

The 19th Street extension would include a 15-foot shared-use bicycle/pedestrian path on the north side and a 10-foot sidewalk on the south side, two 12-foot travel lanes, street lighting, and utilities. The 19th Street extension would include a 22-foot curb cut to provide vehicle access to the proposed parking in Building 109 West.

The current BAE Shipyard entrance is located off of 20th Street, approximately 100 feet north of Building 113. The entrance would be moved approximately 100 feet north of the existing entrance to the terminus of the 19th Street extension. Additionally, BAE Shipyard truck traffic would be rerouted from 20th Street to the 19th Street extension.

Illinois Street

Illinois Street is located along the western side of the proposed park. A portion of the fence along Illinois Street would be removed to accommodate the 19th Street extension. Illinois Street (between 18th and 19th Streets) currently does not have a sidewalk and has approximately 15 parallel on street parking spaces. As part of the project, a new 12-foot sidewalk would be provided between 18th and 19th Street on the eastern side of the Illinois Street fence (within Port property). Illinois Street (between 18th and Mariposa Streets) has a 4-foot wide sidewalk and 14 angled, on-street parking spaces. The existing sidewalk between 18th and Mariposa Streets would be expanded to 12 feet. On-street parking along Illinois Street between 18th and 19th Streets will not change with the proposed project; however, curb parking between Mariposa Street and 18th Street would be modified to parallel parking.

The intersection at 19th and Illinois Streets is currently a three-way intersection and the proposed project would turn this intersection into a four-way intersection. The proposed project would involve the installation of a stop control at this intersection for both the existing eastbound and proposed westbound direction of 19th Street. Additionally, if the proposed project is approved and constructed prior to the San Francisco Municipal Transportation Agency (SFMTA) Mission Bay Loop Project, the project would involve the installation of two new crosswalks across the south and west legs of the 19th Street and Illinois Street intersection and the installation of ADA-compliant curb ramps serving these new crosswalks. The intersection at 18th and Illinois streets is currently a three-way intersection. The proposed project would require the three existing curb cuts along Illinois to be consolidated into a 22-foot curb cut at the 18th and Illinois Street intersection to allow vehicular access to the boat loading/unloading area next to Building 49. If the proposed project is approved and constructed prior to the SFMTA Mission Bay Loop Project, the project would involve the consolidation of the curb cuts and the installation of three new crosswalks at 18th Street and Illinois Street and the and the installation of ADA-compliant curb ramps serving these new crosswalks. In addition, the Crane Cove Project would construct ADA curb ramps and ladder crosswalks across the remaining legs of the 18th Street/Illinois Street and 19th Street /Illinois Street intersections that are not a part of the Mission Bay Loop Project.

Project Construction

The proposed project would occur in two phases:

1. Phase I (construction duration of approximately 16 months)
 - Northern Shoreline
 - Northern Uplands, Open Green, and Building 49
 - Slipway 4 (Keel Park), Cranes 14 and 30, Crane Cove Plaza
 - 19th Street Extension and Georgia Street
 - Illinois Street Improvements
2. Phase 2 (construction duration of approximately 12 months)
 - Slipways 1-3, Building 110, Building 109 West

As described above, construction of the proposed project is anticipated to occur in two phases, with the first phase lasting approximately 16 months and the second phase lasting approximately 12 months. Construction of the project would require excavation to a depth of six feet below ground surface and approximately 9,800 cubic yards of excavation.

Project Approvals

The proposed Crane Cove Park project would require the following approvals:

Actions by the Port Commission

- Approval of Port projects (including the proposed project) funded in the amount of \$8.7 million in the fourth and final sale of the 2008 Clean and Safe Neighborhood Parks General Obligation Bond.
- Adoption of the Crane Cove Park Mitigation Monitoring and Reporting Program (MMRP)

Actions by the Board of Supervisors

- Approval of the fourth and final sale of the 2008 Clean and Safe Neighborhood Parks General Obligation Bond and the second sale of the 2012 Clean and Safe Neighborhood Parks General Obligation Bond

Actions by City Departments

- Approval of encroachment and building permits (*Port of San Francisco*)
- Approval of a Stormwater Management Plan and a Storm Water Pollution and Prevention Plan (*Port of San Francisco and San Francisco Public Utilities Commission*)

EVALUATION OF ENVIRONMENTAL EFFECTS

This Community Plan Exemption (CPE) Checklist evaluates whether the environmental impacts of the proposed project are addressed in the Programmatic Environmental Impact Report for the Eastern Neighborhoods Rezoning and Area Plans (Eastern Neighborhoods PEIR).⁴ The CPE Checklist indicates whether the proposed project would result in significant impacts that: (1) are peculiar to the project or

⁴ San Francisco Planning Department, Eastern Neighborhoods Rezoning and Area Plans Final Environmental Impact Report (PEIR), Planning Department Case No. 2004.0160E, State Clearinghouse No. 2005032048, certified August 7, 2008. Available online at: <http://www.sf-planning.org/index.aspx?page=1893>, accessed August 17, 2012.

project site; (2) were not identified as significant project-level, cumulative, or off-site effects in the PEIR; or (3) are previously identified significant effects, which as a result of substantial new information that was not known at the time that the Eastern Neighborhoods PEIR was certified, are determined to have a more severe adverse impact than discussed in the PEIR. Such impacts, if any, will be evaluated in a project-specific Mitigated Negative Declaration or Environmental Impact Report. If no such impacts are identified, the proposed project is exempt from further environmental review in accordance with Public Resources Code Section 21083.3 and CEQA Guidelines Section 15183.

Mitigation measures identified in the PEIR are discussed under each topic area, and measures that are applicable to the proposed project are provided under the Mitigation Measures Section at the end of this checklist.

The Eastern Neighborhoods PEIR identified significant impacts related to land use, transportation, cultural resources, shadow, noise, air quality, and hazardous materials. Additionally, the PEIR identified significant cumulative impacts related to land use, transportation, and cultural resources. Mitigation measures were identified for the above impacts and reduced all impacts to less-than-significant except for those related to land use (cumulative impacts on Production, Distribution, and Repair (PDR) use), transportation (program-level and cumulative traffic impacts at nine intersections; program-level and cumulative transit impacts on seven Muni lines), cultural resources (cumulative impacts from demolition of historical resources), and shadow (program-level impacts on parks).

The proposed project would include construction of a new park, the 19th Street extension, Georgia Street, and Illinois Street improvements. As discussed below in this checklist, the proposed project would not result in new, significant environmental effects, or effects of greater severity than were already analyzed and disclosed in the Eastern Neighborhoods PEIR.

CHANGES IN THE REGULATORY ENVIRONMENT

Since the certification of the Eastern Neighborhoods PEIR in 2008, several new policies, regulations, statutes, and funding measures have been adopted, passed, or are underway that affect the physical environment and/or environmental review methodology for projects in the Eastern Neighborhoods plan areas. As discussed in each topic area referenced below, these policies, regulations, statutes, and funding measures have or will implement mitigation measures or further reduce less-than-significant impacts identified in the PEIR. These include:

- State statute regulating Aesthetics and Parking Impacts for Transit Priority Infill, effective January 2014;
- San Francisco Bicycle Plan update adoption in June 2009, Better Streets Plan adoption in 2010, Transit Effectiveness Project (aka "Muni Forward") adoption in March 2014, Vision Zero adoption by various City agencies in 2014, Proposition A and B passage in November 2014, and the Transportation Sustainability Program process (see Checklist section "Transportation");
- San Francisco ordinance establishing Noise Regulations Related to Residential Uses Near Places of Entertainment effective June 2015;
- San Francisco ordinances establishing Construction Dust Control, effective July 2008, and Enhanced Ventilation Required for Urban Infill Sensitive Use Developments, effective December 2014 (see Checklist section "Air Quality");

- San Francisco Clean and Safe Parks Bond passage in November 2012 and San Francisco Recreation and Open Space Element of the General Plan adoption in April 2014;
- Urban Water Management Plan adoption in 2011 and Sewer System Improvement Program process (see Checklist section “Utilities and Service Systems”); and
- Article 22A of the Health Code amendments effective August 2013 (see Checklist section “Hazardous Materials”).

CHANGES IN THE PHYSICAL ENVIRONMENT

Since the certification of the Eastern Neighborhoods PEIR in 2008, as evidenced by the volume of development applications submitted to the Planning Department since 2012, the pace of development activity has increased in the Eastern Neighborhoods plan areas. The Eastern Neighborhoods PEIR projected that implementation of the Eastern Neighborhoods Plan could result in a substantial amount of growth within the Eastern Neighborhoods Plan area, resulting in an increase of approximately 7,400 to 9,900 net dwelling units and 3,200,000 to 6,600,000 square feet of net non-residential space (excluding PDR loss) through throughout the lifetime of the Plan (year 2025).⁵ The growth projected in the Eastern Neighborhoods PEIR was based on a soft site analysis (i.e., assumptions regarding the potential for a site to be developed through the year 2025) and not based upon the created capacity of the rezoning options (i.e., the total potential for development that would be created indefinitely).⁶

As of July 31, 2015, projects containing 8,559 dwelling units and 2,231,595 square feet of non-residential space (excluding PDR loss) have completed or are proposed to complete environmental review⁷ within the Eastern Neighborhoods Plan area. These estimates include projects that have completed environmental review (4,885 dwelling units and 1,472,688 square feet of non-residential space) and foreseeable projects (3,674 dwelling units and 758,907 square feet of non-residential space). Foreseeable projects are those projects for which environmental evaluation applications have been submitted to the San Francisco Planning Department. Of the 4,885 dwelling units that have completed environmental review, building permits have been issued for 3,710 dwelling units, or approximately 76 percent of those units (information is not available regarding building permit non-residential square footage). An issued building permit means the buildings containing those dwelling units are currently under construction or open for occupancy.

⁵ Tables 12 through 16 of the Eastern Neighborhoods Draft EIR and Table C&R-2 in the Comments and Responses show projected net growth based on proposed rezoning scenarios. A baseline for existing conditions in the year 2000 was included to provide context for the scenario figures for parcels affected by the rezoning, not projected growth totals from a baseline of the year 2000. Estimates of projected growth were based on parcels that were to be rezoned and did not include parcels that were recently developed (i.e., parcels with projects completed between 2000 and March 2006) or have proposed projects in the pipeline (i.e., projects under construction, projects approved or entitled by the Planning Department, or projects under review by the Planning Department or Department of Building Inspection). Development pipeline figures for each Plan Area were presented separately in Tables 5, 7, 9, and 11 in the Draft EIR. Environmental impact assessments for these pipeline projects were considered separately from the Eastern Neighborhoods rezoning effort.

⁶ San Francisco Planning Department, Community Planning in the Eastern Neighborhoods, Rezoning Options Workbook, Draft, February 2003. This document is available at: <http://www.sf-planning.org/index.aspx?page=1678#background>.

⁷ For this and the Land Use and Land Use Planning section, environmental review is defined as projects that have or are relying on the growth projections and analysis in the Eastern Neighborhoods PEIR for environmental review (i.e., Community Plan Exemptions or Focused Mitigated Negative Declarations and Focused Environmental Impact Reports with an attached Community Plan Exemption Checklist).

Within the Central Waterfront subarea, the Eastern Neighborhoods PEIR projected that implementation of the Eastern Neighborhoods Plan could result in an increase of 800 to 3,600 net dwelling units and 60,000 to 90,000 net non-residential space (excluding PDR loss) through the year 2025. As of July 31, 2015, projects containing 1,273 dwelling units and 66,514 square feet of non-residential space (excluding PDR loss) have completed or are proposed to complete environmental review within the Central Waterfront subarea. These estimates include projects that have completed environmental review (1,053 dwelling units and 62,636 square feet of non-residential space) and foreseeable projects (220 dwelling units and 3,878 square feet of non-residential space). Of the 1,053 dwelling units that have completed environmental review, building permits have been issued for 684 dwelling units, or approximately 65 percent of those units.

Growth that has occurred within the Plan area since adoption of the Eastern Neighborhoods PEIR has been planned for and the effects of that growth were anticipated and considered in the Eastern Neighborhoods PEIR. Although the reasonably foreseeable growth in the residential land use category is approaching the projections within the Eastern Neighborhoods PEIR, the non-residential reasonably foreseeable growth is between approximately 34 and 70 percent of the non-residential projections in the Eastern Neighborhoods PEIR. The Eastern Neighborhoods PEIR utilized the growth projections to analyze the physical environmental impacts associated with that growth for the following environmental impact topics: Land Use; Population, Housing, Business Activity, and Employment; Transportation; Noise; Air Quality; Parks, Recreation, and Open Space; Utilities/Public Services; and Water. The analysis took into account the overall growth in the Eastern Neighborhoods and did not necessarily analyze in isolation the impacts of growth in one land use category, although each land use category may have differing severities of effects. Therefore, given the growth from the reasonably foreseeable projects have not exceeded the overall growth that was projected in the Eastern Neighborhoods PEIR, information that was not known at the time of the PEIR has not resulted in new significant environmental impacts or substantially more severe adverse impacts than discussed in the PEIR.

<i>Topics:</i>	<i>Significant Impact Peculiar to Project or Project Site</i>	<i>Significant Impact not Identified in PEIR</i>	<i>Significant Impact due to Substantial New Information</i>	<i>No Significant Impact not Previously Identified in PEIR</i>
1. LAND USE AND LAND USE PLANNING— Would the project:				
a) Physically divide an established community?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project (including, but not limited to the general plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Have a substantial impact upon the existing character of the vicinity?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

The Eastern Neighborhoods PEIR analyzed a range of potential rezoning options and considered the effects of losing between approximately 520,000 to 4,930,000 square feet of PDR space in the Plan Area throughout the lifetime of the Plan (year 2025). This was compared to an estimated loss of approximately 4,620,000 square feet of PDR space in the Plan Area under the No Project scenario. Within the Central Waterfront subarea, the Eastern Neighborhoods PEIR considered the effects of a net increase of approximately 190,000 square feet of PDR space through the year 2025. The Eastern Neighborhoods PEIR determined that adoption of the Area Plans would result in an unavoidable significant impact on land use due to the cumulative loss of PDR space. This impact was addressed in a Statement of Overriding Considerations with CEQA Findings and adopted as part of the Eastern Neighborhoods Rezoning and Areas Plans approval on January 19, 2009.

As of July 31, 2015, projects containing the removal of 1,748,422 net square feet of PDR space have completed or are proposed to complete environmental review within the Eastern Neighborhoods Plan area. These estimates include projects that have completed environmental review (796,446 square feet of PDR space loss) and foreseeable projects, including the proposed project (951,976 square feet of PDR space loss). Foreseeable projects are those projects for which environmental evaluation applications have been submitted to the San Francisco Planning Department. As of July 31, 2015, projects containing the removal of approximately 51,302 net square feet of PDR space have completed or are proposed to complete environmental review within the Central Waterfront subarea. These estimates include projects that have completed environmental review (15,057 square feet of PDR space loss) and foreseeable projects (36,245 square feet of PDR space loss).

Implementation of the proposed project would result in the net loss of approximately 4,050 square feet of inactive PDR building space in buildings 30, 50, 110, 248, which are currently vacant, and approximately 37,340 square feet of active PDR space in buildings 49 (warehouse/storage), 109 West (BAE Shipyard storage), and 49 (car towing company). This would contribute considerably to the significant cumulative land use impact related to loss of PDR uses that was identified in the Eastern Neighborhoods PEIR. The Eastern Neighborhoods PEIR identified the area east of Illinois Street and north of 20th Street at Pier 70, which includes the project site, to be potentially rezoned to a special Pier 70 Mixed-Use District which would “allow the flexibility to create a mix of arts-oriented, light industrial, research and development,

institutional, and entertainment activities.”⁸ Additionally, the Eastern Neighborhoods PEIR noted that the Central Waterfront Area Plan “identifies specific sites for possible private or public acquisition and improvement including Pier 70 at the end of 18th Street...”, which is where the project site is located, for open space.⁹ The proposed project’s loss of 37,340 square feet of existing active PDR space and 4,050 of inactive PDR space represents a considerable contribution to the cumulative loss of PDR space analyzed in the Eastern Neighborhoods PEIR. This significant, cumulative impact was identified in the PEIR and would not represent a more severe adverse impact than analyzed and disclosed in the PEIR.

The Eastern Neighborhoods PEIR determined that implementation of the Area Plans would not create any new physical barriers in the Eastern Neighborhoods because the rezoning and Area Plans do not provide for any new major roadways, such as freeways that would disrupt or divide the project area or individual neighborhoods or subareas. The proposed project would involve the expansion of the street grid at Pier 70, with the extension of 19th Street east from Illinois Street to the new BAE Shipyard entrance, and the development of Georgia Street which would connect 20th Street with the proposed 19th Street extension. These new streets would not be classified as major roadways and would not act as physical barriers, but rather would function as routes that would provide better access to and within Pier 70 and would accommodate the future alignment of the Blue Greenway, a multi-use recreational trail along San Francisco Bay.

The Citywide Planning and Current Planning Divisions of the Planning Department have determined that the proposed project is permitted in the M-2 (Heavy Industrial) and P (Public) use districts and is consistent with the uses envisioned in the Central Waterfront Plan, which identifies the project site as a potential park site to expand public access to the waterfront and provide large areas of open space.^{10,11}

In view of the above, the proposed project is consistent with the development density established in the Eastern Neighborhoods Rezoning and area Plans, including the loss of PDR space, and its implementation would not result in significant land use impacts that were not identified in the Eastern Neighborhoods PEIR related to land use and land use planning. No mitigation measures are necessary.

<i>Topics:</i>	<i>Significant Impact Peculiar to Project or Project Site</i>	<i>Significant Impact not Identified in PEIR</i>	<i>Significant Impact due to Substantial New Information</i>	<i>No Significant Impact not Previously Identified in PEIR</i>
2. AESTHETICS—Would the project:				
a) Have a substantial adverse effect on a scenic vista?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

⁸ Eastern Neighborhoods PEIR, p. 79. Planning Department Case No. 2004.0160E, State Clearinghouse No. 2005032048. Available online at: <http://www.sf-planning.org/index.aspx?page=1893>.

⁹ Ibid, p. 377.

¹⁰ Adam Varat, San Francisco Planning Department, Community Plan Exemption Eligibility Determination, Citywide Planning and Policy Analysis, Crane Cove Park, July 30, 2015. This document is available for review at the San Francisco Planning Department, 1650 Mission Street, Suite 400, as part of Case File No. 2015-001314ENV.

¹¹ Elizabeth Watty, San Francisco Planning Department, Community Plan Exemption Eligibility Determination, Current Planning Analysis, Crane Cove Park, August 13, 2015. This document is available for review at the San Francisco Planning Department, 1650 Mission Street, Suite 400, as part of Case File No. 2015-001314ENV.

<i>Topics:</i>	<i>Significant Impact Peculiar to Project or Project Site</i>	<i>Significant Impact not Identified in PEIR</i>	<i>Significant Impact due to Substantial New Information</i>	<i>No Significant Impact not Previously Identified in PEIR</i>
b) Substantially damage scenic resources, including, but not limited to, trees, rock outcroppings, and other features of the built or natural environment which contribute to a scenic public setting?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Substantially degrade the existing visual character or quality of the site and its surroundings?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Create a new source of substantial light or glare which would adversely affect day or nighttime views in the area or which would substantially impact other people or properties?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

The Eastern Neighborhoods PEIR states that implementation of the Area Plan would not substantially damage scenic resources that contribute to a scenic public setting. As a proposed rezoning and planning process, the Plan would not directly result in any physical changes. Rather, any changes in urban form and visual quality would be the secondary result of individual development projects that would occur subsequent to the adoption of changes in zoning and community plans.

With respect to views, the Eastern Neighborhoods PEIR found that while development pursuant to the Plan would result in height increases and use district changes, the rezoning would not substantially degrade the existing public views and new development up to the proposed height limits may even help define the street edge and better frame urban views. The PEIR thus found that the Area Plan would not result in a significant adverse impact with regard to views. In addition, the Eastern Neighborhoods PEIR concluded that light and glare impacts would be less than significant because new construction in the Plan Area could generate additional night lighting, but not in amounts unusual for a developed urban area. Furthermore, additional glare from new buildings would not result in a substantial change as use of reflective glass would be restricted by Planning Commission Resolution 9212.

For these reasons, the Eastern Neighborhoods PEIR concluded that implementation of the Area Plans would not substantially degrade the visual character or quality of the area, have a substantial adverse effect on a scenic vista, substantially damage scenic resources that contribute to a scenic public setting, or create a new source of substantial light or glare which would adversely affect day or nighttime views in the area or which would substantially impact other people or properties. No mitigation measures were identified in the PEIR.

The project site is part of Pier 70, which was the site of Union Iron Works, Bethlehem Steel Shipyard, and the San Francisco Yard that supported ship building and ship repair uses. The project site includes facilities from the previous ship yard use, including the slipways, cranes, and buildings that are now either vacant or currently used as storage or vehicle related uses. The area east of the project site is San Francisco Bay and BAE Shipyard which is an active ship repair site and the area south of the project site is the 20th Street Historic Core which is currently being rehabilitated and would include office, light industrial, and commercial uses. The area north of the project site includes commercial, boating and recreation, and office uses while the area east of the project site includes a mix of residential, office, commercial, educational and PDR uses. The proposed project would retain some of the previous ship yard facilities, as the slipways and cranes would be rehabilitated and incorporated into the park design. Additionally, Buildings 49, 110 and 109 West would be renovated to support park uses. The proposed

project would not involve the development of new buildings or major structures so the project site would retain its current open space character and would not substantially degrade any views. While Crane 14 would be moved north to align with the 18th Street corridor, it is not a solid mass and would not result in a substantial obstruction of views to San Francisco Bay.

The proposed project would introduce new sources of light and glare in the form of new lighting for the park use and new street lighting along the 19th Street extension and Georgia Street. However, other existing sources of light and glare associated with Buildings 30, 50, 248, and 249 would be removed as those buildings would be demolished as part of the project. Therefore, while the project could generate additional night lighting, it would not be substantially greater than existing night lighting at the site.

For the above reasons, the proposed project would not result in impacts on aesthetics substantially greater than those identified in the Eastern Neighborhoods PEIR.

Topics:	<i>Significant Impact Peculiar to Project or Project Site</i>	<i>Significant Impact not Identified in PEIR</i>	<i>Significant Impact due to Substantial New Information</i>	<i>No Significant Impact not Previously Identified in PEIR</i>
3. POPULATION AND HOUSING— Would the project:				
a) Induce substantial population growth in an area, either directly (for example, by proposing new homes and businesses) or indirectly (for example, through extension of roads or other infrastructure)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Displace substantial numbers of existing housing units or create demand for additional housing, necessitating the construction of replacement housing?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Displace substantial numbers of people, necessitating the construction of replacement housing elsewhere?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

One of the objectives of the Eastern Neighborhoods Area Plans is to identify appropriate locations for housing in the City’s industrially zoned land to meet the citywide demand for additional housing. The PEIR concluded that an increase in population in the Plan Areas is expected to occur as a secondary effect of the proposed rezoning and that any population increase would not, in itself, result in adverse physical effects, but would serve to advance key City policy objectives, such as providing housing in appropriate locations next to Downtown and other employment generators and furthering the City’s Transit First policies. It was anticipated that the rezoning would result in an increase in both housing development and population in all of the Area Plan neighborhoods. The Eastern Neighborhoods PEIR determined that the anticipated increase in population and density would not result in significant adverse physical effects on the environment. No mitigation measures were identified in the PEIR.

The proposed project would involve the conversion of PDR space to a park which would include park-related ancillary uses such as an aquatic center and café uses. This would result in a small number of new jobs. No displacement of existing housing would occur. As stated in the “Changes in the Physical Environment” section above, these direct effects of the proposed project on population are within the

scope of the population growth anticipated under the Eastern Neighborhoods Rezoning and Area Plans and evaluated in the Eastern Neighborhoods PEIR.

For the above reasons, the proposed project would not result in significant impacts on population and housing that were not identified in the Eastern Neighborhoods PEIR.

<i>Topics:</i>	<i>Significant Impact Peculiar to Project or Project Site</i>	<i>Significant Impact not Identified in PEIR</i>	<i>Significant Impact due to Substantial New Information</i>	<i>No Significant Impact not Previously Identified in PEIR</i>
4. CULTURAL AND PALEONTOLOGICAL RESOURCES—Would the project:				
a) Cause a substantial adverse change in the significance of a historical resource as defined in §15064.5, including those resources listed in Article 10 or Article 11 of the San Francisco Planning Code?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Cause a substantial adverse change in the significance of an archaeological resource pursuant to §15064.5?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Directly or indirectly destroy a unique paleontological resource or site or unique geologic feature?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Disturb any human remains, including those interred outside of formal cemeteries?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Historic Architectural Resources

Pursuant to CEQA Guidelines Sections 15064.5(a)(1) and 15064.5(a)(2), historical resources are buildings or structures that are listed, or are eligible for listing, in the California Register of Historical Resources or are identified in a local register of historical resources, such as Articles 10 and 11 of the San Francisco Planning Code. The Eastern Neighborhoods PEIR determined that future development facilitated through the changes in use districts and height limits under the Eastern Neighborhoods Area Plans could result in substantial adverse changes in the significance of both individual historical resources and on historical districts within the Plan Areas. The PEIR determined that approximately 32 percent of the known or potential historical resources in the Plan Areas could potentially be affected under the preferred alternative. The Eastern Neighborhoods PEIR found this impact to be significant and unavoidable. This impact was addressed in a Statement of Overriding Considerations with findings and adopted as part of the Eastern Neighborhoods Rezoning and Area Plans approval on January 19, 2009.

A portion of the project site (south and east of Building 49) is located within the Union Iron Works Historic District (Historic District), listed on the National Register of Historic Places (National Register). The Union Iron Works Historic District is significant under National Register Criterion A (Events) and Criterion C (Design/Construction) within the areas of maritime industry and industrial architecture, and for its association with the development of steel shipbuilding in the United States. The character-defining features of the Historic District include: waterfront location/shoreline; minimal planted vegetation; open areas that are either paved with asphalt or covered with gravel; streets that are improved without curbs and gutters, except for 20th Street, which has granite curbs; dense urban-industrial character; variation in materials, styles, rooflines, and window types; variation in height and scale, with resources that range from one to six stories (80 feet) in height, some with large footprints of 60,000 to 100,000 square feet;

certain groupings of buildings, such as the entry promenade along 20th Street and the Building 12 complex; features such as cranes, wharves and piers; ship repair activities; and yard layout and plan.

The Planning Department determined in a Historic Resource Evaluation Response (HRER) Part II,¹² upon review of the Historic Resource Evaluation (HRE) prepared by Architectural Resources Group (ARG),¹³ that the proposed project would not cause a significant adverse impact upon any qualified historic resource, nor would it adversely affect the integrity of the Historic District. The proposed project would involve the demolition of Buildings 248 and 249, which are not historic features and do not contribute to the Union Iron Works Historic District. Therefore, their removal would not affect the historic status of the Union Iron Works Historic District or any of its contributing resources.

The proposed project would also involve the demolition of the following two buildings that are contributing resources to the Historic District: Building 30 (Template Warehouse) and Building 50 (Substation No. 2). Buildings 30 and 50 were accessory buildings that supported the shipbuilding process centered in Building 109 and Slipway 4. Building 30 is an open warehouse of utilitarian design, is architecturally undistinguished, and does not possess any features not represented elsewhere within the Historic District. Building 50, more architecturally distinctive than Building 30, in part due to its architectural brick wainscoting, is one of several World War II (WWII)-era electrical power substations within the Historic District. The HRER found that Buildings 30 and 50 do not exhibit any craftsmanship that is important to the District as a whole and not present in other contributing resources, thus their demolition would not result in a significant loss of resources from the WWII-era.

The proposed project would involve the rehabilitation of the following three buildings that are contributing resources to the Historic District: Building 49 (Galvanizing Shop); Building 109 West (Plate Shop No. 1); Building 110 (Yard Washroom/Locker Room). Building 49 would accommodate an aquatic center with boat storage, restrooms, and potentially a small café. Building 49's existing form and scale would be maintained and exterior modifications would be limited to the addition of one roll-up door and four person doors. Building 109 West would accommodate parking and include a pavilion area with site interpretation elements. Building 109 West would continue to be open on three sides, as it has been historically, and the overall form, massing, and building spaces would be maintained. Building 110 would accommodate a café, and the building's character-defining features, including its open floor plan and extensive fenestration, would be maintained.

The proposed project would involve the alteration of the following site elements that are contributing resources within the Historic District: Slipways 1 through 4; Cranes 14 and 30; freight and rail lines; and the iron fence along Illinois Street. Slipway 4 would be resurfaced and used as a paved plaza space (Keel Park). The plaza would accommodate a historic interpretive program, including demarcation of the silhouettes of two major historic ships built at the slipway. Slipways 1, 2, and 3 would include informal pathways that would accommodate interpreted historic ship building relics. Cranes 14 and 30 would be stabilized and retained on-site, with the relocation of Crane 14 out toward the shore end of Slipway 4. The

¹² San Francisco Planning Department, *Historic Resource Evaluation Response Part II for Pier 70 Crane Cove Park*, September 15, 2015. This document is on file and available at the San Francisco Planning Department, 1650 Mission Street, Suite 400 as part of Case File No. 2015-001314ENV.

¹³ Architectural Resources Group (ARG), *Historic Resource Evaluation, Crane Cove Park, San Francisco, California*, Revised, August 2015. This document is on file and available at the San Francisco Planning Department, 1650 Mission Street, Suite 400 as part of Case File No. 2015-001314ENV.

freight and rail lines would be retained and segments currently covered by soil or asphalt would be exposed. The iron fence along Illinois Street would be repaired in place, which would include removing non-historic attachments; repairing broken fasteners and deformed sections and replacing missing finials; and repainting. A small portion of the fence would be removed to accommodate the eastward extension of 19th Street but the existing gate near Building 49 would be retained.

New construction at the project site would include the construction of Crane Cove Plaza; the eastward extension of 19th Street; construction of Georgia Street; landscape treatments including multi-use lawn areas, native plantings, and trees; site furnishings; interpretive exhibits; a sandy shoreline; a children's play area; paths; and pile-supported look out piers. The HRE determined that these new features would be compatible with the extant contributing resources of the Historic District while also being clearly additive to the site. Crane Cove Plaza would reinforce, instead of obscure, Slipway 4 and while the steps that comprise the plaza are clearly additive, their geometric simplicity would be compatible with the concrete expansiveness of the slipway itself. The eastward extension of 19th Street would curve southward so as not to interfere with Slipway 4 or Building 109 and connect with Georgia Street which would not interfere with buildings within the 20th Street Historic Core. The lawn area between Illinois Street and Slipway 4 would clearly be a new element, while referencing and supporting the historic openness of this portion of the project site. Trees would be used sparingly to maintain the fundamental openness of the site and avoid interfering with views of the water or Slipway 4. Site furnishings would be simple in profile and scaled to reference the keel blocks, cribbings, and other industrial remnants that supported the shipbuilding process. The area of the park north of Building 49 is outside of the Historic District and thus could be modified to a greater extent than other portions of the project site without adversely affecting the Historic District. The park design would maintain this area as open space with additive elements, including a new sandy shoreline, shoreline path, and children's playground.

The HRER determined that the demolition of two contributing buildings (Buildings 30 and 50) within the Historic District would not cause a significant adverse impact on a qualified historic resource. The buildings proposed for demolition are ancillary and/or repetitive, relative to the Historic District's history and significance, and the Historic District would continue to retain a high number of contributing resources. The HRER also found that the rehabilitation of the contributing resources (Buildings 49, 109, and 110; Slipways 1 through 4; Cranes 14 and 30; freight and rail lines; and the iron fence along Illinois Street) would meet the Secretary of the Interior's Standards for Rehabilitation. Further, the new construction anticipated for the project site would be appropriately designed to preserve the Historic District's character-defining features, while also accommodating new design features. The project design would not adversely affect any of the character-defining features of the Historic District as a whole and the proposed project would make many of those character-defining features more visible to the public. As a result, the project design would be in conformance with the Secretary of the Interior's Standards for Rehabilitation. Therefore, the proposed project would not contribute to the significant historic resource impact identified in the Eastern Neighborhoods PEIR, and no historic resource mitigation measures would apply to the proposed project.

For these reasons, the proposed project would not result in significant impacts on historic architectural resources that were not identified in the Eastern Neighborhoods PEIR.

Archeological Resources

The Eastern Neighborhoods PEIR determined that implementation of the Area Plans could result in significant impacts on archeological resources and identified three mitigation measures that would reduce these potential impacts to a less than significant level. Eastern Neighborhoods PEIR Mitigation Measure J-1 applies to properties for which a final archeological research design and treatment plan is on file at the Northwest Information Center and the Planning Department. Mitigation Measure J-2 applies to properties for which no archeological assessment report has been prepared or for which the archeological documentation is incomplete or inadequate to serve as an evaluation of potential effects on archeological resources under CEQA. Mitigation Measure J-3, which applies to properties in the Mission Dolores Archeological District, requires that a specific archeological testing program be conducted by a qualified archeological consultant with expertise in California prehistoric and urban historical archeology.

The project site is one of the properties subject to Eastern Neighborhoods PEIR Mitigation Measure J-2. Mitigation Measure J-2 states any project resulting in soils disturbance for which no archeological assessment report has been prepared or for which the archeological document is incomplete or inadequate shall be required to conduct a preliminary archeological sensitivity study prepared by a qualified archeological consultant having expertise in California prehistoric and urban historical archeology. Based on the study, a determination shall be made if additional measures are needed to reduce potential effects of a project on archeological resources to a less-than-significant level. The Planning Department's archeologist conducted a preliminary archeological review of the project site in conformance with the study requirements of Mitigation Measure J-2; the results are summarized below.¹⁴

The project site is located on what was the bayside of the historical Potrero Point shoreline. Since the project site was located underwater, there is a low potential for prehistoric resources within the project site. The area south of the project site (near the intersection of 20th and Illinois Streets) may have been the historical shoreline; however, no prehistoric sites have been previously identified on Potrero Point.

Manufacturing complexes in the general area, such as the San Francisco Cordage Manufactory, opened during the 1850s, and Pacific Rolling Mills opened in 1868 to the southeast of the project site. The initial development of the project area started in the late 1860s, when boat-builders moved there from Steamboat Point. The initial fill of the project area is associated with the expansion of the Union Iron Works shipyard during the late 19th century. Shipbuilding and ship repair continued within the project area from the 1890s through most of the 20th century. During this period, buildings, structures, and infrastructural systems were installed within the shipyard and remains of these resources as well as possible deposits associated with ship construction and shipyard workers may exist within the project area. Archeological deposits associated with shipyard development and shipbuilding and ship repair may be useful in interpreting the Union Iron Works National Register Historic District and may offer additional information concerning the shipyard, shipbuilding, and working conditions.

Based on the Preliminary Archeological Review, it has been determined that the Planning Department's second standard archeological mitigation measure (monitoring) would apply to the proposed project. The Preliminary Archeological Review and its requirements (e.g., monitoring) are consistent with Mitigation Measure J-2 from the Eastern Neighborhoods PEIR. With implementation of this project mitigation

¹⁴ San Francisco Planning Department, Environmental Planning Preliminary Archeological Review for Crane Cove Park, July 24, 2015. This document is available for review at the San Francisco Planning Department, 1650 Mission Street, Suite 400, as part of Case File No. 2015-001314ENV.

measure, impacts related to archeological resources would be less than significant. In accordance with the Eastern Neighborhoods PEIR requirements, the project sponsor has agreed to implement Project Mitigation Measure 1: Archeological Monitoring, as updated below.

With compliance with Project Mitigation Measure 1, the proposed project would not result in significant impacts on archeological resources that were not identified in the Eastern Neighborhoods PEIR.

<u>Topics:</u>	<i>Significant Impact Peculiar to Project or Project Site</i>	<i>Significant Impact not Identified in PEIR</i>	<i>Significant Impact due to Substantial New Information</i>	<i>No Significant Impact not Previously Identified in PEIR</i>
4. TRANSPORTATION AND CIRCULATION— Would the project:				
a) Conflict with an applicable plan, ordinance or policy establishing measures of effectiveness for the performance of the circulation system, taking into account all modes of transportation including mass transit and non-motorized travel and relevant components of the circulation system, including but not limited to intersections, streets, highways and freeways, pedestrian and bicycle paths, and mass transit?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Conflict with an applicable congestion management program, including but not limited to level of service standards and travel demand measures, or other standards established by the county congestion management agency for designated roads or highways?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Result in a change in air traffic patterns, including either an increase in traffic levels, obstructions to flight, or a change in location, that results in substantial safety risks?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Substantially increase hazards due to a design feature (e.g., sharp curves or dangerous intersections) or incompatible uses?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e) Result in inadequate emergency access?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
f) Conflict with adopted policies, plans, or programs regarding public transit, bicycle, or pedestrian facilities, or otherwise decrease the performance or safety of such facilities?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

The Eastern Neighborhoods PEIR anticipated that growth resulting from the zoning changes would not result in significant impacts related to pedestrians, bicyclists, loading, emergency access, or construction. However, the Eastern Neighborhoods PEIR anticipated that growth resulting from the zoning changes could result in significant impacts on traffic and transit ridership, and identified 11 transportation mitigation measures, which are described further below in the Traffic and Transit sub-sections. Even with mitigation, however, it was anticipated that the significant adverse cumulative traffic impacts and the cumulative impacts on transit lines could not be fully mitigated. Thus, these impacts were found to be significant and unavoidable.

The project site is not located within an airport land use plan area, or in the vicinity of a private airstrip. Therefore, the Community Plan Exemption Checklist topic 4c is not applicable.

Trip Generation

A transportation study was prepared for the proposed project by CHS Consulting Group.¹⁵ Per the transportation study, the proposed project would generate an estimated 1,648 person trips (inbound and outbound) on a daily basis, consisting of 1,091 person trips by auto (631 vehicle trips), 180 transit trips, 341 walk trips and 36 trips by other modes. The proposed project would generate an estimated 85 vehicle trips during the PM peak hour (4:00 p.m. to 6:00 p.m.) and an estimated 110 vehicle trips during the weekend midday (MID) peak hour (1:00 p.m. to 3:00 p.m.).

Traffic

Mitigation Measures E-1 through E-4 in the Eastern Neighborhoods PEIR were adopted as part of the Plan with uncertain feasibility to address significant traffic impacts. Mitigation Measures E-2 through E-4 are not applicable to the proposed project, as they are plan-level mitigations to be implemented by City and County agencies. Since certification of the PEIR, SFMTA has been engaged in public outreach regarding some of the parking-related measures identified in Mitigation Measures E-2 and E-4: Intelligent Traffic Management, although they have not been implemented. Measures that have been implemented include enhanced funding as identified in Mitigation Measure E-3 through San Francisco propositions A and B passed in November 2014. Proposition A authorized the City to borrow \$500 million through issuing general obligation bonds in order to meet some of the transportation infrastructure needs of the City. These funds are allocated for constructing transit-only lanes and separated bikeways, installing new boarding islands and escalators at Muni/BART stops, installing sidewalk curb bulb-outs, raised crosswalks, median islands, and bicycle parking and upgrading Muni maintenance facilities, among various other improvements. Proposition B, which also passed in November 2014, amends the City Charter to increase the amount the City provided to the SFMTA based on the City's population, with such funds to be used to improve Muni service and street safety. Some of this funding may be applied to transportation projects within the Eastern Neighborhoods Plan area.

The proposed project's vehicle trips would travel through the intersections surrounding the project blocks. Intersection operating conditions are characterized by the concept of Level of Service (LOS), which ranges from A to F and provides a description of an intersection's performance based on traffic volumes, intersection capacity, and vehicle delays. LOS A represents free flow conditions, with little or no delay, while LOS F represents congested conditions, with extremely long delays; LOS D (moderately high delays) is considered the lowest acceptable level in San Francisco. The intersections near the project site include 18th Street/Illinois Street; 19th Street/Illinois Street; 20th Street/Illinois Street; Third Street/Cesar Chavez Street; I-280 Off-Ramp/Mariposa Street; and I-280 On-Ramp/Mariposa Street. Tables 2 and 3 provide existing and cumulative LOS data gathered for these intersections for the PM peak hour and the weekend MID peak hour.

¹⁵ CHS Consulting, 19th Street Extension/Crane Cove Park Project Transportation Impact Study, October 2015. This document is available for review at the San Francisco Planning Department, 1650 Mission Street, Suite 400, as part of Case File No. 2015-001314ENV.

**Table 2: Intersection Level of Service:
Existing, Existing Plus Project, and Cumulative Weekday PM (4:00 p.m. to 6:00 p.m.) Peak Hour**

Intersection	Existing		Existing+Project		Cumulative (Year 2040)	
	Delay ¹	LOS ₁	Delay ¹	LOS ¹	Delay ¹	LOS ¹
1. 18th Street / Illinois Street ²	10.5 (EB)	B	10.7 (EB)	B	11.4	B
2. 19th Street / Illinois Street ²	10.2 (EB)	B	11.2 (WB)	B	64.0	E
3. 20th Street / Illinois Street	8.7 (9.1/NB)	A (A)	9.0 (9.5/NB)	A (A)	>50 (>50/WB)	F (F)
4. Third Street / Cesar Chavez Street	42.4	D	44.0	D	>80.0	F
5. I-280 Off-Ramp / Mariposa Street	23.2	C	23.2	C	>80.0	F
6. I-280 On-Ramp / Mariposa Street ²	>80 (EB)	F	>80 (EB)	F	>80.0	F

Notes:

1. The LOS and delay (in seconds per vehicle) for signalized intersections represent conditions for the overall intersection. **BOLD** indicates unacceptable LOS conditions (LOS E or F).
2. 18th/Illinois, 19th/Illinois, and I-280 On-Ramp / Mariposa Street intersections assumed to be signalized in Year 2040.

Sources: Pier 70 TIS Report, 2015; CHS Consulting Group, 2015.

**Table 3: Intersection Level of Service:
Existing, Existing Plus Project, and Cumulative Weekend MID (1:00 p.m. to 3:00 p.m.) Peak Hour**

Intersection	Existing		Existing+Project		Cumulative (Year 2040)	
	Delay ¹	LOS ₁	Delay ¹	LOS ¹	Delay ¹	LOS ¹
1. 18th Street / Illinois Street ²	10.1 (EB)	B	10.3 (EB)	B	10.8	B
2. 19th Street / Illinois Street ²	9.7 (EB)	A	10.8 (EB)	B	14.5	B
3. 20th Street/ Illinois Street	7.8 (7.9/NB)	A	8.1 (8.2/NB)	(A)	>50 (>50/EB)	F (F)
4. Third Street / Cesar Chavez Street	27.0	C	27.2	C	>80.0	F
5. I-280 Off-Ramp/ Mariposa Street	24.2	C	24.2	C	>80.0	F
6. I-280 On-Ramp/ Mariposa Street ²	11.5 (EB)	B	11.7 (EB)	B	9.6	A

Notes:

1. The LOS and delay (in seconds per vehicle) for signalized intersections represent conditions for the overall intersection. **BOLD** indicates unacceptable LOS conditions (LOS E or F).
2. 18th/Illinois, 19th/Illinois, and I-280 On-Ramp / Mariposa Street intersections assumed to be signalized in Year 2040.

Sources: Pier 70 TIS Report, 2015; CHS Consulting Group, 2015.

Existing Plus Proposed Project Conditions

The proposed project would generate approximately 85 new vehicle trips during the weekday PM peak hour (39 inbound and 46 outbound), and 110 new vehicle trips during the weekend MID peak hour (52 inbound and 58 outbound). The transportation impact analysis also accounts for the proposed re-routing of BAE Shipyard truck traffic from 20th Street to the 19th Street extension. (See BAE Shipyard Traffic section below.)

As shown in Tables 2 and 3 above, with the addition of the proposed project, all study intersections would be expected to continue operating at acceptable LOS conditions (LOS D or better), with the exception of the eastbound STOP-controlled approach at the I-280 On-Ramp/Mariposa Street intersection, which is expected to operate at LOS F during the PM peak hour both with and without the addition of project traffic. At the unsignalized intersection of I-280 On-Ramp/Mariposa Street during the PM peak hour, the intersection would operate at LOS F with and without implementation of the proposed project. The proposed project would not add any vehicles to the eastbound critical right-turn movement of this intersection. The proposed project's contributions to the I-280 On-Ramp/Mariposa Street intersection would therefore not be substantial and the proposed project would result in a less-than-significant traffic impact at the intersection.

Vehicle Queuing

Vehicle access to the proposed off-street parking in Building 109 West would be via the proposed 19th Street extension. The driveway to Building 109 West would be along the 19th Street extension and would accommodate two-way vehicle flow (e.g., one ingress lane and one egress lane). Because the parking driveway would allow for two-way traffic flow, this design would not require vehicles attempting to enter the parking lot to dwell (stop) along 19th Street prior to entry for an extended period of time (with the exception of waiting for any crossing pedestrians) nor result in substantial vehicle queues along 19th Street. Therefore, impacts relative to project vehicle queuing conditions would be less than significant. While vehicle queuing impacts would be less than significant, Project Improvement Measure 1: Monitoring and Abatement of Queues could be implemented to further reduce this less-than-significant impact.

BAE Shipyard Traffic

Trucks traveling to and from the BAE Shipyard currently access the facility via 20th Street. The proposed 19th Street extension would create an alternate route for trucks and thus reduce the number of trucks traveling along 20th Street relative to current conditions. Based on information provided by the Port of San Francisco, the BAE Ship Yard operates with a staff of approximately 200 employees, Monday through Friday between 6:30 a.m. and 3:30 p.m., with up to five employees on site beyond 5:00 p.m. and fewer on weekends.

Existing BAE employees typically arrive between 6:00 - 6:30 AM and depart between 3:00 - 3:30 PM on weekdays, thereby avoiding weekday PM peak hours. On weekends, existing BAE employee trips are typically a maximum of two autos per day, with one vehicle arriving at 10:00 PM and leaving at 6:00 AM, with the other auto arriving at 6:00 AM and departing at 10:00 PM. Therefore, no existing BAE employee trips currently occur during the weekend MID peak hour.

On a typical weekday, about 12 trucks travel to/from the BAE facility between 6:30 a.m. and 3:30 p.m., which equates to about 1.3 truck trips per hour, respectively. No trucks are scheduled to travel to/from

the BAE facility on weekends. It is noted that on non-typical days (i.e., days when there is a cruise ship in dry dock), about 28 trucks are scheduled to travel to/from the BAE facility between 3:30 a.m. and 9:30 p.m., which equates to about 1.5 trucks per hour, respectively.

The presence of large trucks, with their slower speeds and larger turning radii, could result in some vehicle delays and congestion on roadways in the immediate vicinity of the project site and BAE facility (e.g., 19th and 20th Streets) and would have lesser effects on higher-capacity roadways farther from the project site (e.g., Third Street). However, because the BAE facility would continue with current operations and the proposed 19th Street extension would serve as a route to/from the BAE facility to further disperse truck traffic, and because the level of truck activity would not be substantial on a given day (e.g., about one truck trip per hour) or during typical peak commute or weekend peak periods, the diversion of truck trips along 19th and 20th Streets would not result in substantial vehicle queues nor substantially contribute to traffic congestion levels along adjacent streets.

2040 Cumulative Conditions

Future year 2040 cumulative traffic volumes were developed in order to assess the long-term cumulative effects of the proposed project in combination with projected development within San Francisco and the rest of the Bay Area, as well as implementation of planned transportation infrastructure projects. For the future year, cumulative intersection traffic volumes were derived from outputs from the San Francisco County Transportation Authority's (SFCTA) travel demand forecasting model (SF-CHAMP Model). The geographic context for the analysis of cumulative transportation impacts includes the sidewalks and roadways adjacent to the project site, and the local roadway and transit network in the vicinity of the Project Site. The discussion of cumulative transportation impacts assesses the degree to which the Project would affect the transportation network in conjunction with other reasonably foreseeable projects. Examples of reasonably foreseeable development projects and transportation network changes that were considered in the cumulative analysis include (but are not limited to) the following: Pier 70 Mixed-Use District Project; 20th Street Historic Core Buildings (Orton) Project; Mission Bay Loop Project; Mission Bay Redevelopment Plan; and Golden State Warriors Project at Mission Bay Blocks 29-32.

The Mission Bay Loop project would provide turn-around capabilities for the T Third light rail via a connection trackway from Third Street to 18th, 19th, and Illinois Streets. The existing light rail trackway on 18th and 19th Streets between Third and Illinois Streets would be extended to Illinois Street in order to complete the loop. The Mission Bay Loop project would allow for increased service along the planned Central Subway Corridor and within the Central Waterfront and Mission Bay areas. Accordingly, the turn-around would facilitate a 50 percent increase in frequency to transit service and the increase in service would be achieved by allowing up to half of the trains traveling on Third Street via the Central Subway during peak hours to turn around at the Mission Bay Loop and proceed back toward downtown San Francisco. In addition to the proposed light rail turn around, traffic, pedestrian, and train signals would be installed at the intersections of 18th and Illinois Streets and 19th Street and Illinois Streets. The train signals would be activated by the train operator and would require vehicular traffic to wait at the red signal.¹⁶ An Environmental Impact Statement and Environmental Impact Report (EIS/EIR) was

¹⁶ It is noted that the Mission Bay Loop Project Environmental Assessment (May 2013) indicated that the proposed light rail improvements would not substantially affect intersection LOS conditions along Third and Illinois Streets at 18th and 19th Streets, and traffic conditions would continue to operate satisfactorily. In addition, the project

prepared and approved by the Federal Transit Authority (FTA) in 1999 and as an update to the prior evaluation, an Environmental Assessment (EA) was prepared in May 6, 2013. The FTA identified no substantial adverse effects associated with the project and issued a Findings of No Significant Impact (FONSI) on June 30, 2013.¹⁷

As shown in Table 2 above, under Year 2040 during the weekday PM peak hour, the following study intersections are anticipated to operate at LOS E or F: 19th Street/Illinois Street; 20th Street/Illinois Street; Third Street/Cesar Chavez Street; I-280 Off-Ramp/Mariposa Street; I-280 On-Ramp/Mariposa Street. The proposed project would not contribute considerably to these LOS delay conditions during the weekday PM peak hour as its contribution of an estimated 85 new PM peak hour vehicle trips would not be a substantial proportion of the overall traffic volume or the new vehicle trips generated by Eastern Neighborhoods' Plan projects during the PM peak hour at those intersections.

As shown in Table 3 above, in Year 2040 during the weekend MID peak hour, the following intersections are anticipated to operate unacceptably at LOS F: Third Street/Cesar Chavez Street; I-280 Off-Ramp/Mariposa Street; and 20th Street/Illinois Street. The proposed project would not contribute considerably to LOS delay conditions during the MID peak hour at Third Street/Cesar Chavez Street and I-280 Off-Ramp/Mariposa Street as its contribution of an estimated 110 new MID peak-hour vehicle trips would not be a substantial proportion of the overall traffic volume or the new vehicle trips generated by Eastern Neighborhoods' Plan projects during the MID peak hour at those intersections.

The intersection of 20th Street/Illinois Street currently has an existing signal that currently functions as an all-way stop control. During the weekend MID peak hour, the intersection of 20th Street/Illinois Street would operate at LOS F under 2040 cumulative conditions. The proposed project is expected to add 23 vehicles to the eastbound approach, representing approximately 4 percent of the eastbound approach MID peak hour volume. All other approaches (westbound, northbound and southbound) would operate at LOS F. The proposed project is expected to add 33 vehicles to the westbound approach, which is approximately 10 percent of the MID peak hour westbound approach volume. The proposed project is expected to add 10 vehicles to the northbound approach, which is approximately 1.8 percent of the MID peak hour northbound approach volume. The proposed project is expected to add eight vehicles to the southbound approach, which is 2.4 percent of the MID peak hour southbound approach volume. The proposed project would contribute over five percent of traffic volumes to the westbound approach at the intersection of 20th and Illinois Streets under 2040 cumulative conditions; any traffic contribution in the cumulative context that is five percent and above is considered to be a substantial contribution to a poorly operating intersection. The proposed project's contributions to this poorly operating intersection would therefore be considered to contribute considerably to the previously identified Eastern Neighborhoods PEIR significant cumulative traffic impact for the Central Waterfront area.

The Eastern Neighborhoods PEIR analyzed the cumulative traffic effects of development resulting from the implementation of the Eastern Neighborhoods Rezoning and Area Plans and rezoning of four Plan Areas. The FEIR analyzed the effects of increased traffic on several representative study intersections

would not result in any potential adverse effects to transit, pedestrian, bicyclist facilities or to users of such facilities.

¹⁷ Mission Bay Loop information is available online at: <http://www.sfmta.com/projects-planning/projects/mission-bay-loop>; accessed October 5, 2015.

within the Eastern Neighborhoods that were selected to provide an overall characterization of existing and future traffic conditions within the area. The FEIR identified cumulative traffic impacts for several representative study intersections including Third and Cesar Chavez Streets, Third and Evans Streets, Cesar Chavez and Evans Streets, 25th and Indiana Streets, Third and King Streets, Sixth and Brannan Streets, Seventh and Harrison Streets, Guerrero and Duboce Streets, Mission/Otis/Thirteenth Streets, South Van Ness and Thirteenth Streets, DeHaro/Division/King Streets, Rhode Island and Sixteenth Streets, and Rhode Island and Division Streets. There are several similarities between the representative study intersections and the intersection of 20th and Illinois Streets, including similar lane geometry and turning movements. In addition, the traffic volumes and the street function associated with the above-listed representative study intersections are substantially similar to the traffic volumes and the street function of the 20th Street and Illinois Street intersection, and are representative of the cumulative traffic impacts resulting from the Eastern Neighborhoods Rezoning and Area Plans; therefore, the analysis contained within the Eastern Neighborhoods PEIR reasonably predicts the significant cumulative impact at 20th and Illinois Streets.

To mitigate the 2040 significant cumulative traffic impact, Eastern Neighborhoods PEIR Mitigation Measure E-1: Traffic Signal Installation (Project Mitigation Measure 2) would apply. This includes installation of a new a traffic signal at the intersection of 20th and Illinois Streets would need to be installed in order to upgrade the existing signal that currently functions as an all-way stop control. With this new upgraded signal, the average vehicle delay would decrease, and the intersection would operate at LOS B. There are a number of proposed developments in the immediate vicinity of this intersection, most noticeably at Pier 70, that would contribute to growth in future traffic volumes and increased delays at this intersection. The mitigation measure, implementation of a traffic signal at the intersection of 20th and Illinois Streets, could be linked to these and other proposed development projects in the area. Under this mitigation measure, the project sponsor for the proposed project would pay its fair share contribution to this signal to mitigate the significant cumulative traffic impact at the intersection of 20th and Illinois Streets, which is their share of the mitigation to upgrade the traffic signal at this intersection. The amount and schedule for payment for the proposed project's fair share contribution to the mitigation shall be determined by SFMTA.

The proposed project's fair share contribution to the 20th and Illinois Streets intersection mitigation measure (traffic signal) would reduce the project's contribution to the Eastern Neighborhoods PEIR significant cumulative impact for the Central Waterfront area. However, due to the uncertainty that the remainder of the mitigation measure would be implemented; that is, the uncertainty that the remaining cost of the traffic signal would be obtained, the cumulative traffic impact for the Central Waterfront area, including at the 20th and Illinois Streets intersection, would be considered significant and unavoidable. This significant and unavoidable impact was identified and discussed in the Eastern Neighborhoods PEIR.

Transit

Mitigation Measures E-5 through E-11 in the Eastern Neighborhoods PEIR were adopted as part of the Plan with uncertain feasibility to address significant transit impacts. These measures are not applicable to the proposed project, as they are plan-level mitigations to be implemented by City and County agencies. In compliance with a portion of Mitigation Measure E-5: Enhanced Transit Funding, the City adopted impact fees for development in the Eastern Neighborhoods that go toward funding transit and complete

streets. In addition, the City is currently conducting outreach regarding Mitigation Measures E-5: Enhanced Transit Funding and Mitigation Measure E-11: Transportation Demand Management as part of the Transportation Sustainability Program.¹⁸ In compliance with all or portions of Mitigation Measure E-6: Transit Corridor Improvements, Mitigation Measure E-7: Transit Accessibility, Mitigation Measure E-9: Rider Improvements, and Mitigation Measure E-10: Transit Enhancement, the SFMTA is implementing the Transit Effectiveness Project (TEP), which was approved by the SFMTA Board of Directors in March 2014. The TEP (now called Muni Forward) includes system-wide review, evaluation, and recommendations to improve service and increase transportation efficiency. Examples of transit priority and pedestrian safety improvements within the Eastern Neighborhoods Plan area as part of Muni Forward include the 14 Mission Rapid Transit Project, the 22 Fillmore Extension along 16th Street to Mission Bay (expected construction between 2017 and 2020), and the Travel Time Reduction Project on Route 9 San Bruno (initiation in 2015). In addition, Muni Forward includes service improvements to various routes with the Eastern Neighborhoods Plan area; for instance the implemented new Route 55 on 16th Street.

Mitigation Measure E-7 also identifies implementing recommendations of the San Francisco Bicycle Plan and Better Streets Plan. As part of the San Francisco Bicycle Plan, adopted in 2009, a series of minor, near-term, and long-term bicycle facility improvements are planned within the Eastern Neighborhoods, including along 2nd Street, 5th Street, 17th Street, Townsend Street, Illinois Street, and Cesar Chavez Boulevard. The San Francisco Better Streets Plan, adopted in 2010, describes a vision for the future of San Francisco's pedestrian realm and calls for streets that work for all users. The Better Streets Plan requirements were codified in Section 138.1 of the Planning Code and new projects constructed in the Eastern Neighborhoods Plan area are subject to its varying requirements, dependent on project size. Another effort which addresses transit accessibility, Vision Zero, was adopted by various City agencies in 2014. Vision Zero focuses on building better and safer streets through education, evaluation, enforcement, and engineering. The goal is to eliminate all traffic fatalities by 2024. Vision Zero projects within the Eastern Neighborhoods Plan area include pedestrian intersection treatments along Mission Street from 18th to 23rd streets, the Potrero Avenue Streetscape Project from Division to Cesar Chavez streets, and the Howard Street Pilot Project, which includes pedestrian intersection treatments from 4th to 6th streets.

The project site is located within a quarter mile of several local transit lines including Muni lines 22 Fillmore, 48 Quintara-24th Street, and the T Third light rail. The proposed project would be expected to generate 180 daily transit trips, including 25 during the PM peak hour and 33 during the weekend MID peak hour. The addition of 25 PM peak hour transit trips would contribute less than one percent to Muni corridor ridership levels. As such, the proposed project would not result in a substantial contribution to existing ridership levels or cause a substantial increase in delays or operating costs such that significant adverse impacts in transit service could result.

Each of the rezoning options in the Eastern Neighborhoods PEIR identified significant and unavoidable cumulative impacts relating to increases in transit ridership on Muni lines, with the Preferred Project having significant impacts on seven lines. Of those lines, the project site is located within a quarter-mile of Muni lines 22-Fillmore and 48 Quintara. The proposed project would not contribute considerably to these conditions as its minor contribution of 25 PM peak hour transit trips would not be a substantial proportion of the overall additional transit volume generated by Eastern Neighborhood projects. The proposed project would also not contribute considerably to 2040 cumulative transit conditions and thus would not result in any significant cumulative transit impacts.

¹⁸ <http://tsp.sfplanning.org>

Pedestrian

The proposed project would generate 71 pedestrian trips (25 transit and 46 walk) during a typical weekday PM peak hour and 109 pedestrian trips (33 transit and 76 walk) during a typical weekend MID peak hour. The proposed project would include multiple pedestrian entrances to accommodate visitors and employees. Pedestrian access locations would be along the east side of Illinois Street, with direct access to the playground and multi-use lawn in the northwest section of the project site; Building 49 (to include recreational uses and boat storage, and Class 1 bicycle parking); and the picnic and multi-use lawn area in the southwest portion of the project site. Pedestrians would also be able to access the proposed plaza, Keel Park area, and Building 109 West via sidewalks along the north side of 19th Street. Stop control would be installed at this intersection for both the existing eastbound and proposed westbound direction of 19th Street. Additionally, if the proposed project is approved and constructed before the SFMTA Mission Bay Loop Project, it would also modify the existing crosswalks at the 18th Street/Illinois Street and 19th Street/Illinois Street intersections. At the 18th Street/Illinois Street intersection, three new crosswalks would be constructed, while two new crosswalks would be installed across the south and west legs of the 19th Street/Illinois Street intersection. In addition, the Crane Cove Project would construct crosswalks across the remaining legs of the 18th Street/Illinois Street and 19th Street /Illinois Street intersections that are not a part of the Mission Bay Loop Project. Overall, the proposed project would improve the streetscape and landscape conditions with new sidewalks, plantings, ornamental furniture, benches, lounge areas, and internal pedestrian pathways within the project site. The project design would also promote pedestrian safety and comfort, and would allow for adequate public space and maneuverability for safe pedestrian passage along the sidewalk areas. Furthermore, the potential increase in pedestrian trips would not result in substantial overcrowding along sidewalk areas or at nearby transit stops and stations, as new sidewalks would range between 8 and 12 feet in total width and would be able to accommodate an increase in demand. Additionally, because on-street parking would remain along the east side of Illinois Street, these parked vehicles would also serve as a buffer between moving pedestrians along the sidewalks and vehicular traffic along Illinois Street.

Although the proposed project would result in an increase in the number of vehicles in the vicinity of the project site, this increase would not be substantial enough to create potentially hazardous conditions for pedestrians or otherwise substantially interfere with pedestrian accessibility to the site and adjoining areas, including the nearby BAE facility. The proposed pedestrian improvements would continue to allow for adequate public space and maneuverability for safe pedestrian passage within the project site and to nearby transit facilities (e.g., Muni bus and light rail stops), streets, and neighboring uses. As described above, the proposed project would not result in an increase in overcrowding on public sidewalks, interfere with pedestrian circulation to nearby areas and buildings, or create potentially hazardous conditions for pedestrians, and would create additional corridors for pedestrian circulation. As such, pedestrian impacts resulting from the project would be less than significant.

The proposed project would include a new driveway access point along the north side of the 19th Street extension, about 450 feet east of Illinois Street, to access the parking lot at Building 109 West. This new driveway access point would have the potential to conflict with pedestrians along the north side 19th Street extension sidewalk. While pedestrian impacts would be less than significant, implementation of Project Improvement Measure 2: Installation of Traffic Calming Devices at Parking Lot Exiting Lane, which would result in the installation of appropriate traffic calming devices (e.g., speed bump, rumble strips, "slow speed" signage, etc.) at the exiting travel lane along the garage driveway to reduce speeds of

exiting vehicles traveling out of the parking lot would help to further reduce and/or eliminate potential vehicle-pedestrian conflicts. Additionally, the implementation of Project Improvement Measure 1: Monitoring and Abatement of Queues, as discussed in the Vehicle Queuing section above, would also help further reduce less-than-significant pedestrian impacts.

There would be a projected increase in background vehicle traffic between Existing plus Project and 2040 cumulative conditions. This would result in an increase in the potential for vehicle-pedestrian conflicts at intersections in the study area. While there would be a general increase in vehicle traffic that is expected through the future 2040 cumulative conditions, the proposed project would not create potentially hazardous conditions for pedestrians, or otherwise interfere with pedestrian accessibility to the site and adjoining areas. As previously mentioned, improvement measures to further reduce potential pedestrian impacts have been included as a part of this analysis. Based on these findings, the proposed project, in combination with past, present and reasonably foreseeable developments in San Francisco, would result in less-than-significant cumulative pedestrian impacts.

Bicycle

There are several designated bicycle routes in proximity to the project site: Route 5 along Terry A. Francois Boulevard and Illinois Street; Route 7 along Indiana Street; Route 23 along Mariposa and Mississippi Streets; and Route 60 along Cesar Chavez Street. As such, it is anticipated that a portion of the four (4) "other" weekday PM peak hour and seven (7) weekend MID peak hour trips generated by the proposed project would be bicycle trips. The routes stated above provide direct connectivity to several bicycle routes throughout the area and provide linkage to other regions of the city. With the current bicycle and traffic volumes on the adjacent streets, bicycle travel generally occurs without major impedances or safety problems. Based on the existing bicycle network within the project vicinity, it is reasonable to assume that the anticipated increase in bicyclists associated with the proposed project would be accommodated by existing bicycle network facilities. The proposed project would not introduce any design features that would eliminate or impede access to existing bicycle routes in proximity to the project site. It is noted that although the proposed project would result in an increase in the number of vehicles in the vicinity of the project site, this anticipated increase would not be substantial enough to create potentially hazardous conditions for bicyclists or otherwise substantially interfere with bicycle accessibility to the site and adjoining areas, and therefore, the proposed project would have less-than-significant bicycle impacts.

Project Improvement Measure 1: Monitoring and Abatement of Queues and Project Improvement Measure 2: Installation of Traffic Calming Devices at Parking Lot Exiting Lane, discussed in the sections above, would also help further reduce any less-than-significant effects related to conflicts between vehicles and other users of roadways within the project site.

Bicycle trips in the area may increase between the completion of the project and the cumulative scenario due to general growth in the area. In particular, the proposed project would be designed to provide adequate points of access to bicycle parking within the project site and adjacent sidewalk areas, and such facilities would be designed to reduce any potential conflicts with private cars or delivery/freight vehicles. Additionally, the proposed project would not reduce access to the existing bicycle routes along Illinois, Mariposa, Indiana, Mississippi Streets, or Terry A. Francois Boulevard, and these facilities would

be able to accommodate any potential increase in bicycle trips over time. This increase would not reach a level that would create potentially hazardous conditions for bicycles.

Under cumulative conditions, there is a projected increase in vehicles at intersections in the vicinity of the proposed project, which may result in an increase in vehicle-bicycle conflicts at intersections in the study area. Although there would be a general increase in vehicle traffic that is expected through the future 2040 cumulative conditions, the proposed project would not create potentially hazardous conditions for bicycles or otherwise interfere with bicycle accessibility to the project site and adjoining areas, or substantially affect nearby bicycle routes. Based on these findings, the proposed project, in combination with past, present and reasonably foreseeable developments in San Francisco, would result in less-than-significant cumulative impacts on bicyclists.

Loading

The proposed project would generate up to nine daily and one peak-hour deliveries. The project would provide a commercial loading zone consisting of two curbside loading spaces on the south side of the 19th Street extension within the project site, directly across from Building 109. This would meet the project demand for loading spaces and therefore would reduce the potential for double-parking of vehicles and/or conflicts between freight/delivery vehicles and other users of the roadway and adjacent sidewalk areas. Based on these findings, the proposed project's loading activities would not create potentially hazardous traffic conditions or significant delays affecting traffic, transit, bicycles or pedestrians, and the proposed project would have a less-than-significant loading impact.

To further reduce these less-than-significant loading impacts, Project Improvement Measure 3: Convert On-Street Parking Spaces and Install Freight/Delivery Loading Zone along Illinois Street is recommended to provide dedicated on-street area for freight/delivery activities and to avoid using other on-street parking spaces or double parking within travel lanes. Additionally, Project Improvement Measure 4: Coordination of Freight/Loading Activities is also proposed to enforce appropriate loading procedures to avoid any blockages along Illinois and 19th Streets during loading activities, reduce any potential conflicts between delivery vehicles and other users of adjacent roadway (e.g., bicyclists) and pedestrians walking along these adjacent streets, and to avoid scheduling loading activities during peak commute periods.

Loading impacts are by their nature localized and site-specific, and would not contribute to impacts from other development projects near the project site. As such, the proposed project would not result in loading impacts, as the estimated loading demand would be met at on-street parking spaces near the project site (as previously discussed) and in the event such spaces are not available, the improvement measures discussed above have been recommended to further reduce any potential on- or off-site loading impacts. Therefore, based on these findings, the proposed project, in combination with past, present and reasonably foreseeable developments in San Francisco, would result in less-than-significant cumulative loading impacts.

Emergency Access

The street network serving the project area currently accommodates the movements of emergency vehicles that travel to the project site. In the event of an emergency, vehicles can access the project site from Illinois and 19th Streets immediately adjacent to the site, as is done under existing conditions. In addition, emergency vehicles would be able to access the site internally via the project's 19th Street

extension and Georgia Street. Furthermore, although the proposed project would generate additional traffic in the area, such an increase in vehicles would not impede or hinder the movement of emergency vehicles in the project area, for example from the neighboring fire stations (Fire Department Fire Station No. 25 or Fire Station No. 37). The proposed project would result in the extension of 19th Street, which would comprise two 12-foot-wide travel lanes, no on-street parking, and a total width of 26 feet curb-to-curb. The project's Georgia Street extension would include two 13-foot-wide travel lanes and no on-street parking. Both extensions would be able to accommodate emergency vehicles, including fire apparatus and trucks, police and ambulatory vehicles. Based on these findings, the proposed project's impact on emergency vehicle access would be less than significant.

Construction

Detailed plans for construction activities have not yet been finalized, but during the anticipated 28-month construction period, temporary and intermittent transportation impacts would result from construction-related truck movements to and from the project site during demolition and construction activities associated with the proposed development.

Construction-related activities would typically occur Monday through Friday, and occasional Saturdays as required, and is not anticipated to occur on Sundays or major legal holidays. The hours of construction would be enforced by the Port of San Francisco, and the contractor would need to comply with the San Francisco Noise Ordinance, enforced by the SFPD, which permits construction noise seven days a week, between 7:00 a.m. and 8:00 p.m.

The proposed project would be constructed in two sequential phases. Phase 1 would occur over an estimated 16-month period and include demolition, export of soils, grading, importing of soils/materials, and hardscape construction and importing of concrete. Phase 2 would occur over an estimated 12-month period and include all of the same activities as Phase 1, with the exception of grading and exporting soils.

Construction activities would result in an increase in vehicle trips, including truck trips, and transport of construction equipment, machinery, and related materials over the 28-month construction period. Once transported, the majority of equipment would be stored on site and staging areas would also be located on site and not along any traffic or parking lanes on Illinois Street, 20th Street or any other nearby local street. In the event that any lanes (travel and parking) and/or sidewalks need to be temporarily closed, such closures are subject to review and approval by the Transportation Advisory Staff Committee (TASC) an interdepartmental committee, including the Police, Public Works, Planning, and Fire Departments and SFMTA Muni Operations. The construction management plan reviewed by the TASC would address issues of circulation (traffic, pedestrians, and bicycle), safety, parking and other project construction in the area. The project would be required to consult with SFMTA Muni Operations prior to construction to review potential effects on nearby transit operations.

Throughout the construction period, there would be a flow of construction-related trucks into and out of the project site. The impact of construction truck traffic would be a temporary lessening of the capacities of local streets due to the slower movement and larger turning radii of trucks, which may affect traffic operations. It is anticipated that a majority of the construction-related truck traffic would use I-80, I-280 and U.S. 101 to access the project site from the East Bay and South Bay. For access between the project site and the East Bay, trucks would be routed to the site from I-80 westbound to U.S. 101 southbound via the Cesar Chavez Street off-ramp and would return via the Cesar Chavez Street on-ramp to U.S. 101 and then

to eastbound I-80. For access between the project site and the South Bay, trucks would be routed from I-280 northbound to the site via the Mariposa Street off-ramp, and would return to I-280 southbound from the on-ramp at Mariposa Street. Trucks from the South Bay would also be routed to the site from U.S. 101 northbound via Cesar Chavez Street off-ramp and would return via the Cesar Chavez Street on-ramp to U.S. 101, trucks traveling along U.S. 101 would also merge onto I-280 and use the on- and off-ramps (as previously described) in order to access the project site.

It is anticipated that there would be an average of 15 construction workers per day at the project site, Monday through Friday between the hours of 7:00 a.m. and 3:00 p.m., for the duration of both construction phases. The trip distribution and mode split of construction workers are not known; however, construction workers would be encouraged to carpool or take public transportation and avoid parking their vehicles in and around the project site. It is also anticipated that the addition of the worker-related vehicle or transit trips would not substantially affect transportation conditions, as any impacts on local intersections or the transit network would be similar to, or less than, those associated with the proposed project.

The proposed project would generate a total of 3,605 truck trips (round trips) over the 28-month period. However, truck trips would be scheduled on a month-to-month basis, and the frequency and demand of truck trips would vary based on scheduled activities and daily progress during construction. At peak construction months, the proposed project is assumed to generate up to 12 trucks per day, which equates to about one truck trip per hour and would generate fewer truck trips per day during non-peak months of construction. It is further assumed that the peak construction period would occur over a sequential 5-month period during Phase 1 of construction and the prior months and months after the peak period would require fewer truck trips (about an average of 4 truck trips per day, or one truck trip every 3 hours per day).

Assuming that all construction workers would commute to/from the project via private automobile, the proposed project would generate a total of 27 round trips per day (15 construction worker trips and 12 truck trips) during peak construction months, and would average about 19 round trips per day (15 construction worker trips and 4 truck trips) during non-peak months of construction. Based on these estimates, the proposed project would not generate a substantial amount of new vehicle trips nor would these trips occur during typical peak commute periods each day.

The construction contractor would be required to meet the *City of San Francisco's Regulations for Working in San Francisco Streets*, (the "Blue Book"), and would be required to meet with Muni, SFMTA Sustainable Streets, and other responsible city agencies to determine feasible traffic management measures to reduce traffic congestion during construction of this project and other nearby projects, as appropriate.

For the reasons above and as construction-related impacts are temporary and limited in duration, the proposed project would result in less-than-significant construction-related transportation impacts.

While construction related impacts would be less than significant, improvement measures could be implemented to further reduce these less-than-significant impacts. Project Improvement Measure 5: Construction Truck Deliveries During Off-Peak Periods and Project Improvement Measure 6: Construction Management Plan, which would further minimize disruption of the general traffic flow on adjacent streets during the AM and PM peak commute periods, require coordination with SFMTA, the

Fire Department, Muni, and the Planning Department to determine feasible measures to reduce traffic congestion, minimize construction impacts on nearby businesses, and minimize traffic and parking demand associated with construction workers. Implementation of these improvement measures would not have any additional transportation-related impacts.

The construction of the proposed project may overlap with the construction of other projects. As a result, construction activities associated with these other projects would affect access, traffic, and pedestrians on streets used as access routes to and from the project sites (e.g., Illinois Street, Third Street, 20th Street, Cesar Chavez Street, etc.). Overall, localized cumulative construction-related transportation impacts could occur as a result of future, foreseeable projects that generate increased traffic at the same time and on the same roads as the proposed project. As discussed above, the Project Sponsor would coordinate with various City departments such as SFMTA and DPW through the TASC to develop coordinated plans that would address construction-related vehicle routing and pedestrian/bicycle movements adjacent to the construction area for the duration of construction overlap. Per the construction project improvement measures discussed above, the construction manager for each individual project would work with the various departments of the City to develop a detailed and coordinated plan that would address construction vehicle routing, traffic control and pedestrian movement adjacent to the construction area for the duration of any overlap in construction activity. These improvement measures would further reduce the proposed project's less-than-significant impacts related to potential conflicts between construction activities and pedestrians, transit, and autos, including construction truck traffic management, project construction updates for adjacent businesses and residents, and carpool and transit access for construction workers. Therefore, based on these findings, the proposed project, in combination with past, present, and reasonably foreseeable developments in San Francisco, would result in a less-than-significant cumulative construction-related transportation impact.

Parking

On an average weekday, the demand for parking would be for 46 spaces. The proposed project would provide 25 off-street spaces. Thus, as proposed, the project would have an unmet parking demand of an estimated 21 spaces. At this location, the unmet parking demand could be accommodated within existing on-street and off-street parking spaces within a reasonable distance of the project vicinity. Additionally, the project site is well served by public transit and bicycle facilities. Therefore, any unmet parking demand associated with the project would not materially affect the overall parking conditions in the project vicinity such that hazardous conditions or significant delays would be created.

Parking conditions are not static, as parking supply and demand varies from day to day, from day to night, from month to month, etc. Hence, the availability of parking spaces (or lack thereof) is not a permanent physical condition, but changes over time as people change their modes and patterns of travel. While parking conditions change over time, a substantial shortfall in parking caused by a project that creates hazardous conditions or significant delays to traffic, transit, bicycles or pedestrians could adversely affect the physical environment. Whether a shortfall in parking creates such conditions will depend on the magnitude of the shortfall and the ability of drivers to change travel patterns or switch to other travel modes. If a substantial shortfall in parking caused by a project creates hazardous conditions or significant delays in travel, such a condition could also result in secondary physical environmental impacts (e.g., air quality or noise impacts caused by congestion), depending on the project and its setting.

The absence of a ready supply of parking spaces, combined with available alternatives to auto travel (e.g., transit service, taxis, bicycles or travel by foot) and a relatively dense pattern of urban development, induces many drivers to seek and find alternative parking facilities, shift to other modes of travel, or change their overall travel habits. Any such resulting shifts to transit service or other modes (walking and biking), would be in keeping with the City’s “Transit First” policy and numerous San Francisco General Plan Policies, including those in the Transportation Element. The City’s Transit First Policy, established in the City’s Charter Article 8A, Section 8A.115, provides that “parking policies for areas well served by public transit shall be designed to encourage travel by public transportation and alternative transportation.”

For the above reasons, the proposed project would not result in significant transportation impacts that were not identified in the Eastern Neighborhoods PEIR.

<u>Topics:</u>	<i>Significant Impact Peculiar to Project or Project Site</i>	<i>Significant Impact not Identified in PEIR</i>	<i>Significant Impact due to Substantial New Information</i>	<i>No Significant Impact not Previously Identified in PEIR</i>
5. NOISE—Would the project:				
a) Result in exposure of persons to or generation of noise levels in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Result in exposure of persons to or generation of excessive groundborne vibration or groundborne noise levels?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Result in a substantial permanent increase in ambient noise levels in the project vicinity above levels existing without the project?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Result in a substantial temporary or periodic increase in ambient noise levels in the project vicinity above levels existing without the project?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e) For a project located within an airport land use plan area, or, where such a plan has not been adopted, in an area within two miles of a public airport or public use airport, would the project expose people residing or working in the area to excessive noise levels?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
f) For a project located in the vicinity of a private airstrip, would the project expose people residing or working in the project area to excessive noise levels?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
g) Be substantially affected by existing noise levels?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

The Eastern Neighborhoods PEIR determined that implementation of the Eastern Neighborhoods Area Plans and Rezoning would result in significant noise impacts during construction activities and in conflicts between noise-sensitive uses, such as housing, in proximity to noisy uses such as PDR, retail, entertainment, cultural/institutional/educational uses, and office uses. The Eastern Neighborhoods PEIR also determined that incremental increases in traffic-related noise attributable to implementation of the Eastern Neighborhoods Area Plans and Rezoning would be less than significant. The Eastern

Neighborhoods PEIR therefore identified six noise mitigation measures that would reduce noise impacts from construction and noisy land uses to less-than-significant levels.

Eastern Neighborhoods PEIR Mitigation Measures F-1 and F-2 relate to construction noise. Mitigation Measure F-1 addresses individual projects that include pile-driving, and Mitigation Measure F-2 addresses individual projects that include particularly noisy construction procedures (including pile-driving). The proposed project would include pile driving to construct new pile-supported look out piers at the project site so Mitigation Measures F-1 (Project Mitigation Measure 3) and F-2 (Project Mitigation 4) would apply.

In addition, all construction activities for the proposed project (approximately 16 months for Phase I and 12 months for Phase II) would be subject to and would comply with the San Francisco Noise Ordinance (Article 29 of the San Francisco Police Code) (Noise Ordinance). Construction noise is regulated by the Noise Ordinance. The Noise Ordinance requires that construction work be conducted in the following manner: (1) noise levels of construction equipment, other than impact tools, must not exceed 80 dBA at a distance of 100 feet from the source (the equipment generating the noise); (2) impact tools must have intake and exhaust mufflers that are approved by the Director of the Department of Public Works (DPW) to best accomplish maximum noise reduction; and (3) if the noise from the construction work would exceed the ambient noise levels at the site property line by 5 dBA, the work must not be conducted between 8:00 p.m. and 7:00 a.m. unless the Director of DPW authorizes a special permit for conducting the work during that period.

The Port Engineering Division is responsible for enforcing the Noise Ordinance for projects during normal business hours (8:00 a.m. to 5:00 p.m.). The Police Department is responsible for enforcing the Noise Ordinance during all other hours. Nonetheless, during the construction period for the proposed project of approximately 28 months (approximately 16 months for Phase I and 12 months for Phase II), occupants of the nearby properties could be disturbed by construction noise. Times may occur when noise could interfere with indoor activities in nearby residences and other businesses near the project site. The increase in noise in the project area during project construction would not be considered a significant impact of the proposed project, because the construction noise would be temporary, intermittent, and restricted in occurrence and level, as the contractor would be required to comply with the Noise Ordinance and Eastern Neighborhoods PEIR Mitigation Measures F-1 and F-2, which would reduce construction noise impacts to a less than significant level.

Eastern Neighborhoods PEIR Mitigation Measures F-3 and F-4 require that a detailed analysis of noise reduction requirements be conducted for new development that includes noise-sensitive uses located along streets with noise levels above 60 dBA (Ldn). The proposed project would not include any noise-sensitive uses, thus PEIR Mitigation Measures F-3 and F-4 would not apply.

Eastern Neighborhoods PEIR Mitigation Measure F-5 addresses impacts related to individual projects that include new noise-generating uses that would be expected to generate noise levels in excess of ambient noise in the proposed project site vicinity. The proposed project would not double traffic volumes in the project vicinity which would be necessary to produce an increase in ambient noise levels perceptible to most people (3 decibel increase).¹⁹ Additionally, while the proposed project would re-route BAE Shipyard traffic from 20th Street to the 19th Street extension, the transportation study indicates that

¹⁹ CHS Consulting, 19th Street Extension/Crane Cove Park Project Transportation Impact Study, October 2015. This document is available for review at the San Francisco Planning Department, 1650 Mission Street, Suite 400, as part of Case File No. 2015-001314ENV.

the level of truck activity would not be substantial on a given day (e.g., about one truck trip per hour). Therefore, the proposed project would not result in a substantial permanent increase in ambient noise levels in the project vicinity. It is not anticipated that the proposed park uses would generate noise levels in excess of ambient noise, thus PEIR Mitigation Measure F-5 would not apply.

As discussed above, the Mission Bay Loop project would provide turn-around capabilities for the T Third light rail via a connection trackway from Third Street to 18th, 19th, and Illinois Streets. The existing light rail trackway on 18th and 19th Streets between Third and Illinois Streets would be extended to Illinois Street in order to complete the loop. An Environmental Impact Statement and Environmental Impact Report (EIS/EIR) was prepared and approved by the Federal Transit Authority (FTA) in 1999 and as an update to the prior evaluation, an Environmental Assessment (EA) was prepared in May 6, 2013. The EA indicated that the increase in both day-night average and peak hour average noise levels on nearby residences from operation of the Loop would be less than one decibel. Further, the noise contribution of six to eight light rail vehicles during peak commute hours would not significantly elevate existing noise levels. The FTA identified no substantial adverse effects associated with the project and issued a Findings of No Significant Impact (FONSI) on June 30, 2013.²⁰

Mitigation Measure F-6 addresses impacts from existing ambient noise levels on open space required under the Planning Code for new development that includes noise sensitive uses. The proposed project would not include any noise-sensitive uses, thus PEIR Mitigation Measure F-6 would not apply.

The project site is not located within an airport land use plan area, within two miles of a public airport, or in the vicinity of a private airstrip. Therefore, topic 12e and f from the CEQA Guidelines, Appendix G is not applicable.

For the above reasons, the proposed project would not result in significant noise impacts that were not identified in the Eastern Neighborhoods PEIR.

²⁰ Mission Bay Loop information is available online at: <http://www.sfmta.com/projects-planning/projects/mission-bay-loop>; accessed October 5, 2015.

<i>Topics:</i>	<i>Significant Impact Peculiar to Project or Project Site</i>	<i>Significant Impact not Identified in PEIR</i>	<i>Significant Impact due to Substantial New Information</i>	<i>No Significant Impact not Previously Identified in PEIR</i>
6. AIR QUALITY—Would the project:				
a) Conflict with or obstruct implementation of the applicable air quality plan?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Violate any air quality standard or contribute substantially to an existing or projected air quality violation?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Result in a cumulatively considerable net increase of any criteria pollutant for which the project region is non-attainment under an applicable federal, state, or regional ambient air quality standard (including releasing emissions which exceed quantitative thresholds for ozone precursors)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Expose sensitive receptors to substantial pollutant concentrations?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e) Create objectionable odors affecting a substantial number of people?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

The Eastern Neighborhoods PEIR identified potentially significant air quality impacts resulting from construction activities and impacts to sensitive land uses²¹ as a result of exposure to elevated levels of diesel particulate matter (DPM) and other toxic air contaminants (TACs). The Eastern Neighborhoods PEIR identified four mitigation measures that would reduce these air quality impacts to less-than-significant levels and stated that with implementation of identified mitigation measures, the Area Plan would be consistent with the Bay Area 2005 Ozone Strategy, the applicable air quality plan at that time. All other air quality impacts were found to be less than significant.

Eastern Neighborhoods PEIR Mitigation Measure G-1 addresses air quality impacts during construction, PEIR Mitigation Measure G-2 addresses the siting of sensitive land uses near sources of TACs and PEIR Mitigation Measures G-3 and G-4 address proposed uses that would emit DPM and other TACs.

Construction Dust Control

Eastern Neighborhoods PEIR Mitigation Measure G-1 Construction Air Quality requires individual projects involving construction activities to include dust control measures and to maintain and operate construction equipment so as to minimize exhaust emissions of particulates and other pollutants. The San Francisco Board of Supervisors subsequently approved a series of amendments to the San Francisco Building and Health Codes, generally referred to as the Construction Dust Control Ordinance (Ordinance 176-08, effective July 30, 2008). The intent of the Construction Dust Control Ordinance is to reduce the quantity of fugitive dust generated during site preparation, demolition, and construction work in order to protect the health of the general public and of on-site workers, minimize public nuisance complaints, and to avoid orders to stop work by DBI. Project-related construction activities would result in construction dust, primarily from ground-disturbing activities.

²¹ The Bay Area Air Quality Management District (BAAQMD) considers sensitive receptors as: children, adults or seniors occupying or residing in: 1) residential dwellings, including apartments, houses, condominiums, 2) schools, colleges, and universities, 3) daycares, 4) hospitals, and 5) senior care facilities. BAAQMD, Recommended Methods for Screening and Modeling Local Risks and Hazards, May 2011, page 12.

For projects over one half-acre, such as the proposed project, the Dust Control Ordinance requires that the project sponsor submit a Dust Control Plan for approval by the San Francisco Department of Public Health. DBI will not issue a building permit without written notification from the Director of Public Health that the applicant has a site-specific Dust Control Plan, unless the Director waives the requirement. The site-specific Dust Control Plan would require the project sponsor to implement additional dust control measures such as installation of dust curtains and windbreaks and to provide independent third-party inspections and monitoring, provide a public complaint hotline, and suspend construction during high wind conditions.

The regulations and procedures set forth by the San Francisco Dust Control Ordinance would ensure that construction dust impacts would not be significant. These requirements supersede the dust control provisions of PEIR Mitigation Measure G-1. Therefore, the portion of PEIR Mitigation Measure G-1 Construction Air Quality that addresses dust control is no longer applicable to the proposed project.

Criteria Air Pollutants

In accordance with the state and federal Clean Air Acts, air pollutant standards are identified for the following six criteria air pollutants: ozone²², carbon monoxide (CO), particulate matter (PM)²³, nitrogen dioxide (NO₂), sulfur dioxide (SO₂), and lead. These air pollutants are termed criteria air pollutants because they are regulated by developing specific public health- and welfare-based criteria as the basis for setting permissible levels. In general, the San Francisco Bay Area Air Basin (SFBAAB) experiences low concentrations of most pollutants when compared to federal or state standards. The SFBAAB is designated as either in attainment²⁴ or unclassified for most criteria pollutants with the exception of ozone, PM_{2.5}, and PM₁₀, for which these pollutants are designated as non-attainment for either the state or federal standards. By its very nature, regional air pollution is largely a cumulative impact in that no single project is sufficient in size to, by itself, result in non-attainment of air quality standards. Instead, a project's individual emissions contribute to existing cumulative air quality impacts. If a project's contribution to cumulative air quality impacts is considerable, then the project's impact on air quality would be considered significant.²⁵

While the Eastern Neighborhoods PEIR determined that at a program-level the Eastern Neighborhoods Rezoning and Area Plans would not result in significant regional air quality impacts, the PEIR states that "Individual development projects undertaken in the future pursuant to the new zoning and area plans would be subject to a significance determination based on the BAAQMD's quantitative thresholds for individual projects."²⁶ The Bay Area Air Quality Management District (BAAQMD) prepared updated *2011 BAAQMD CEQA Air Quality Guidelines* (Air Quality Guidelines),²⁷ which provided new methodologies for analyzing air quality impacts. The Air Quality Guidelines also provide thresholds of significance for those criteria air pollutants that the SFBAAB is in non-attainment. These thresholds of significance are used by the City. Pursuant to the Air Quality Guidelines, projects that meet the screening criteria do not have a significant impact related to criteria air pollutants. Criteria air pollutant emissions during operation of the proposed project would meet the Air Quality Guidelines screening criteria (2613

²⁶ San Francisco Planning Department, Eastern Neighborhood's Rezoning and Area Plans Final Environmental Impact Report. See page 346. Available online at: <http://www.sf-planning.org/Modules/ShowDocument.aspx?documentid=4003>. Accessed June 4, 2014.

²⁷ Bay Area Air Quality Management District, CEQA Air Quality Guidelines, updated May 2011. See pp. 3-2 to 3-3..

acres). Therefore, the project would not have a significant impact related to operational criteria air pollutants, and a detailed air quality assessment for operation of the proposed project is not required.

Construction

Construction activities from the proposed project would result in the emission of criteria air pollutants from equipment exhaust, construction-related vehicular activity, and construction worker automobile trips. Construction of the proposed project would occur over an approximately 28-month period. Construction-related criteria air pollutants generated by the proposed project were quantified using the California Emissions Estimator Model (CalEEMod) and provided within an Air Quality Memorandum.²⁸ The model was developed, including default data (e.g., emission factors, meteorology, etc.) in collaboration with California air districts’ staff. Default assumptions were used where project-specific information was unknown. Emissions were converted from tons/year to lbs/day using the estimated construction duration of 210 working days. As shown in Table 4, project construction emissions would be below the thresholds of significance. Therefore, the portions of Eastern Neighborhoods PEIR Mitigation Measure G-1 related to emissions exhaust by requiring engines to meet higher emission standards on certain types of construction equipment would not apply.

Table 4: Daily Project Construction Emissions

	Pollutant Emissions (Average Pounds per Day)			
	ROG	NOx	Exhaust PM ₁₀	Exhaust PM _{2.5}
Project Emissions	5.4	43.9	2.1	2.0
Significance Threshold	54.0	54.0	82.0	54.0

Emissions over threshold levels are in **bold**.

Source: BAAQMD, 2011; San Francisco Planning Department, 2015.

The proposed project is subject to the San Francisco Clean Construction Ordinance which would require the project construction activities to utilize only off-road equipment and off-road engines fueled by biodiesel fuel grade B20 and utilize only off-road equipment that either meets or exceeds Tier 2 standards for off-road engines or operates with the most effective Verified Diesel Emission Control Strategy (VDECS). Adherence to the requirements of the Clean Construction Ordinance would further reduce project emissions. Therefore, construction air quality emissions impacts would be less than significant.

Health Risk

Since certification of the PEIR, the San Francisco Board of Supervisors approved a series of amendments to the San Francisco Building and Health Codes, generally referred to as the Enhanced Ventilation Required for Urban Infill Sensitive Use Developments or Health Code, Article 38 (Ordinance 224-14, effective December 8, 2014)(Article 38). The purpose of Article 38 is to protect the public health and welfare by establishing an Air Pollutant Exposure Zone and imposing an enhanced ventilation requirement for all urban infill sensitive use development within the Air Pollutant Exposure Zone. The Air Pollutant Exposure Zone as defined in Article 38 are areas that, based on modeling of all known air pollutant sources, exceed health protective standards for cumulative PM_{2.5} concentration, cumulative excess cancer risk, and incorporates health vulnerability factors and proximity to freeways. Projects

²⁸ San Francisco Planning Department, Air Quality Memorandum for Crane Cove Park, August 26, 2015. This document is available for review at the San Francisco Planning Department, 1650 Mission Street, Suite 400, as part of Case File No 2015-001314ENV.

within the Air Pollutant Exposure Zone require special consideration to determine whether the project’s activities would expose sensitive receptors to substantial air pollutant concentrations or add emissions to areas already adversely affected by poor air quality.

Construction

The project site is not located within an identified Air Pollutant Exposure Zone. Therefore, the ambient health risk to sensitive receptors from air pollutants is not considered substantial and the remainder of Mitigation Measure G-1 that requires the minimization of construction exhaust emissions is not applicable to the proposed project.

Siting Sensitive Land Uses

The proposed project would include development of a new park, 19th Street extension, Georgia Street, and Illinois Street improvements, and is not considered a sensitive land use for purposes of air quality evaluation. Therefore, PEIR Mitigation Measure G-2 Air Quality for Sensitive Land Uses is not applicable to the proposed project, and there would be no impact related to siting of new sensitive land uses.

Siting New Sources

The proposed project would not be expected to generate 100 trucks per day or 40 refrigerated trucks per day. With the proposed 19th Street Extension all BAE truck traffic would be rerouted to use the 19th Street extension into the site from Illinois Street. Based on the information provided by the Port of San Francisco, on a typical weekday there are approximately 12 to 28 trucks that travel to/from the BAE facility. Therefore, Eastern Neighborhoods PEIR Mitigation Measure G-3 is not applicable. In addition, the proposed project would not include any sources that would emit DPM or other TACs. Therefore, Eastern Neighborhoods PEIR Mitigation Measure G-4 is not applicable and impacts related to siting new sources of pollutants would be less than significant.

Conclusion

For the above reasons, none of the Eastern Neighborhoods PEIR air quality mitigation measures are applicable to the proposed project and the project would not result in significant air quality impacts that were not identified in the PEIR.

<i>Topics:</i>	<i>Significant Impact Peculiar to Project or Project Site</i>	<i>Significant Impact not Identified in PEIR</i>	<i>Significant Impact due to Substantial New Information</i>	<i>No Significant Impact not Previously Identified in PEIR</i>
7. GREENHOUSE GAS EMISSIONS—Would the project:				
a) Generate greenhouse gas emissions, either directly or indirectly, that may have a significant impact on the environment?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Conflict with any applicable plan, policy, or regulation of an agency adopted for the purpose of reducing the emissions of greenhouse gases?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

The Eastern Neighborhoods PEIR assessed the GHG emissions that could result from the Eastern Neighborhoods Area Plans under the three rezoning options. The Eastern Neighborhoods Rezoning

Options A, B, and C are anticipated to result in GHG emissions on the order of 4.2, 4.3 and 4.5 metric tons of CO₂E²⁹ per service population,³⁰ respectively. The Eastern Neighborhoods PEIR concluded that the resulting GHG emissions from the three options analyzed in the Eastern Neighborhoods Area Plans would be less than significant. No mitigation measures were identified in the PEIR.

The proposed project was determined to be consistent with San Francisco’s GHG Reduction Strategy³¹, which is comprised of regulations that have proven effective in reducing San Francisco’s overall GHG emissions; GHG emissions have measurably been reduced when compared to 1990 emissions levels, demonstrating that the City has met and exceeded Executive Order S-3-05, AB 32, and the Bay Area 2010 Clean Air Plan GHG reduction goals for the year 2020.³² Other existing regulations, such as those implemented through Assembly Bill (AB) 32, will continue to reduce a proposed project’s contribution to climate change. Therefore, the proposed project’s GHG emissions would not conflict with state, regional, and local GHG reduction plans and regulations, and thus the proposed project’s contribution to GHG emissions would not be cumulatively considerable or generate GHG emissions, either directly or indirectly, that would have a significant impact on the environment.

As the proposed project is within the development projected under the Eastern Neighborhoods Rezoning and Area Plans, there would be no additional impacts on greenhouse gas emissions beyond those analyzed in the Eastern Neighborhoods PEIR.

<u>Topics:</u>	<i>Significant Impact Peculiar to Project or Project Site</i>	<i>Significant Impact not Identified in PEIR</i>	<i>Significant Impact due to Substantial New Information</i>	<i>No Significant Impact not Previously Identified in PEIR</i>
8. WIND AND SHADOW—Would the project:				
a) Alter wind in a manner that substantially affects public areas?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Create new shadow in a manner that substantially affects outdoor recreation facilities or other public areas?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Wind

Based upon experience of the Planning Department in reviewing wind analyses and expert opinion on other projects, it is generally (but not always) the case that projects under 80 feet in height do not have the potential to generate significant wind impacts. The proposed project would not involve the development of new buildings or any new structures 80 feet or taller at the project site. While Crane 14 would be moved north, the crane is not a solid mass and wind would be able to pass through it. For the above

²⁹ CO₂E, defined as equivalent Carbon Dioxide, is a quantity that describes other greenhouse gases in terms of the amount of Carbon Dioxide that would have an equal global warming potential.

³⁰ Memorandum from Jessica Range to Environmental Planning staff, Greenhouse Gas Analyses for Community Plan Exemptions in Eastern Neighborhoods, April 20, 2010. This memorandum provides an overview of the GHG analysis conducted for the Eastern Neighborhoods PEIR and provides an analysis of the emissions using a service population (equivalent of total number of residents and employees) metric.

³¹ San Francisco Port, Compliance Checklist Table for Greenhouse Gas Analysis: Table 2 Municipal Projects for Crane Cove Park, July 21, 2015. This document is available for review at the San Francisco Planning Department, 1650 Mission Street, Suite 400, as part of Case File No. 2015-001314ENV.

³² Executive Order S-3-05, Assembly Bill 32, and the Bay Area 2010 Clean Air Plan set a target of reducing GHG emissions to below 1990 levels by year 2020.

reasons, the proposed project is not anticipated to cause significant impacts related to wind that were not identified in the Eastern Neighborhoods PEIR.

Shadow

Planning Code Section 295 generally prohibits new structures above 40 feet in height that would cast additional shadows on open space that is under the jurisdiction of the San Francisco Recreation and Park Commission between one hour after sunrise and one hour before sunset, at any time of the year, unless that shadow would not result in a significant adverse effect on the use of the open space. Under the Eastern Neighborhoods Rezoning and Area Plans, sites surrounding parks could be redeveloped with taller buildings without triggering Section 295 of the Planning Code because certain parks are not subject to Section 295 of the Planning Code (i.e., under jurisdiction of departments other than the Recreation and Parks Department or privately owned). The Eastern Neighborhoods PEIR could not conclude that the rezoning and community plans would result in less-than-significant shadow impacts because the feasibility of mitigation for potential new shadow impacts of unknown proposed proposals could not be determined at that time. Therefore, the PEIR determined shadow impacts to be significant and unavoidable. No mitigation measures were identified in the PEIR.

The proposed project would not involve the development of new buildings or any new structures above 40 feet in height at the project site and therefore, would not have the potential to cast new shadows.

For the above reasons, the proposed project would not result in significant impacts related to shadow that were not identified in the Eastern Neighborhoods PEIR.

<u>Topics:</u>	<i>Significant Impact Peculiar to Project or Project Site</i>	<i>Significant Impact not Identified in PEIR</i>	<i>Significant Impact due to Substantial New Information</i>	<i>No Significant Impact not Previously Identified in PEIR</i>
9. RECREATION—Would the project:				
a) Increase the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facilities would occur or be accelerated?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Include recreational facilities or require the construction or expansion of recreational facilities that might have an adverse physical effect on the environment?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Physically degrade existing recreational resources?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

The Eastern Neighborhoods PEIR concluded that implementation of the Eastern Neighborhoods Rezoning and Area Plans would not result in substantial or accelerated deterioration of existing recreational resources or require the construction or expansion of recreational facilities that may have an adverse effect on the environment. No mitigation measures related to recreational resources were identified in the Eastern Neighborhoods PEIR.

The proposed project includes the construction of a new park and thus would not have the potential to degrade existing recreational facilities. Additionally as it is within the development projected under the Eastern Neighborhoods Rezoning and Area Plans, there would be no additional impacts on recreation beyond those analyzed in the Eastern Neighborhoods PEIR.

<i>Topics:</i>	<i>Significant Impact Peculiar to Project or Project Site</i>	<i>Significant Impact not Identified in PEIR</i>	<i>Significant Impact due to Substantial New Information</i>	<i>No Significant Impact not Previously Identified in PEIR</i>
10. UTILITIES AND SERVICE SYSTEMS—Would the project:				
a) Exceed wastewater treatment requirements of the applicable Regional Water Quality Control Board?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Require or result in the construction of new water or wastewater treatment facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Require or result in the construction of new storm water drainage facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Have sufficient water supply available to serve the project from existing entitlements and resources, or require new or expanded water supply resources or entitlements?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e) Result in a determination by the wastewater treatment provider that would serve the project that it has inadequate capacity to serve the project's projected demand in addition to the provider's existing commitments?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
f) Be served by a landfill with sufficient permitted capacity to accommodate the project's solid waste disposal needs?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
g) Comply with federal, state, and local statutes and regulations related to solid waste?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

The Eastern Neighborhoods PEIR determined that the anticipated increase in population resulting from implementation of the Area Plans would not result in a significant impact on the provision of water, wastewater collection and treatment, and solid waste collection and disposal. No mitigation measures were identified in the PEIR.

Since certification of the PEIR, the San Francisco Public Utilities Commission (SFPUC) adopted the 2010 Urban Water Management Plan (UWMP) in June 2011. The UWMP update includes City-wide demand projections to the year 2035, compares available water supplies to meet demand and presents water demand management measures to reduce long-term water demand. Additionally, the UWMP update includes a discussion of the conservation requirement set forth in Senate Bill 7 passed in November 2009 mandating a statewide 20% reduction in per capita water use by 2020. The UWMP includes a quantification of the SFPUC's water use reduction targets and plan for meeting these objectives. The UWMP projects sufficient water supply in normal years and a supply shortfall during prolonged droughts. Plans are in place to institute varying degrees of water conservation and rationing as needed in response to severe droughts.

In addition, the SFPUC is in the process of implementing the Sewer System Improvement Program, which is a 20-year, multi-billion dollar citywide upgrade to the City's sewer and stormwater infrastructure to ensure a reliable and seismically safe system. The program includes planned

improvements that will serve development in the Eastern Neighborhoods Plan area including at the Southeast Treatment Plant, the Central Bayside System, and green infrastructure projects, such as the Mission and Valencia Green Gateway.

As the proposed project is within the development projected under the Eastern Neighborhoods Rezoning and Area Plans, there would be no additional impacts on utilities and service systems beyond those analyzed in the Eastern Neighborhoods PEIR.

<u>Topics:</u>	<i>Significant Impact Peculiar to Project or Project Site</i>	<i>Significant Impact not Identified in PEIR</i>	<i>Significant Impact due to Substantial New Information</i>	<i>No Significant Impact not Previously Identified in PEIR</i>
11. PUBLIC SERVICES—Would the project:				
a) Result in substantial adverse physical impacts associated with the provision of, or the need for, new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times, or other performance objectives for any public services such as fire protection, police protection, schools, parks, or other services?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

The Eastern Neighborhoods PEIR determined that the anticipated increase in population resulting from implementation of the Area Plans would not result in a significant impact to public services , including fire protection, police protection, and public schools. No mitigation measures were identified in the PEIR.

As the proposed project is within the development projected under the Eastern Neighborhoods Rezoning and Area Plans and would not provide additional residential uses within the Plan Area, there would be no additional impacts on public services beyond those analyzed in the Eastern Neighborhoods PEIR.

<u>Topics:</u>	<i>Significant Impact Peculiar to Project or Project Site</i>	<i>Significant Impact not Identified in PEIR</i>	<i>Significant Impact due to Substantial New Information</i>	<i>No Significant Impact not Previously Identified in PEIR</i>
12. BIOLOGICAL RESOURCES—Would the project:				
a) Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special-status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations or by the California Department of Fish and Game or U.S. Fish and Wildlife Service?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

<u>Topics:</u>	<i>Significant Impact Peculiar to Project or Project Site</i>	<i>Significant Impact not Identified in PEIR</i>	<i>Significant Impact due to Substantial New Information</i>	<i>No Significant Impact not Previously Identified in PEIR</i>
c) Have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e) Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
f) Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

As discussed in the Eastern Neighborhoods PEIR, the Eastern Neighborhoods Plan Area is in a developed urban environment that does not provide native natural habitat for any rare or endangered plant or animal species. There are no riparian corridors, estuaries, marshes, or wetlands in the Plan Area that could be affected by the development anticipated under the Area Plan. In addition, development envisioned under the Eastern Neighborhoods Area Plan would not substantially interfere with the movement of any resident or migratory wildlife species. For these reasons, the PEIR concluded that implementation of the Area Plan would not result in significant impacts on biological resources, and no mitigation measures were identified.

The project site is located within Central Waterfront Plan Area of the Eastern Neighborhoods Area Plans. The proposed improvements are located in a developed industrial setting, where there is little potential to affect terrestrial special-status species (i.e. terrestrial species that are state or federally designated as candidate, threatened, endangered, protected, or species of special concern).³³ The American Kestrel (*falco sparverius*), sometimes colloquially known as the sparrow hawk, and the Townsend’s big-eared bat (*corynorhinus townsendii*) are terrestrial special status species identified as having a low potential of being present within vacant buildings proposed to be demolished. While the potential for the American Kestrel and Townsend’s big-eared bat to be present at the project site is very low, the Port’s standard construction practice is to survey all buildings or portions of buildings slated for demolition or substantial disturbance to identify nesting habitat, or in the case of abandoned buildings, potential roosting habitat, prior to demolition. Additionally, the American Kestrel is protected by the Migratory Bird Treaty Act of 1918 (MBTA) and California Fish and Game Code (CFG) Section 3503 prohibits destruction of the nests or eggs of most native resident and migratory bird species. Section 3503.5 of the CFG specifically prohibits the taking of hawks or destruction of their nests or eggs. Thus, any potential impacts to these species would be less-than-significant by conformance with existing laws and Port construction practices.

³³ San Francisco Port, Biological Resources, Crane Cove Park Project Area, Pier 70, Port of San Francisco, September 2015. This document is available for review at the San Francisco Planning Department, 1650 Mission Street, Suite 400, as part of Case File No. 2015-001314ENV.

While there is little potential to impact terrestrial special-status species, some construction activities in and over-water could affect fish habitat or special-status species, as the proposed project would involve construction of three new pile-supported piers and a new shoreline area. California Central Valley and Central California Coast steelhead, Chinook Salmon, and Green sturgeon are federally designated as threatened or endangered (depending on the specific population), and either migrate through, or in the case of the Green sturgeon, reside in San Francisco Bay. Longfin Smelt ranges throughout San Francisco Bay and is listed as a candidate species under the federal Endangered Species Act. San Francisco Bay is deemed Essential Fish Habitat by the Magnusson-Stevens Fishery Conservation and Management Act for federally managed fisheries, including Pacific Groundfish, Coastal Pelagic Fish, and Pacific Coast Salmon. In San Francisco Bay, Pacific herring and Dungeness crab are managed as commercial fisheries by the California Department of Fish and Wildlife.

In response, the Port has standard construction specifications for in-water work that apply to construction, maintenance, and/or repair activities conducted by contractors or Port staff to prevent adverse impact to marine life. Such measures include seasonal restrictions on work in-water to avoid fish migration and spawning seasons (work may proceed during June 1 through November 30), procedures to reduce underwater noise from pile-driving (i.e., vibratory pile-driving, “soft start” method, bubble curtain for noise abatement as needed) that may impact fish or marine mammals, measures to reduce turbidity resulting from in-water construction activity, and measures to prevent water quality or other impacts from upland construction (i.e. stormwater pollution and prevention plans, erosion control plans, hazardous materials management plans, restrictions on maintenance and fueling of construction vehicles and equipment).

The Port would be required to implement these and any other applicable measures specified by the National Marine Fisheries Service to ensure that in-water construction would not adversely affect species regulated under the federal Endangered Species Act or their critical habitat¹⁸ and would comply with California Department of Fish and Wildlife guidelines for work during Pacific herring spawning season.¹⁹ As part of the Crane Cove Park project, the Port will implement all applicable components of its standard construction specifications for work in water, the above-referenced resource agency guidelines, and any additional measures that emerge from the project construction permitting process with resource agencies.

As such, implementation of the proposed project would not result in significant impacts to biological resources not identified in the Eastern Neighborhoods PEIR.

<i>Topics:</i>	<i>Significant Impact Peculiar to Project or Project Site</i>	<i>Significant Impact not Identified in PEIR</i>	<i>Significant Impact due to Substantial New Information</i>	<i>No Significant Impact not Previously Identified in PEIR</i>
13. GEOLOGY AND SOILS—Would the project:				
a) Expose people or structures to potential substantial adverse effects, including the risk of loss, injury, or death involving:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
i) Rupture of a known earthquake fault, as delineated on the most recent Alquist-Priolo Earthquake Fault Zoning Map issued by the State Geologist for the area or based on other substantial evidence of a known fault? (Refer to Division of Mines and Geology Special Publication 42.)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

<u>Topics:</u>	<i>Significant Impact Peculiar to Project or Project Site</i>	<i>Significant Impact not Identified in PEIR</i>	<i>Significant Impact due to Substantial New Information</i>	<i>No Significant Impact not Previously Identified in PEIR</i>
ii) Strong seismic ground shaking?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
iii) Seismic-related ground failure, including liquefaction?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
iv) Landslides?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Result in substantial soil erosion or the loss of topsoil?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Be located on geologic unit or soil that is unstable, or that would become unstable as a result of the project, and potentially result in on- or off-site landslide, lateral spreading, subsidence, liquefaction, or collapse?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Be located on expansive soil, as defined in Table 18-1-B of the Uniform Building Code, creating substantial risks to life or property?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e) Have soils incapable of adequately supporting the use of septic tanks or alternative wastewater disposal systems where sewers are not available for the disposal of wastewater?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
f) Change substantially the topography or any unique geologic or physical features of the site?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

The Eastern Neighborhoods PEIR concluded that implementation of the Plans would indirectly increase the population that would be subject to an earthquake, including seismically induced ground-shaking, liquefaction, and landslides. The PEIR also noted that new development is generally safer than comparable older development due to improvements in building codes and construction techniques. Compliance with applicable codes and recommendations made in project-specific geotechnical analyses would not eliminate earthquake risks, but would reduce them to an acceptable level, given the seismically active characteristics of the Bay Area. Thus, the PEIR concluded that implementation of the Plan would not result in significant impacts with regard to geology, and no mitigation measures were identified in the Eastern Neighborhoods PEIR.

A geotechnical investigation was prepared for the proposed project³⁴ and includes information gathered from data review, site reconnaissance, field exploration, and laboratory testing. The project site is underlain by artificial fill placed seaward of the historic shoreline. Fill was placed on top of younger bay mud and a majority of fill was placed from the late 1800s to the early 1900s. The original shoreline was comprised of serpentine bluffs overlooking mud flats that extended into San Francisco Bay. Two soil borings at the project site up to the depths of 88 and 60.5 feet below ground surface (bgs) encountered artificial fill, underlain by younger bay mud and then older bay mud and bayside deposits, further underlain by bedrock. Groundwater was measured at depths of approximately 9 and 6.5 feet bgs; however variations in groundwater are anticipated due to the variations of the water level in San Francisco Bay.

³⁴ AGS, Preliminary Geotechnical Study Report Pier 70 Crane Cove Park March 2015 and Draft Geotechnical Study Report Pier 70 Crane Cove Park Phase II May 2014. These documents are available for review at the San Francisco Planning Department, 1650 Mission Street, Suite 400, as part of Case File No. 2015-001314ENV.

The project site does not lie within an Alquist-Priolo Earthquake Fault Zone; therefore the potential for seismic surface ruptures is low. The project site is located within a liquefaction zone as mapped by the California Division of Mines and Geology for the City and County of San Francisco. The project site is in an area that would be exposed to strong ground shaking in the event of an earthquake. According to the geotechnical report, the major geotechnical factors that affect the project site are the presence of uncontrolled fill materials, highly compressible younger bay mud clays, and potentially liquefiable soils above and below the young bay mud layer. The existing very loose to medium dense upper sandy and gravelly fill materials and loose to medium dense sands below the young bay mud at the site have high liquefaction potential when subjected to significant earthquake shaking. Therefore, the geotechnical report recommends a soil improvement program that could include vibro-replacement stone columns and/or grouting techniques that could reduce liquefaction potential at the project site. Alternatively, the existing structures and the proposed overlook piers may be founded on a new deep foundation system, such as cast-in-drilled-hole piles. Additional improvements include replacement of uncontrolled fill material with structural fill materials to support the slab-on-grade concrete platforms, pedestrian paths, and the new street extensions; the design of the new street extensions in accordance with the latest Caltrans standard specifications and procedures; reducing potential differential settlement; and new retaining walls. As part of the proposed project, the existing cove in the northern shoreline would be removed and a crescent shaped sloped beach would be constructed in that area. The sloped area would be covered with rip rap which would keep the erodible soils from the Bay's tidal forces due to the wave action of the Bay.

The project sponsor would be required to adhere to the San Francisco Port Building Code, which specifies seismic design parameters for the design of earthquake-resistant structures and would minimize the potential for structural damage from earthquakes. The geotechnical report concludes that the project site is suitable for the proposed project improvements with incorporation of the report's recommendations.

The project would be required to conform to the San Francisco Port Building Code, which ensures the safety of all Port sponsored construction within Port jurisdiction, and which is enforced by the Port of San Francisco Engineering Division (Port Engineering Division). The final plans will be reviewed by the Port Engineering Division to ensure compliance with all applicable Port Building Code provisions regarding structural safety. The above-referenced geotechnical investigation report would be available for use by the Port Engineering Division during its review of building permits for the site. In addition, Port Engineering Division could require that additional site specific soils report(s) be prepared in conjunction with permit applications, as needed. The Port Engineering Division requirement for a geotechnical report and review of the building permit application pursuant to Port Engineering Division's implementation of the Building Code would ensure that the proposed project would have no significant impacts related to soils, seismic or other geological hazards.

In light of the above, the proposed project would not result in a significant effect related to seismic and geologic hazards. Therefore, the proposed project would not result in significant impacts related to geology and soils that were not identified in the Eastern Neighborhoods PEIR, and no mitigation measures are necessary.

<u>Topics:</u>	<i>Significant Impact Peculiar to Project or Project Site</i>	<i>Significant Impact not Identified in PEIR</i>	<i>Significant Impact due to Substantial New Information</i>	<i>No Significant Impact not Previously Identified in PEIR</i>
14. HYDROLOGY AND WATER QUALITY—Would the project:				
a) Violate any water quality standards or waste discharge requirements?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Substantially deplete groundwater supplies or interfere substantially with groundwater recharge such that there would be a net deficit in aquifer volume or a lowering of the local groundwater table level (e.g., the production rate of pre-existing nearby wells would drop to a level which would not support existing land uses or planned uses for which permits have been granted)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, in a manner that would result in substantial erosion or siltation on- or off-site?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, or substantially increase the rate or amount of surface runoff in a manner that would result in flooding on- or off-site?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e) Create or contribute runoff water which would exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
f) Otherwise substantially degrade water quality?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
g) Place housing within a 100-year flood hazard area as mapped on a federal Flood Hazard Boundary or Flood Insurance Rate Map or other authoritative flood hazard delineation map?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
h) Place within a 100-year flood hazard area structures that would impede or redirect flood flows?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
i) Expose people or structures to a significant risk of loss, injury or death involving flooding, including flooding as a result of the failure of a levee or dam?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
j) Expose people or structures to a significant risk of loss, injury or death involving inundation by seiche, tsunami, or mudflow?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

The Eastern Neighborhoods PEIR determined that the anticipated increase in population resulting from implementation of the Area Plans would not result in a significant impact on hydrology and water quality, including the combined sewer system and the potential for combined sewer outflows, flooding and inundation by seiche or tsunami. No mitigation measures were identified in the PEIR.

The majority of the project site is paved, with existing buildings scattered throughout the site. Areas not paved or covered with buildings are those with compacted, poor quality fill (soil or debris) and/or areas with weedy landscaping. The proposed project would include the installation of several multi-purpose

lawn areas which would increase the pervious area at the project site. Thus the proposed project would not increase stormwater runoff.

A portion of the project site is in a special flood hazard area identified on San Francisco’s Interim Floodplain maps.³⁵ The City of San Francisco has a Floodplain Management Program (San Francisco Administrative Code, Chapter 2A, Article XX) which includes provisions for flood hazard reduction for all new and substantially improved structures within the special flood hazard area. The Floodplain Management Program includes construction standards such as adequate anchors for structures and use of materials resistant to flood damage, which would minimize flood damage. The proposed project would comply with these requirements. Additionally, the proposed project’s design would adapt to potential flooding.³⁶ The grade of the upland area, which includes buildings that would be rehabilitated for ancillary park uses, would be raised to provide protection from future water inundation. Additionally, some areas of the park, such as the shoreline and Slipway 4, would be designed to be inundated under higher sea level conditions. Thus, the project would result in less than significant impacts related to flooding.

Therefore, the proposed project would not result in any significant impacts related to hydrology and water quality that were not identified in the Eastern Neighborhoods PEIR.

<i>Topics:</i>	<i>Significant Impact Peculiar to Project or Project Site</i>	<i>Significant Impact not Identified in PEIR</i>	<i>Significant Impact due to Substantial New Information</i>	<i>No Significant Impact not Previously Identified in PEIR</i>
15. HAZARDS AND HAZARDOUS MATERIALS—				
Would the project:				
a) Create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed school?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Be located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5 and, as a result, would it create a significant hazard to the public or the environment?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

³⁵ City and County of San Francisco, San Francisco Interim Floodplain Map Citywide, Final Draft July, 2008. This document is available for review at the San Francisco Planning Department, 1650 Mission Street, Suite 400, as part of Case File No. 2015-001314ENV.

³⁶ Port of San Francisco, Pier 70 Crane Cove Park – Sea Level Rise/Flooding Adaptation, June 30, 2015. This document is available for review at the San Francisco Planning Department, 1650 Mission Street, Suite 400, as part of Case File No. 2015-001314ENV.

<u>Topics:</u>	<i>Significant Impact Peculiar to Project or Project Site</i>	<i>Significant Impact not Identified in PEIR</i>	<i>Significant Impact due to Substantial New Information</i>	<i>No Significant Impact not Previously Identified in PEIR</i>
e) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project result in a safety hazard for people residing or working in the project area?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
f) For a project within the vicinity of a private airstrip, would the project result in a safety hazard for people residing or working in the project area?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
g) Impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
h) Expose people or structures to a significant risk of loss, injury, or death involving fires?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

The Eastern Neighborhoods PEIR noted that implementation of any of the proposed project’s rezoning options would encourage construction of new development within the project area. The PEIR found that there is a high potential to encounter hazardous materials during construction activities in many parts of the project area because of the presence of 1906 earthquake fill, previous and current land uses associated with the use of hazardous materials, and known or suspected hazardous materials cleanup cases. However, the PEIR found that existing regulations for facility closure, Under Storage Tank (UST) closure, and investigation and cleanup of soil and groundwater would ensure implementation of measures to protect workers and the community from exposure to hazardous materials during construction.

Hazardous Building Materials

The Eastern Neighborhoods PEIR determined that future development in the Plan Area may involve demolition or renovation of existing structures containing hazardous building materials. Some building materials commonly used in older buildings could present a public health risk if disturbed during an accident or during demolition or renovation of an existing building. Hazardous building materials addressed in the PIER include asbestos, electrical equipment such as transformers and fluorescent light ballasts that contain PCBs or di (2 ethylhexyl) phthalate (DEHP), fluorescent lights containing mercury vapors, and lead-based paints. Asbestos and lead based paint may also present a health risk to existing building occupants if they are in a deteriorated condition. If removed during demolition of a building, these materials would also require special disposal procedures. The Eastern Neighborhoods PEIR identified a significant impact associated with hazardous building materials including PCBs, DEHP, and mercury and determined that that Mitigation Measure L-1: Hazardous Building Materials (Project Mitigation Measure 5), as outlined below, would reduce effects to a less-than-significant level. Because the proposed development includes demolition of existing buildings, Mitigation Measure L-1 (Project Mitigation Measure 5) would apply to the proposed project. See full text of Mitigation Measure L-1 in the Mitigation Measures Section below.

Soil and Groundwater Contamination

Due to its location in an area of known bay fill and industrial land use at the site, the project is subject to Article 22A of the San Francisco Health Code, also known as the Maher Ordinance, which is administered and overseen by the Department of Public Health (DPH). The Maher Ordinance applies to projects that

will disturb 50 cubic yards or more and requires the project sponsor to retain the services of a qualified professional to prepare a Site History Report that meets the requirements of Health Code Section 22.A.6. If it is determined that the project will trigger applicability of the Maher Ordinance, the extent to which work completed to date fulfills the requirements of the ordinance will be evaluated in consultation with DPH.

The Site History Report required by the Maher Ordinance would determine the potential for site contamination and level of exposure risk associated with the project. Based on that information, the project sponsor could be required to conduct soil and/or groundwater sampling and analysis. Where such analysis reveals the presence of hazardous substances in excess of state or federal standards, the project sponsor is required to submit a site mitigation plan (SMP) to DPH or other appropriate state or federal agency(ies), and to remediate any site contamination in accordance with an approved SMP prior to the issuance of any building permit. The Port has already completed an extensive investigation of the entire Pier 70 site within which the proposed project is located. The Site Investigation Reports^{37,38} fulfill the requirement for a Site History Report under Health Code Article 22A, and completed sampling and analysis that would typically be performed to meet the soil characterization requirements of Article 22A.

Pier 70 is like many areas along San Francisco's waterfront that are comprised primarily of fill material. Pier 70 soil contains naturally occurring metals and asbestos (NOA) as well as heavy hydrocarbons typical of bayshore fill material. Soil throughout the site contains polycyclic aromatic hydrocarbons (PAHs), metals and/or total petroleum hydrocarbons (TPH) at concentrations exceeding Cleanup Levels. Polychlorinated biphenyls (PCBs) are present at concentrations above risk-based screening levels at the project site. In addition to the aforementioned components, shallow sediment within the offshore area also contains dioxins and furans.

Based on the findings of the site investigations, a Feasibility Study and Remedial Action Plan (FS/RAP) was developed for the upland area, in accordance with methodology specified by applicable Federal and State regulatory guidance and with oversight by the Regional Water Quality Control Board (Water Board) and DPH. The FS/RAPs identifies the preferred remedy to protect human health and the environment and allow the reuse of the property.

The final FS/RAP document for the upland area was published on May 31st, 2012³⁹ and approved by the Water Board on August 9th, 2012. The FS/RAP document for the intertidal areas is currently being drafted and would subsequently be reviewed by the Water Board.⁴⁰ In summary, the remedy includes engineering controls and institutional controls that will reduce the exposure of human and ecological receptors to residual contaminants of concern in the soil, soil gas, and groundwater beneath the project site. The following components comprise the remedy: installation of durable covers; long-term monitoring, maintenance and repair of durable covers; and institutional controls.

³⁷ Treadwell & Rollo, Environmental Site Investigation Report Pier 70 Master Plan Area San Francisco, California, January 13, 2011. This document is available for review at the San Francisco Planning Department, 1650 Mission Street, Suite 400, as part of Case File No. 2015-001314ENV.

³⁸ Treadwell & Rollo, Site Investigation Pier 70 Northeastern Shoreline San Francisco California, January 21, 2008. This document is available for review at the San Francisco Planning Department, 1650 Mission Street, Suite 400, as part of Case File No. 2015-001314ENV.

³⁹ Treadwell & Rollo, Feasibility Study and Remedial Action Plan Pier 70 Master Plan Area San Francisco, California, May 2012. This document is available for review at the San Francisco Planning Department, 1650 Mission Street, Suite 400, as part of Case File No. 2015-001314ENV.

⁴⁰ Carol Bach, San Francisco Port, Email correspondence with Melinda Hue, Environmental Planner, July 9, 2015. This document is available for review at the San Francisco Planning Department, 1650 Mission Street, Suite 400, as part of Case File No. 2015-001314ENV.

Installation of durable covers over site soil and shoreline revetment (where needed) would provide a physical barrier against the exposure of human and ecological receptors to contaminants of concern in soil, including metals, PAHs, petroleum hydrocarbons, and PCBs. Acceptable durable covers may include: new or existing building foundations; new or existing streets and sidewalks; new or existing hardscapes or paved parking areas; new landscaping on clean imported soil over a demarcation layer; six inches of gravel over demarcation layer or geotextile; and shoreline revetment or other shoreline improvements, such as a placement of a cap consisting of geotextile, bedding material or activated carbon, and armor stone. The durable covers would need long-term monitoring, maintenance, and repair and would be conducted in accordance with the Operation and Maintenance Plan in the FS/RAP. Institutional controls would include land use and activity restrictions to prevent or minimize exposure to contaminated soil and soil vapor, and to prevent or minimize exposure to impacted groundwater by restricting activities related to groundwater.

Currently, the project site includes existing durable cover or hardscape of several types. The existing hardscape at Pier 70 is considered acceptable and conforms with the requirements of a durable cover discussed in the FS/RAP. In some portions of the project site native soil is exposed and acceptable durable cover is not yet present. The proposed project would result in the installation of acceptable durable cover including the rehabilitation of existing buildings, installation of new streets, sidewalks, asphalt, concrete pavement, hardscape, and installation of areas with clean fill underlain by a demarcation layer to identify native soil. Certain shoreline areas may have a rock revetment or other shoreline strengthening measures installed for stabilization and erosion control. Such shoreline improvements would be designed to prevent erosion of contaminated soil into the Bay.

Following the FS/RAP, a draft Risk Management Plan (RMP) was prepared for agency (Water Board and Department of Public Health), stakeholder, and public review, and a final draft RMP was submitted to the Water Board in July 2013. The Water Board approved that draft as the final RMP on January 24, 2014.⁴¹ The RMP presents a decision framework and specific protocols for managing chemicals in soil and groundwater within the Pier 70 area, including the project site, to protect human health and the environment. It provides specifications and details on how risk would be managed during future construction, operation, and maintenance, including ground disturbing activity notification and reporting; access control; requirements for existing or durable disturbing activities; soil management protocols such as soil stockpile management, soil import criteria, dust control plan, construction stormwater management, and off-site soil disposal; unanticipated conditions response protocol; and groundwater management protocols. The draft FS/RAP for the proposed project's intertidal areas specifies that work along the shoreline be conducted in accordance with the provisions of the Risk Management Plan.

For the reasons above, the proposed project would not result in significant impacts related to hazards or hazardous materials that were not identified in the Eastern Neighborhoods PEIR.

⁴¹ Treadwell & Rollo, Pier 70 Risk Management Plan Pier 70 Master Plan Area San Francisco, California, July 2013. This document is available for review at the San Francisco Planning Department, 1650 Mission Street, Suite 400, as part of Case File No. 2015-001314ENV.

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16. MINERAL AND ENERGY RESOURCES— Would the project:				
a) Result in the loss of availability of a known mineral resource that would be of value to the region and the residents of the state?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Result in the loss of availability of a locally important mineral resource recovery site delineated on a local general plan, specific plan or other land use plan?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Encourage activities which result in the use of large amounts of fuel, water, or energy, or use these in a wasteful manner?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

The Eastern Neighborhoods PEIR determined that the Area Plan would facilitate the construction of both new residential units and commercial buildings. Development of these uses would not result in use of large amounts of fuel, water, or energy in a wasteful manner or in the context of energy use throughout the City and region. The energy demand for individual buildings would be typical for such projects and would meet, or exceed, current state and local codes and standards concerning energy consumption, including Title 24 of the California Code of Regulations enforced by DBI. The Plan Area does not include any natural resources routinely extracted and the rezoning does not result in any natural resource extraction programs. Therefore, the Eastern Neighborhoods PEIR concluded that implementation of the Area Plan would not result in a significant impact on mineral and energy resources. No mitigation measures were identified in the PEIR.

As the proposed project is within the development projected under the Eastern Neighborhoods Rezoning and Area Plans, there would be no additional impacts on mineral and energy resources beyond those analyzed in the Eastern Neighborhoods PEIR.

<u>Topics:</u>	<i>Significant Impact Peculiar to Project or Project Site</i>	<i>Significant Impact not Identified in PEIR</i>	<i>Significant Impact due to Substantial New Information</i>	<i>No Significant Impact not Previously Identified in PEIR</i>
17. AGRICULTURE AND FOREST RESOURCES:—Would the project:				
a) Convert Prime Farmland, Unique Farmland, or Farmland of Statewide Importance, as shown on the maps prepared pursuant to the Farmland Mapping and Monitoring Program of the California Resources Agency, to non-agricultural use?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Conflict with existing zoning for agricultural use, or a Williamson Act contract?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Conflict with existing zoning for, or cause rezoning of, forest land (as defined in Public Resources Code Section 12220(g)) or timberland (as defined by Public Resources Code Section 4526)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Result in the loss of forest land or conversion of forest land to non-forest use?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

<u>Topics:</u>	<i>Significant Impact Peculiar to Project or Project Site</i>	<i>Significant Impact not Identified in PEIR</i>	<i>Significant Impact due to Substantial New Information</i>	<i>No Significant Impact not Previously Identified in PEIR</i>
e) Involve other changes in the existing environment which, due to their location or nature, could result in conversion of Farmland to non-agricultural use or forest land to non-forest use?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

The Eastern Neighborhoods PEIR determined that no agricultural resources exist in the Area Plan; therefore the rezoning and community plans would have no effect on agricultural resources. No mitigation measures were identified in the PEIR. The Eastern Neighborhoods PEIR did not analyze the effects on forest resources.

As the proposed project is within the development projected under the Eastern Neighborhoods Rezoning and Area Plans, there would be no additional impacts on agriculture and forest resources beyond those analyzed in the Eastern Neighborhoods PEIR.

MITIGATION AND IMPROVEMENT MEASURES

Mitigation Measures

Project Mitigation Measure 1: Archeological Monitoring (Mitigation Measure J-2 in the Eastern Neighborhoods PEIR)

Based on the reasonable potential that archeological resources may be present within the project site, the following measures shall be undertaken to avoid any potentially significant adverse effect from the proposed project on buried or submerged historical resources. The project sponsor shall retain the services of an archaeological consultant from the rotational Department Qualified Archaeological Consultants List (QACL) maintained by the Planning Department archaeologist. The project sponsor shall contact the Department archeologist to obtain the names and contact information for the next three archeological consultants on the QACL. The archeological consultant shall undertake an archeological monitoring program. All plans and reports prepared by the consultant as specified herein shall be submitted first and directly to the ERO for review and comment, and shall be considered draft reports subject to revision until final approval by the ERO. Archeological monitoring and/or data recovery programs required by this measure could suspend construction of the project for up to a maximum of four weeks. At the direction of the ERO, the suspension of *construction* can be extended beyond four weeks only if such a suspension is the only feasible means to reduce to a less than significant level potential effects on a significant archeological resource as defined in CEQA Guidelines Sect. 15064.5 (a) and (c).

Consultation with Descendant Communities: On discovery of an archeological site⁴² associated with descendant Native Americans or the Overseas Chinese an appropriate representative⁴³ of the descendant

⁴² By the term “archeological site” is intended here to minimally include any archeological deposit, feature, burial, or evidence of burial.

⁴³ An “appropriate representative” of the descendant group is here defined to mean, in the case of Native Americans, any individual listed in the current Native American Contact List for the City and County

group and the ERO shall be contacted. The representative of the descendant group shall be given the opportunity to monitor archeological field investigations of the site and to consult with ERO regarding appropriate archeological treatment of the site, of recovered data from the site, and, if applicable, any interpretative treatment of the associated archeological site. A copy of the Final Archaeological Resources Report shall be provided to the representative of the descendant group.

Archeological monitoring program (AMP). The archeological monitoring program shall minimally include the following provisions:

- The archeological consultant shall prepare an Archeological Monitoring Plan to direct the monitoring program to be approved by the ERO reasonably prior to any project-related soils disturbing activities commencing. The ERO in consultation with the project archeologist shall determine what project activities shall be archeologically monitored. In most cases, any soils disturbing activities, such as demolition, foundation removal, excavation, grading, utilities installation, foundation work, driving of piles (foundation, shoring, etc.), site remediation, etc., shall require archeological monitoring because of the potential risk these activities pose to archaeological resources and to their depositional context;
- The archeological consultant shall advise all project contractors to be on the alert for evidence of the presence of the expected resource(s), of how to identify the evidence of the expected resource(s), and of the appropriate protocol in the event of apparent discovery of an archeological resource;
- The archaeological monitor(s) shall be present on the project site according to a schedule agreed upon by the archeological consultant and the ERO until the ERO has, in consultation with the archeological consultant, determined that project construction activities could have no effects on significant archeological deposits;
- The archeological monitor shall record and be authorized to collect soil samples and artifactual/ecofactual material as warranted for analysis;
- If an intact archeological deposit is encountered, all soils disturbing activities in the vicinity of the deposit shall cease. The archeological monitor shall be empowered to temporarily redirect demolition/excavation/pile driving/construction crews and heavy equipment until the deposit is evaluated. If in the case of pile driving activity (foundation, shoring, etc.), the archeological monitor has cause to believe that the pile driving activity may affect an archeological resource, the pile driving activity shall be terminated until an appropriate evaluation of the resource has been made in consultation with the ERO. The archeological consultant shall immediately notify the ERO of the encountered archeological deposit. The archeological consultant shall, after making a reasonable effort to assess the identity, integrity, and significance of the encountered archeological deposit, present the findings of this assessment to the ERO.

If the ERO in consultation with the archeological consultant determines that a significant archeological resource is present and that the resource could be adversely affected by the proposed project, at the discretion of the project sponsor either:

- A) The proposed project shall be re-designed so as to avoid any adverse effect on the significant archeological resource; or

of San Francisco maintained by the California Native American Heritage Commission and in the case of the Overseas Chinese, the Chinese Historical Society of America.

- B) An archeological data recovery program shall be implemented, unless the ERO determines that the archeological resource is of greater interpretive than research significance and that interpretive use of the resource is feasible.

If an archeological data recovery program is required by the ERO, the archeological data recovery program shall be conducted in accord with an archeological data recovery plan (ADRP). The project archeological consultant, project sponsor, and ERO shall meet and consult on the scope of the ADRP. The archeological consultant shall prepare a draft ADRP that shall be submitted to the ERO for review and approval. The ADRP shall identify how the proposed data recovery program will preserve the significant information the archeological resource is expected to contain. That is, the ADRP will identify what scientific/historical research questions are applicable to the expected resource, what data classes the resource is expected to possess, and how the expected data classes would address the applicable research questions. Data recovery, in general, should be limited to the portions of the historical property that could be adversely affected by the proposed project. Destructive data recovery methods shall not be applied to portions of the archeological resources if nondestructive methods are practical.

The scope of the ADRP shall include the following elements:

- *Field Methods and Procedures.* Descriptions of proposed field strategies, procedures, and operations.
- *Cataloguing and Laboratory Analysis.* Description of selected cataloguing system and artifact analysis procedures.
- *Discard and Deaccession Policy.* Description of and rationale for field and post-field discard and deaccession policies.
- *Interpretive Program.* Consideration of an on-site/off-site public interpretive program during the course of the archeological data recovery program.
- *Security Measures.* Recommended security measures to protect the archeological resource from vandalism, looting, and non-intentionally damaging activities.
- *Final Report.* Description of proposed report format and distribution of results.
- *Curation.* Description of the procedures and recommendations for the curation of any recovered data having potential research value, identification of appropriate curation facilities, and a summary of the accession policies of the curation facilities.

Human Remains, Associated or Unassociated Funerary Objects. The treatment of human remains and of associated or unassociated funerary objects discovered during any soils disturbing activity shall comply with applicable State and Federal Laws, including immediate notification of the Coroner of the City and County of San Francisco and in the event of the Coroner's determination that the human remains are Native American remains, notification of the California State Native American Heritage Commission (NAHC) who shall appoint a Most Likely Descendant (MLD) (Pub. Res. Code Sec. 5097.98). The archeological consultant, project sponsor, ERO, and MLD shall have up to but not beyond six days of discovery to make all reasonable efforts to develop an agreement for the treatment of human remains and associated or unassociated funerary objects with appropriate dignity (CEQA Guidelines. Sec. 15064.5(d)). The agreement should take into consideration the appropriate excavation, removal, recordation, analysis, curation, possession, and final disposition of the human remains and associated or unassociated funerary objects. Nothing in existing State regulations or in this mitigation measure compels the project sponsor and the ERO to accept recommendations of an MLD. The archeological consultant shall retain possession of any Native American human remains and associated or unassociated burial objects until completion of any scientific

analyses of the human remains or objects as specified in the treatment agreement if such as agreement has been made or, otherwise, as determined by the archeological consultant and the ERO.

Final Archeological Resources Report. The archeological consultant shall submit a Draft Final Archeological Resources Report (FARR) to the ERO that evaluates the historical significance of any discovered archeological resource and describes the archeological and historical research methods employed in the archeological testing/monitoring/data recovery program(s) undertaken. Information that may put at risk any archeological resource shall be provided in a separate removable insert within the draft final report.

Copies of the Draft FARR shall be sent to the ERO for review and approval. Once approved by the ERO copies of the FARR shall be distributed as follows: California Archaeological Site Survey Northwest Information Center (NWIC) shall receive one (1) copy and the ERO shall receive a copy of the transmittal of the FARR to the NWIC. The Environmental Planning division of the Planning Department shall receive one bound, one unbound and one unlocked, searchable PDF copy on CD of the FARR along with copies of any formal site recordation forms (CA DPR 523 series) and/or documentation for nomination to the National Register of Historic Places/California Register of Historical Resources. In instances of high public interest or interpretive value, the ERO may require a different final report content, format, and distribution than that presented above.

Project Mitigation 2: Traffic Signal Installation (Mitigation Measure E-1 in the Eastern Neighborhoods PEIR)

To mitigate the significant cumulative traffic impact at the intersection of 20th and Illinois Streets, an upgraded traffic signal would need to be installed at this intersection. With this new signal, the average vehicle delay would decrease, and the intersection would operate at LOS F during the weekday PM peak hour and LOS D during the weekday MID peak hour. The LOS F condition is due to a number of proposed developments in the immediate vicinity of this intersection, most noticeably at Pier 70, that would contribute to growth in future traffic volumes and increased delays. Installation of a traffic signal at the intersection of 20th and Illinois Streets could be linked to these and other proposed development projects.

The project sponsor shall pay their fair share contribution to mitigate the significant cumulative traffic impact at the intersection of 20th and Illinois Streets. The amount and schedule for payment of the proposed project's fair share contribution to the mitigation shall be determined by SFMTA.

Project Mitigation Measure 3: Construction Noise (Mitigation Measure F-1 Construction Noise in the Eastern Neighborhoods PEIR)

For subsequent development projects within proximity to noise-sensitive uses that would include pile-driving, individual project sponsors shall ensure that piles be pre-drilled wherever feasible to reduce construction-related noise and vibration. No impact pile drivers shall be used unless absolutely necessary. Contractors would be required to use pile-driving equipment with state-of-the-art noise shielding and muffling devices. To reduce noise and vibration impacts, sonic or vibratory sheetpile drivers, rather than impact drivers, shall be used wherever sheetpiles are needed. Individual project sponsors shall also require that contractors schedule pile-driving activity for times of the day that would minimize disturbance to neighbors.

Project Mitigation Measure 4: Construction Noise (Mitigation Measure F-2: Construction Noise in the Eastern Neighborhoods PEIR)

Where environmental review of a development project undertaken subsequent to the adoption of the proposed zoning controls determines that construction noise controls are necessary due to the nature of planned construction practices and the sensitivity of proximate uses, the Planning Director shall require that the sponsors of the subsequent development project develop a set of site-specific noise attenuation measures under the supervision of a qualified acoustical consultant. Prior to commencing construction, a plan for such measures shall be submitted to the Department of Building Inspection to ensure that maximum feasible noise attenuation will be achieved. These attenuation measures shall include as many of the following control strategies as feasible:

- Erect temporary plywood noise barriers around a construction site, particularly where a site adjoins noise-sensitive uses;
- Utilize noise control blankets on a building structure as the building is erected to reduce noise emission from the site;
- Evaluate the feasibility of noise control at the receivers by temporarily improving the noise reduction capability of adjacent buildings housing sensitive uses;
- Monitor the effectiveness of noise attenuation measures by taking noise measurements; and
- Post signs on-site pertaining to permitted construction days and hours and complaint procedures and who to notify in the event of a problem, with telephone numbers listed.

Project Mitigation Measure 5: Hazardous Building Materials (Mitigation Measure L-1 Hazardous Building Materials in the Eastern Neighborhoods PEIR)

The City shall condition future development approvals to require that the subsequent project sponsors ensure that any equipment containing PCBs or DEPH, such as fluorescent light ballasts, are removed and properly disposed of according to applicable federal, state, and local laws prior to the start of renovation, and that any fluorescent light tubes, which could contain mercury, are similarly removed and properly disposed of. Any other hazardous materials identified, either before or during work, shall be abated according to applicable federal, state, and local laws.

Improvement Measures**Project Improvement Measure 1: Monitoring and Abatement of Queues**

It shall be the responsibility of the owner/operator of any off-street parking facility with more than 20 parking spaces (excluding loading and car-share spaces) to ensure that recurring vehicle queues do not occur on the public right-of-way. A vehicle queue is defined as one or more vehicles (destined to the parking facility) blocking any portion of any public street, alley or sidewalk for a consecutive period of three minutes or longer on a daily or weekly basis.

If a recurring queue occurs, the owner/operator of the parking facility shall employ abatement methods as needed to abate the queue. Appropriate abatement methods will vary depending on the characteristics and causes of the recurring queue, as well as the characteristics of the parking facility, the street(s) to which the facility connects, and the associated land uses (if applicable).

Suggested abatement methods include but are not limited to the following: redesign of facility to improve vehicle circulation and/or on-site queue capacity; employment of parking attendants; installation of LOT FULL signs with active management by parking attendants; use of valet parking or other space-efficient parking techniques; use of off-site parking facilities or shared parking with nearby uses; use of parking

occupancy sensors and signage directing drivers to available spaces; travel demand management strategies such as additional bicycle parking, customer shuttles, delivery services; and/or parking demand management strategies such as parking time limits, paid parking, time-of-day parking surcharge, or validated parking.

If the Planning Director, or his or her designee, suspects that a recurring queue is present, the Department shall notify the property owner in writing. Upon request, the owner/operator shall hire a qualified transportation consultant to evaluate the conditions at the site for no less than seven days. The consultant shall prepare a monitoring report to be submitted to the Department for review. If the Department determines that a recurring queue does exist, the facility owner/operator shall have 90 days from the date of the written determination to abate the queue.

Project Improvement Measure 2: Installation of Traffic Calming Devices at Parking Lot Exiting Lane

It shall be the responsibility of the owner/operator to install appropriate traffic calming devices (e.g., speed bump, rumble strips, "slow speed" signage, etc.) at the exiting travel lane along the garage driveway to reduce vehicle speeds of exiting vehicles traveling out of the parking lot and to further reduce and/or eliminate potential vehicle-pedestrian conflicts.

Project Improvement Measure 3: Convert On-Street Parking Spaces and Install Freight/Delivery Loading Zone along Illinois Street

To reduce the potential for parking of freight/delivery vehicles within the travel lane adjacent to the curb lane on Illinois or 19th Street (in the event that the on-street parking spaces are occupied), the Project Sponsor should seek approval from the SFMTA to convert two (2) regular, on-street parking spaces to yellow-striped loading parking spaces. The location of these two spaces shall be located along the east side of Illinois Street, adjacent to the project site.

Project Improvement Measure 4: Coordination of Freight/Loading Activities for Park and Park Related Retail

To reduce the potential for parking of delivery vehicles within the travel lane adjacent to the curb lane on Illinois or 19th Street or during peak commute periods (between 7:00 a.m. and 9:00 a.m. and 4:00 p.m. and 6:00 p.m.), freight/loading activities shall be scheduled and coordinated through Port of San Francisco staff and shall be restricted to occur between the hours of 9:00 a.m. and 4:00 p.m., and no deliveries shall occur between 7:00 a.m. and 9:00 a.m. or between 4:00 p.m. and 6:00 p.m.

The Project Sponsor shall enforce strict truck size regulations for use of the on-street loading spaces in the proposed freight/delivery loading area. Truck lengths exceeding 40 feet shall be prohibited from entering the loading zone and shall utilize other on-street parking spaces, if available. The Project Sponsor shall notify Port of San Francisco staff, and café tenants of imposed truck size limits in the proposed freight loading area.

In the event freight/delivery vehicles exceed the 40-foot length and are in need to occupy the recommended on-street loading space (see improvement measure above), appropriate traffic control measures shall be enforced to avoid and/or eliminate any conflicts with moving vehicles or other users along Illinois Street or sidewalk areas adjacent to the project site. Such measures shall include but not limited to flaggers, cones, and signage to notify drivers and others of freight/delivery activities.

Project Improvement Measure 5: Construction Truck Deliveries During Off-Peak Periods

Any construction traffic occurring between 7:00 a.m. and 9:00 a.m. or between 3:30 p.m. and 6:00 p.m. would coincide with peak hour traffic and could temporarily impede traffic and transit flow, although it would not be considered a significant impact. Limiting truck movements to the hours between 9:00 a.m. and 3:30 p.m. (or other times, if approved by SFMTA) would further minimize disruption of the general traffic flow on adjacent streets during the a.m. and p.m. peak periods.

As required, the Project Sponsor and construction contractor(s) shall meet with the Sustainable Streets Division of the SFMTA, the Fire Department, Muni, and the Planning Department to determine feasible measures to reduce traffic congestion, including potential transit disruption, and pedestrian circulation impacts during construction of the project. To minimize cumulative traffic impacts due to project construction, the Project Sponsor shall coordinate with construction contractors for any concurrent nearby projects that are planned for construction or which later become known.

Project Improvement Measure 6: Construction Management Plan

In addition to items required in the Construction Management Plan, the project sponsor shall include the following:

- Carpool and Transit Access for Construction Workers – As an improvement measure to minimize parking demand and vehicle trips associated with construction workers, the construction contractor shall include methods to encourage carpooling and transit use to the project site by construction workers in the Construction Management Plan contracts.
- Project Construction Updates – As an improvement measure to minimize construction impacts on nearby businesses, the project sponsor shall provide regularly-updated information (typically in the form of website, news articles, on-site posting, etc.) regarding project construction and schedule, as well as contact information for specific construction inquiries or concerns.

**MITIGATION MONITORING AND REPORTING PROGRAM
 (Including the Text of the Mitigation Measures and Proposed Improvement Measures)**

	Responsibility for Implementation	Mitigation Schedule	Monitoring/Report Responsibility	Status/Date Completed
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MITIGATION MEASURES				
F. Noise				
<p><i>Project Mitigation Measure 3: Construction Noise (Mitigation Measure F-1 in the Eastern Neighborhoods PEIR)</i></p> <p>For subsequent development projects within proximity to noise-sensitive uses that would include pile-driving, individual project sponsors shall ensure that piles be pre-drilled wherever feasible to reduce construction-related noise and vibration. No impact pile drivers shall be used unless absolutely necessary. Contractors would be required to use pile-driving equipment with state-of-the-art noise shielding and muffling devices. To reduce noise and vibration impacts, sonic or vibratory sheetpile drivers, rather than impact drivers, shall be used wherever sheetpiles are needed. Individual project sponsors shall also require that contractors schedule pile-driving activity for times of the day that would minimize disturbance to neighbors.</p>	<p>Project Sponsor along with Project Contractor of each subsequent development project undertaken pursuant to the Eastern Neighborhoods Rezoning and Area Plans Project.</p>	<p>During construction</p>	<p>Each Project Sponsor to provide Planning Department with monthly reports during construction period.</p>	<p>Considered complete upon receipt of final monitoring report at completion of construction.</p>
<p><i>Project Mitigation Measure 4: Construction Noise (Mitigation Measure F-2 in the Eastern Neighborhoods PEIR)</i></p> <p>Where environmental review of a development project undertaken subsequent to the adoption of the proposed zoning controls determines that construction noise controls are necessary due to the nature of planned construction practices and the sensitivity of proximate uses, the Planning Director shall require that the sponsors of the subsequent development project develop a set of site-specific noise attenuation measures under the supervision of a qualified acoustical consultant. Prior to commencing construction, a plan for such measures shall be submitted to the Department of Building Inspection to ensure that maximum feasible noise attenuation will be achieved. These attenuation measures shall include as many of the following control strategies as feasible:</p> <ul style="list-style-type: none"> • Erect temporary plywood noise barriers around a construction site, particularly where a site adjoins noise-sensitive uses; • Utilize noise control blankets on a building structure as the building is erected to reduce noise emission from the site; • Evaluate the feasibility of noise control at the receivers by temporarily improving the noise reduction capability of adjacent buildings housing 	<p>Project Sponsor along with Project Contractor of each subsequent development project undertaken pursuant to the Eastern Neighborhoods Rezoning and Area Plans Project.</p>	<p>During construction</p>	<p>Each Project Sponsor to provide Planning Department with monthly reports during construction period.</p>	<p>Considered complete upon receipt of final monitoring report at completion of construction.</p>

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sensitive uses; • Monitor the effectiveness of noise attenuation measures by taking noise measurements; and • Post signs on-site pertaining to permitted construction days and hours and complaint procedures and who to notify in the event of a problem, with telephone numbers listed.				
J. Archeological Resources <i>Project Mitigation Measure 1: Archeological Monitoring (Mitigation Measure J-2 in the Eastern Neighborhoods PEIR)</i> Based on the reasonable potential that archeological resources may be present within the project site, the following measures shall be undertaken to avoid any potentially significant adverse effect from the proposed project on buried or submerged historical resources. The project sponsor shall retain the services of a qualified archeological consultant having expertise in California prehistoric and urban historical archeology. The archeological consultant shall undertake an archeological monitoring program. All plans and reports prepared by the consultant as specified herein shall be submitted first and directly to the ERO for review and comment, and shall be considered draft reports subject to revision until final approval by the ERO. Archeological monitoring and/or data recovery programs required by this measure could suspend construction of the project for up to a maximum of four weeks. At the direction of the ERO, the suspension of <i>construction</i> can be extended beyond four weeks only if such a suspension is the only feasible means to reduce to a less than significant level potential effects on a significant archeological resource as defined in CEQA Guidelines Sect. 15064.5 (a)(c). <i>Archeological monitoring program (AMP).</i> The archeological monitoring program shall minimally include the following provisions: ■ The archeological consultant, project sponsor, and ERO shall meet and consult on the scope of the AMP reasonably prior to any project-related soils disturbing activities commencing. The ERO in consultation with the project archeologist shall determine what project activities shall be archeologically monitored. In most cases, any soils disturbing activities, such as demolition, foundation removal, excavation, grading, utilities installation, foundation work, driving of piles (foundation, shoring, etc.), site remediation, etc., shall require archeological monitoring because of the potential risk these activities	The Project Sponsor	Prior to issuance of grading or building permits	Project Sponsor shall retain archaeological consultant to undertake archaeological monitoring program in consultation with ERO.	Complete when Project Sponsor retains qualified archaeological consultant.
	The Project Sponsor and archaeological consultant	Prior to any soils disturbance	Consultation with ERO on scope of AMP	After consultation with and approval by ERO of AMP.

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<p>pose to archaeological resources and to their depositional context;</p> <ul style="list-style-type: none"> ▪ The archeological consultant shall advise all project contractors to be on the alert for evidence of the presence of the expected resource(s), of how to identify the evidence of the expected resource(s), and of the appropriate protocol in the event of apparent discovery of an archeological resource; ▪ The archaeological monitor(s) shall be present on the project site according to a schedule agreed upon by the archeological consultant and the ERO until the ERO has, in consultation with the archeological consultant, determined that project construction activities could have no effects on significant archeological deposits; ▪ The archeological monitor shall record and be authorized to collect soil samples and artifactual/ecofactual material as warranted for analysis <p>If an intact archeological deposit is encountered, all soils disturbing activities in the vicinity of the deposit shall cease. The archeological monitor shall be empowered to temporarily redirect demolition/excavation/pile driving/construction crews and heavy equipment until the deposit is evaluated. If in the case of pile driving activity (foundation, shoring, etc.), the archeological monitor has cause to believe that the pile driving activity may affect an archeological resource, the pile driving activity shall be terminated until an appropriate evaluation of the resource has been made in consultation with the ERO. The archeological consultant shall immediately notify the ERO of the encountered archeological deposit. The archeological consultant shall, after making a reasonable effort to assess the identity, integrity, and significance of the encountered archeological deposit, present the findings of this assessment to the ERO.</p>	<p>The archaeological consultant, Project Sponsor and project contractor.</p>	<p>Monitoring of soils disturbing activities.</p>	<p>Archaeological consultant to monitor soils disturbing activities specified in AMP and immediately notify the ERO of any encountered archaeological resource.</p>	<p>Considered complete upon completion of AMP.</p>
<p>If the ERO in consultation with the archeological consultant determines that a significant archeological resource is present and that the resource could be adversely affected by the proposed project, at the discretion of the project sponsor either:</p> <ul style="list-style-type: none"> A) The proposed project shall be re-designed so as to avoid any adverse effect on the significant archeological resource; or B) An archeological data recovery program shall be implemented, unless the ERO determines that the archeological resource is of greater interpretive than research significance and that interpretive use of the resource is feasible. 	<p>ERO, archaeological consultant, and Project Sponsor.</p>	<p>Following discovery of significant archaeological resource that could be adversely affected by project.</p>	<p>Redesign of project to avoid adverse effect or undertaking of archaeological data recovery program.</p>	<p>Considered complete upon avoidance of adverse effect</p>

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<p>If an archeological data recovery program is required by the ERO, the archeological data recovery program shall be conducted in accord with an archeological data recovery plan (ADRP). The project archeological consultant, project sponsor, and ERO shall meet and consult on the scope of the ADRP. The archeological consultant shall prepare a draft ADRP that shall be submitted to the ERO for review and approval. The ADRP shall identify how the proposed data recovery program will preserve the significant information the archeological resource is expected to contain. That is, the ADRP will identify what scientific/historical research questions are applicable to the expected resource, what data classes the resource is expected to possess, and how the expected data classes would address the applicable research questions. Data recovery, in general, should be limited to the portions of the historical property that could be adversely affected by the proposed project. Destructive data recovery methods shall not be applied to portions of the archeological resources if nondestructive methods are practical.</p> <p>The scope of the ADRP shall include the following elements</p> <ul style="list-style-type: none"> ▪ Field Methods and Procedures. Descriptions of proposed field strategies, procedures, and operations. ▪ Cataloguing and Laboratory Analysis. Description of selected cataloguing system and artifact analysis procedures. ▪ Discard and Deaccession Policy. Description of and rationale for field and post-field discard and deaccession policies. ▪ Interpretive Program. Consideration of an on-site/off-site public interpretive program during the course of the archeological data recovery program. ▪ Security Measures. Recommended security measures to protect the archeological resource from vandalism, looting, and non-intentionally damaging activities. ▪ Final Report. Description of proposed report format and distribution of results. ▪ Curation. Description of the procedures and recommendations for the curation of any recovered data having potential research value, identification of appropriate curation facilities, and a summary of the accession policies of the curation facilities. 	<p>Archaeological consultant in consultation with ERO</p>	<p>After determination by ERO that an archaeological data recovery program is required</p>	<p>Archaeological consultant to prepare an ADRP in consultation with ERO</p>	<p>Considered complete upon approval of ADRP by ERO.</p>

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<p><i>Human Remains, Associated or Unassociated Funerary Objects.</i> The treatment of human remains and of associated or unassociated funerary objects discovered during any soils disturbing activity shall comply with applicable State and Federal Laws, including immediate notification of the Coroner of the City and County of San Francisco and in the event of the Coroner’s determination that the human remains are Native American remains, notification of the California State Native American Heritage Commission (NAHC) who shall appoint a Most Likely Descendant (MLD) (Pub. Res. Code Sec. 5097.98). The archeological consultant, project sponsor, ERO, and MLD shall make all reasonable efforts to develop an agreement for the treatment of, with appropriate dignity, human remains and associated or unassociated funerary objects (CEQA Guidelines. Sec. 15064.5(d)). The agreement should take into consideration the appropriate excavation, removal, recordation, analysis, curation, possession, and final disposition of the human remains and associated or unassociated funerary objects.</p> <p><i>Final Archeological Resources Report.</i> The archeological consultant shall submit a Draft Final Archeological Resources Report (FARR) to the ERO that evaluates the historical of any discovered archeological resource and describes the archeological and historical research methods employed in the archeological testing/monitoring/data recovery program(s) undertaken. Information that may put at risk any archeological resource shall be provided in a separate removable insert within the draft final report.</p>	<p>Archaeological consultant or medical examiner</p> <p>Archaeological consultant</p>	<p>Discovery of human remains</p> <p>Following completion of cataloguing, analysis, and interpretation of recovered archaeological data.</p>	<p>Notification of County/City Coroner and, as warranted, notification of NAHC.</p> <p>Preparation of FARR</p>	<p>Considered complete on finding by ERO that all State laws regarding human remains/burial objects have been adhered to, consultation with MLD is completed as warranted, and that sufficient opportunity has been provided to the archaeological consultant for scientific/historical analysis of remains/funerary objects.</p> <p>FARR is complete on review and approval of ERO</p>
L. Hazardous Materials				
<p><i>Project Mitigation Measure 5: Hazardous Building Materials (Mitigation Measure L-1 in the Eastern Neighborhoods PEIR)</i></p> <p>The City shall condition future development approvals to require that the subsequent project sponsors ensure that any equipment containing PCBs or DEPH, such as fluorescent light ballasts, are removed and properly disposed of according to applicable federal, state, and local laws prior to the start of renovation, and that any fluorescent light tubes, which could contain mercury, are similarly removed and properly disposed of. Any other hazardous materials identified, either before or during work, shall be abated according to applicable federal, state, and local laws.</p>	<p>Project Sponsor/project archeologist of each subsequent development project undertaken pursuant to the Eastern Neighborhoods Areas Plans and Rezoning</p>	<p>Prior to approval of each subsequent project, through Mitigation Plan.</p>	<p>Planning Department, in consultation with DPH; where Site Mitigation Plan is required, Project Sponsor or contractor shall submit a monitoring report to DPH, with a copy to Planning Department and DBI, at end of construction.</p>	<p>Considered complete upon approval of each subsequent project.</p>

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E. Transportation				
<p><i>Project Mitigation 2: Traffic Signal Installation (Mitigation Measure E-1 in the Eastern Neighborhoods PEIR)</i></p> <p>To mitigate the 2025 No Project traffic impacts, a To mitigate the significant cumulative traffic impact at the intersection of 20th and Illinois Streets, an upgraded traffic signal would need to be installed at this intersection. With this new signal, the average vehicle delay would decrease, and the intersection would operate at LOS F during the weekday PM peak hour and LOS D during the weekday MID peak hour. The LOS F condition is due to a number of proposed developments in the immediate vicinity of this intersection, most noticeably at Pier 70, that would contribute to growth in future traffic volumes and increased delays. Installation of a traffic signal at the intersection of 20th and Illinois Streets could be linked to these and other proposed development projects.</p> <p>The project sponsor shall pay their fair share contribution to mitigate the significant cumulative traffic impact at the intersection of 20th and Illinois Streets. The amount and schedule for payment of the proposed project's fair share contribution to the mitigation shall be determined by SFMTA.</p>	San Francisco Municipal Transportation Agency (SFMTA); project sponsor; Port of San Francisco.	To be determined by SFMTA.	SFMTA; Port of San Francisco.	Upon Signalization.
IMPROVEMENT MEASURES				
<p><i>Project Improvement Measure 1: Monitoring and Abatement of Queues</i></p> <p>It shall be the responsibility of the owner/operator of any off-street parking facility with more than 20 parking spaces (excluding loading and car-share spaces) to ensure that recurring vehicle queues do not occur on the public right-of-way. A vehicle queue is defined as one or more vehicles (destined to the parking facility) blocking any portion of any public street, alley or sidewalk for a consecutive period of three minutes or longer on a daily or weekly basis.</p> <p>If a recurring queue occurs, the owner/operator of the parking facility shall employ abatement methods as needed to abate the queue. Appropriate abatement methods will vary depending on the characteristics and causes of the recurring queue, as well as the characteristics of the parking facility, the street(s) to which the facility connects, and the associated land uses (if applicable).</p> <p>Suggested abatement methods include but are not limited to the following:</p>	Project Sponsor; Owner or Operator of the parking facility	Ongoing during parking operations	Port of San Francisco	Ongoing during parking operations

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<p>redesign of facility to improve vehicle circulation and/or on-site queue capacity; employment of parking attendants; installation of LOT FULL signs with active management by parking attendants; use of valet parking or other space-efficient parking techniques; use of off-site parking facilities or shared parking with nearby uses; use of parking occupancy sensors and signage directing drivers to available spaces; travel demand management strategies such as additional bicycle parking, customer shuttles, delivery services; and/or parking demand management strategies such as parking time limits, paid parking, time-of-day parking surcharge, or validated parking.</p> <p>If the Planning Director, or his or her designee, suspects that a recurring queue is present, the Department shall notify the property owner in writing. Upon request, the owner/operator shall hire a qualified transportation consultant to evaluate the conditions at the site for no less than seven days. The consultant shall prepare a monitoring report to be submitted to the Department for review. If the Department determines that a recurring queue does exist, the facility owner/operator shall have 90 days from the date of the written determination to abate the queue.</p>				
<p><i>Project Improvement Measure 2: Installation of Traffic Calming Devices at Parking Lot Exiting Lane</i></p> <p>It shall be the responsibility of the owner/operator to install appropriate traffic calming devices (e.g., speed bump, rumble strips, “slow speed” signage, etc.) at the exiting travel lane along the garage driveway to reduce vehicle speeds of exiting vehicles traveling out of the parking lot and to further reduce and/or eliminate potential vehicle-pedestrian conflicts.</p>	Project sponsor; Owner or Operator of the parking facility	Design measures to be incorporated into project design; prior to issuance of a building permit.	Port of San Francisco: Planning Department; Department of Public Works (DPW); SFMTA	Considered complete upon installation and implementation of traffic calming features
<p><i>Project Improvement Measure 3: Convert On-Street Parking Spaces and Install Freight/Delivery Loading Zone along Illinois Street</i></p> <p>To reduce the potential for parking of freight/delivery vehicles within the travel lane adjacent to the curb lane on Illinois or 19th Street (in the event that the on-street parking spaces are occupied), the Project Sponsor shall seek approval from the SFMTA to convert two (2) regular, on-street parking spaces to yellow-striped loading parking spaces. The location of these two spaces shall be located along the east side of Illinois Street, adjacent to the project site.</p>	Project sponsor.	Loading zone to be incorporated into project design; prior to issuance of a building permit.	Port of San Francisco: Planning Department; Department of Public Works (DPW); SFMTA	Considered complete upon installation and implementation of loading zone

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	Responsibility for Implementation	Mitigation Schedule	Monitoring/Report Responsibility	Status/Date Completed
<p><i>Project Improvement Measure 4: Coordination of Freight/Loading Activities for Park and Park Related Retail</i></p> <p>To reduce the potential for parking of delivery vehicles within the travel lane adjacent to the curb lane on Illinois or 19th Street or during peak commute periods (between 7:00 a.m. and 9:00 a.m. and 4:00 p.m. and 6:00 p.m.), freight/loading activities shall be scheduled and coordinated through Port of San Francisco staff and shall be restricted to occur between the hours of 9:00 a.m. and 4:00 p.m., and no deliveries shall occur between 7:00 a.m. and 9:00 a.m. or between 4:00 p.m. and 6:00 p.m.</p> <p>The Project Sponsor shall enforce strict truck size regulations for use of the on-street loading spaces in the proposed freight/delivery loading area. Truck lengths exceeding 40 feet shall be prohibited from entering the loading zone and shall utilize other on-street parking spaces, if available. The Project Sponsor shall notify Port of San Francisco staff, and café tenants of imposed truck size limits in the proposed freight loading area.</p> <p>In the event freight/delivery vehicles exceed the 40-foot length and are in need to occupy the recommended the on-street loading space (see improvement measure above), appropriate traffic control measures shall be enforced to avoid and/or eliminate any conflicts with moving vehicles or other users along Illinois Street or sidewalk areas adjacent to the project site. Such measures shall include but not limited flaggers, cones, and signage to notify drivers and others of freight/delivery activities</p>	Project sponsor; building tenant(s)	Ongoing during building operations for oversized delivery vehicles or during higher volumes of pedestrian or bicycle activity in the project area.	Port of San Francisco.	Ongoing during building operations.
<p><i>Project Improvement Measure 5: Construction Truck Deliveries During Off-Peak Periods</i></p> <p>Any construction traffic occurring between 7:00 a.m. and 9:00 a.m. or between 3:30 p.m. and 6:00 p.m. would coincide with peak hour traffic and could temporarily impede traffic and transit flow, although it would not be considered a significant impact. Limiting truck movements to the hours between 9:00 a.m. and 3:30 p.m. (or other times, if approved by SFMTA) would further minimize disruption of the general traffic flow on adjacent streets during the a.m. and p.m. peak periods.</p> <p>As required, the Project Sponsor and construction contractor(s) shall meet with the Sustainable Streets Division of the SFMTA, the Fire Department, Muni, and the Planning Department to determine feasible measures to reduce traffic congestion, including potential transit disruption, and pedestrian circulation impacts during construction of the project. To minimize</p>	Project sponsor; Project contractor(s)	Prior to construction activity.	Port of San Francisco	Upon completion of project construction

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	Responsibility for Implementation	Mitigation Schedule	Monitoring/Report Responsibility	Status/Date Completed
cumulative traffic impacts due to project construction, the Project Sponsor shall coordinate with construction contractors for any concurrent nearby projects that are planned for construction or which later become known.				
<p><i>Project Improvement Measure 6: Construction Management Plan</i></p> <p>In addition to items required in the Construction Management Plan, the project sponsor shall include the following:</p> <ul style="list-style-type: none"> • Carpool and Transit Access for Construction Workers – As an improvement measure to minimize parking demand and vehicle trips associated with construction workers, the construction contractor shall include methods to encourage carpooling and transit use to the project site by construction workers in the Construction Management Plan contracts. • Project Construction Updates – As an improvement measure to minimize construction impacts on nearby businesses, the project sponsor shall provide regularly-updated information (typically in the form of website, news articles, on-site posting, etc.) regarding project construction and schedule, as well as contact information for specific construction inquiries or concerns. 	Project sponsor; Project contractor(s)	Prior to construction activity.	Port of San Francisco	Upon completion of project construction



CEQA Exemption Determination

PROPERTY INFORMATION/PROJECT DESCRIPTION

Project Address Crane Cove Park - Pier 70		Block/Lot(s) 3941001, 4046001, 4046002
Case No. 2015-001314ENV		Permit No.
<input checked="" type="checkbox"/> Addition/Alteration	<input checked="" type="checkbox"/> Demolition (requires HRE for Category B Building)	<input checked="" type="checkbox"/> New Construction
<p>Project description for Planning Department approval.</p> <p>The proposed project would involve 1) the construction of a new, approximately 9.8-acre shoreline park (Crane Cove Park), 2) an extension of 19th Street for park access and circulation, 3) creation of Georgia Street which would connect 20th Street to the 19th Street extension, 4) the relocation of the BAE Shipyard entrance from 20th Street to the terminus of the 19th Street extension and rerouting BAE Shipyard truck traffic from 20th Street to the 19th Street extension, and 5) street improvements along the eastern side of Illinois Street.</p>		

STEP 1: EXEMPTION TYPE

The project has been determined to be exempt under the California Environmental Quality Act (CEQA).	
<input type="checkbox"/>	Class 1 - Existing Facilities. Interior and exterior alterations; additions under 10,000 sq. ft.
<input type="checkbox"/>	Class 3 - New Construction. Up to three new single-family residences or six dwelling units in one building; commercial/office structures; utility extensions; change of use under 10,000 sq. ft. if principally permitted or with a CU.
<input type="checkbox"/>	<p>Class 32 - In-Fill Development. New Construction of seven or more units or additions greater than 10,000 sq. ft. and meets the conditions described below:</p> <p>(a) The project is consistent with the applicable general plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations.</p> <p>(b) The proposed development occurs within city limits on a project site of no more than 5 acres substantially surrounded by urban uses.</p> <p>(c) The project site has no value as habitat for endangered rare or threatened species.</p> <p>(d) Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality.</p> <p>(e) The site can be adequately served by all required utilities and public services.</p>
<input checked="" type="checkbox"/>	Other _____ CPE issued 10/05/2015
<input type="checkbox"/>	Common Sense Exemption (CEQA Guidelines section 15061(b)(3)). It can be seen with certainty that there is no possibility of a significant effect on the environment.

STEP 2: ENVIRONMENTAL SCREENING ASSESSMENT

TO BE COMPLETED BY PROJECT PLANNER

<input type="checkbox"/>	<p>Air Quality: Would the project add new sensitive receptors (specifically, schools, day care facilities, hospitals, residential dwellings, and senior-care facilities within an Air Pollution Exposure Zone? Does the project have the potential to emit substantial pollutant concentrations (e.g. use of diesel construction equipment, backup diesel generators, heavy industry, diesel trucks, etc.)? <i>(refer to the Environmental</i></p>
<input type="checkbox"/>	<p>Hazardous Materials: <input type="checkbox"/> Maher or <input type="checkbox"/> Cortese Is the project site located within the Maher area or on a site containing potential subsurface soil or groundwater contamination and would it involve ground disturbance of at least 50 cubic yards or a change of use from an industrial use to a residential or institutional use? Is the project site located on a Cortese site or would the project involve work on a site with an existing or former gas station, parking lot, auto repair, dry cleaners, or heavy manufacturing use, or a site with current or former underground storage tanks? <i>if Maher box is checked, note below whether the applicant has enrolled in or received a waiver from the San Francisco Department of Public Health (DPH) Maher program, or if Environmental Planning staff has determined that hazardous material effects would be less than significant.</i> Note that a categorical exemption shall not be issued for a project located on the Cortese List</p>
<input type="checkbox"/>	<p>Transportation: Does the project involve a child care facility or school with 30 or more students, or a location 1,500 sq. ft. or greater? Does the project have the potential to adversely affect transit, pedestrian and/or bicycle safety (hazards) or the adequacy of nearby transit, pedestrian and/or bicycle facilities? Would the project involve the intensification of or a substantial increase in vehicle trips at the project site or elsewhere in the region due to autonomous vehicle or for-hire vehicle fleet maintenance, operations or</p>
<input type="checkbox"/>	<p>Archeological Resources: Would the project result in soil disturbance/modification greater than two (2) feet below grade in an archeological sensitive area or eight (8) feet in a non-archeological sensitive area? If yes, archeology review is required.</p>
<input type="checkbox"/>	<p>Subdivision/Lot Line Adjustment: Does the project site involve a subdivision or lot line adjustment on a lot with a slope average of 20% or more? <i>(refer to the Environmental Information tab on https://sfplanningqis.org/PIM/)</i> If box is checked, Environmental Planning must issue the exemption.</p>
<input type="checkbox"/>	<p>Average Slope of Parcel = or > 25%, or site is in Edgehill Slope Protection Area or Northwest Mt. Sutro Slope Protection Area: Does the project involve any of the following: (1) New building construction, except one-story storage or utility occupancy, (2) horizontal additions, if the footprint area increases more than 50%, or (3) horizontal and vertical additions increase more than 500 square feet of new projected roof area? <i>(refer to the Environmental Information tab on https://sfplanninggis.org/PIM/)</i> If box is checked, a geotechnical report is likely required and Environmental Planning must issue the exemption.</p>
<input type="checkbox"/>	<p>Seismic Hazard: <input type="checkbox"/> Landslide or <input type="checkbox"/> Liquefaction Hazard Zone: Does the project involve any of the following: (1) New building construction, except one-story storage or utility occupancy, (2) horizontal additions, if the footprint area increases more than 50%, (3) horizontal and vertical additions increase more than 500 square feet of new projected roof area, or (4) grading performed at a site in the landslide hazard zone? <i>(refer to the Environmental Information tab on https://sfplanninggis.org/PIM/)</i> If box is checked, a geotechnical report is required and Environmental Planning must issue the exemption.</p>
<p>Comments and Planner Signature (optional): Joy Navarrete CPE was issued October 5, 2015</p>	

**STEP 3: PROPERTY STATUS - HISTORIC RESOURCE
TO BE COMPLETED BY PROJECT PLANNER**

PROPERTY IS ONE OF THE FOLLOWING: (refer to Property Information Map)	
<input checked="" type="checkbox"/>	Category A: Known Historical Resource. GO TO STEP 5.
<input type="checkbox"/>	Category B: Potential Historical Resource (over 45 years of age). GO TO STEP 4.
<input type="checkbox"/>	Category C: Not a Historical Resource or Not Age Eligible (under 45 years of age). GO TO STEP 6.

**STEP 4: PROPOSED WORK CHECKLIST
TO BE COMPLETED BY PROJECT PLANNER**

Check all that apply to the project.	
<input type="checkbox"/>	1. Change of use and new construction. Tenant improvements not included.
<input type="checkbox"/>	2. Regular maintenance or repair to correct or repair deterioration, decay, or damage to building.
<input type="checkbox"/>	3. Window replacement that meets the Department's <i>Window Replacement Standards</i> . Does not include storefront window alterations.
<input type="checkbox"/>	4. Garage work. A new opening that meets the <i>Guidelines for Adding Garages and Curb Cuts</i> , and/or replacement of a garage door in an existing opening that meets the Residential Design Guidelines.
<input type="checkbox"/>	5. Deck, terrace construction, or fences not visible from any immediately adjacent public right-of-way.
<input type="checkbox"/>	6. Mechanical equipment installation that is not visible from any immediately adjacent public right-of-way.
<input type="checkbox"/>	7. Dormer installation that meets the requirements for exemption from public notification under <i>Zoning Administrator Bulletin No. 3: Dormer Windows</i> .
<input type="checkbox"/>	8. Addition(s) that are not visible from any immediately adjacent public right-of-way for 150 feet in each direction; does not extend vertically beyond the floor level of the top story of the structure or is only a single story in height; does not have a footprint that is more than 50% larger than that of the original building; and does not cause the removal of architectural significant roofing features.
Note: Project Planner must check box below before proceeding.	
<input checked="" type="checkbox"/>	Project is not listed. GO TO STEP 5.
<input type="checkbox"/>	Project does not conform to the scopes of work. GO TO STEP 5.
<input type="checkbox"/>	Project involves four or more work descriptions. GO TO STEP 5.
<input type="checkbox"/>	Project involves less than four work descriptions. GO TO STEP 6.

**STEP 5: ADVANCED HISTORICAL REVIEW
TO BE COMPLETED BY PRESERVATION PLANNER**

Check all that apply to the project.	
<input type="checkbox"/>	1. Reclassification of property status. (Attach HRER Part I) <input type="checkbox"/> Reclassify to Category A a. Per HRER b. Other (specify): <input type="checkbox"/> Reclassify to Category C (No further historic review)
<input checked="" type="checkbox"/>	2. Project involves a known historical resource (CEQA Category A) as determined by Step 3 and conforms entirely to proposed work checklist in Step 4.
<input type="checkbox"/>	3. Interior alterations to publicly accessible spaces that do not remove, alter, or obscure character defining features.
<input type="checkbox"/>	4. Window replacement of original/historic windows that are not "in-kind" but are consistent with existing historic character.
<input type="checkbox"/>	5. Façade/storefront alterations that do not remove, alter, or obscure character-defining features.

<input type="checkbox"/>	6. Raising the building in a manner that does not remove, alter, or obscure character-defining features.
<input type="checkbox"/>	7. Restoration based upon documented evidence of a building's historic condition, such as historic photographs, plans, physical evidence, or similar buildings.
<input type="checkbox"/>	8. Work consistent with the <i>Secretary of the Interior Standards for the Treatment of Historic Properties</i> (Analysis required):
<input type="checkbox"/>	9. Work compatible with a historic district (Analysis required):
<input type="checkbox"/>	10. Work that would not materially impair a historic resource (Attach HRER Part II).
Note: If ANY box in STEP 5 above is checked, a Preservation Planner MUST sign below.	
<input checked="" type="checkbox"/>	Project can proceed with exemption review. The project has been reviewed by the Preservation Planner and can proceed with exemption review. GO TO STEP 6.
Comments (optional):	
Preservation Planner Signature:	

**STEP 6: EXEMPTION DETERMINATION
TO BE COMPLETED BY PROJECT PLANNER**

<input checked="" type="checkbox"/>	No further environmental review is required. The project is exempt under CEQA. There are no unusual circumstances that would result in a reasonable possibility of a significant effect.	
	Project Approval Action: Port of SF approval	Signature: Joy Navarrete
		04/11/2022
	<p>Supporting documents are available for review on the San Francisco Property Information Map, which can be accessed at https://sfplanninggis.org/PIM/. Individual files can be viewed by clicking on the Planning Applications link, clicking the "More Details" link under the project's environmental record number (ENV) and then clicking on the "Related Documents" link. Once signed or stamped and dated, this document constitutes an exemption pursuant to CEQA Guidelines and Chapter 31 of the Administrative Code.</p> <p>In accordance with Chapter 31 of the San Francisco Administrative Code, an appeal of an exemption determination to the Board of Supervisors can only be filed within 30 days of the project receiving the approval action.</p>	

STEP 7: MODIFICATION OF A CEQA EXEMPT PROJECT

TO BE COMPLETED BY PROJECT PLANNER

In accordance with Chapter 31 of the San Francisco Administrative Code, when a California Environmental Quality Act (CEQA) exempt project changes after the Approval Action and requires a subsequent approval, the Environmental Review Officer (or his or her designee) must determine whether the proposed change constitutes a substantial modification of that project. This checklist shall be used to determine whether the proposed changes to the approved project would constitute a "substantial modification" and, therefore, be subject to additional

MODIFIED PROJECT DESCRIPTION

Modified Project Description:

YMCA proposal for Building 49, which includes the following components:

General description: Community hub focused on human-powered watercraft, fitness & wellness, hyper-local food concessions, diverse & inclusive programming, targeted retail, and educational programs

Community wellness center: Includes traditional gym amenities like cardio machines, weights, 20+ group exercise classes each week as well as gender-neutral locker rooms, onsite wellness coaching, health education classes, and personal training

Dogpatch Paddle: Relocate and scale our human-powered watercraft rentals, lessons, classes, youth programs, and retail storefront, which features equipment sales, healthy provisions, and beach essentials. We will offer drop-in services, monthly memberships, as well as combined aquatics & fitness packages, in partnership with the YMCA

Dogpatch coffee and bagel shop: Will occupy the southwest corner of Building 49 with a health-oriented menu

DETERMINATION IF PROJECT CONSTITUTES SUBSTANTIAL MODIFICATION

Compared to the approved project, would the modified project:

- | | |
|--------------------------|--|
| <input type="checkbox"/> | Result in expansion of the building envelope, as defined in the Planning Code; |
| <input type="checkbox"/> | Result in the change of use that would require public notice under Planning Code Sections 311 or 312; |
| <input type="checkbox"/> | Result in demolition as defined under Planning Code Section 317 or 19005(f)? |
| <input type="checkbox"/> | Is any information being presented that was not known and could not have been known at the time of the original determination, that shows the originally approved project may no longer qualify for the exemption? |

If at least one of the above boxes is checked, further environmental review is required

DETERMINATION OF NO SUBSTANTIAL MODIFICATION

- | | |
|-------------------------------------|---|
| <input checked="" type="checkbox"/> | The proposed modification would not result in any of the above changes. |
|-------------------------------------|---|

If this box is checked, the proposed modifications are exempt under CEQA, in accordance with prior project approval and no additional environmental review is required. This determination shall be posted on the Planning Department website and office and mailed to the applicant, City approving entities, and anyone requesting written notice. In accordance with Chapter 31, Sec 31.08j of the San Francisco Administrative Code, an appeal of this determination can

Planner Name:

Joy Navarrete

Date:

04/11/2022

From: [Conine-Nakano, Susanna \(MYR\)](#)
To: [BOS Legislation, \(BOS\)](#)
Cc: [Paulino, Tom \(MYR\)](#); [Gee, Natalie \(BOS\)](#); [Delepine, Boris \(PRT\)](#)
Subject: Mayor -- Resolution -- Building 49 Lease
Date: Tuesday, May 9, 2023 3:00:50 PM
Attachments: [Mayor -- Resolution -- Building 49 Lease.zip](#)

Hello Clerks,

Attached for introduction to the Board of Supervisors is a Resolution approving and authorizing the execution, delivery and performance of a lease of Building 49 located at 701 Illinois Street within Crane Cove Park by the YMCA of San Francisco, for an initial term of 10 years plus options to extend for a total term of up to 34 years, 11 months, and a fee waiver for a companion license agreement; and making findings under the California Environmental Quality Act.

Please note that Supervisor Walton is a co-sponsor of this legislation.

Best,
Susanna

Susanna Conine-Nakano
Office of Mayor London N. Breed
City & County of San Francisco
1 Dr. Carlton B. Goodlett Place, Room 200
San Francisco, CA 94102
415-554-6147