

File No. 100516

Committee Item No. 2

Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Sub - Committee: Budget and Finance

Date: May 26, 2010

Board of Supervisors Meeting

Date: _____

Cmte Board

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| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Resolution |
| <input type="checkbox"/> | <input type="checkbox"/> | Ordinance |
| <input type="checkbox"/> | <input type="checkbox"/> | Legislative Digest |
| <input type="checkbox"/> | <input type="checkbox"/> | Budget Analyst Report |
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| <input type="checkbox"/> | <input type="checkbox"/> | Introduction Form (for hearings) |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Department/Agency Cover Letter and/or Report |
| <input type="checkbox"/> | <input type="checkbox"/> | MOU |
| <input type="checkbox"/> | <input type="checkbox"/> | Grant Information Form |
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| <input type="checkbox"/> | <input type="checkbox"/> | Award Letter |
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OTHER

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Completed by: Andrea S. Ausberry

Date Friday, May 21, 2010

Completed by: _____

Date _____

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

1 [Lease Agreement with the California State Lands Commission and the City and County of
2 San Francisco]

3 **Resolution approving and authorizing a 25 year lease with the California State Lands**
4 **Commission for a portion of the San Francisco Bay in Alameda and San Mateo**
5 **Counties, at no rent, for the public purpose of constructing the San Francisco Public**
6 **Utilities Commission Water System Improvement Program-Funded Project**
7 **CUW36801, Bay Division Pipeline Reliability Upgrade - Tunnel; adopting**
8 **environmental findings under the California Environmental Quality Act ("CEQA"),**
9 **CEQA Guidelines, and Administrative Code Chapter 31; adopting findings of**
10 **consistency with City Planning Code Section 101.1; and authorizing the General**
11 **Manager of SFPUC to execute documents, make certain modifications and take**
12 **certain actions in furtherance of this resolution.**

13
14
15 WHEREAS, The San Francisco Public Utilities Commission ("SFPUC") plans to
16 construct Project CUW36801 Bay Division Pipeline Reliability Upgrade Project-Bay Tunnel
17 ("Bay Tunnel" or the "Project"), under the Water System Improvement Program ("WSIP")
18 for improvements to the regional water supply system, a public use, and in connection
19 therewith will require interests in certain real property described herein; and,

20 WHEREAS, The objectives of the Project, together with other Bay Division Pipeline
21 ("BDPL") Reliability Upgrade projects, are to provide a seismically reliable conduit between
22 Mission Boulevard in Fremont and the Pulgas Tunnel in San Mateo County, to size and
23 configure the BDPL transmission system for transmission of water across the Bay for
24 distribution to residents of San Mateo County and the City and County of San Francisco,
25 ("CCSF" or the "City") to replenish local reservoirs, and to contribute toward meeting

1 estimated average annual demand under conditions of both planned and unplanned facility
2 outages; and,

3 WHEREAS, A Final Program Environmental Impact Report ("PEIR") was prepared for
4 the WSIP and certified by the Planning Commission on October 30, 2008 by Motion No.
5 17734; and

6 WHEREAS, Thereafter the SFPUC approved the WSIP and adopted findings and a
7 Mitigation Monitoring and Reporting Program as required by the California Environmental
8 Quality Act ("CEQA") on October 30, 2008 by Resolution No. 08-0200; and

9 WHEREAS, An environmental impact report ("EIR") as required by CEQA was
10 prepared for the Project in Planning Department File No. 2005.01 64E; and

11 WHEREAS, The Final EIR ("FEIR") for the Project was certified by the San
12 Francisco Planning Commission on July 9, 2009 by Motion No. 17918; and

13 WHEREAS, The FEIR prepared for the Project is tiered from the PEIR, as
14 authorized by and in accordance with CEQA and the CEQA Guidelines; and

15 WHEREAS, On July 14, 2009, the SFPUC, by Resolution No. 09-0120, a copy of
16 which is on file with the Clerk of the Board of Supervisors of the City ("Board") in File
17 No. 090979 and which is incorporated herein by this reference and is considered part of the
18 record before this Board: (1) approved the Project; (2) adopted findings (CEQA Findings),
19 including the statement of overriding considerations, and a Mitigation Monitoring and
20 Reporting Program ("MMRP") required by CEQA; (3) authorized the General Manager to
21 seek Board approval of, and if approved, to execute certain necessary agreements and
22 deeds, which the SFPUC staff will pursue and submit to the Board at a later date; and

23 WHEREAS, The Project files, including the FEIR, PEIR and SFPUC Resolution No.
24 09-0120 have been made available for review by the Board and the public, and those files
25 are considered part of the record before this Board; and

1 WHEREAS, The Board has reviewed and considered the information and findings
2 contained in the FEIR, PEIR and SFPUC Resolution No. 09-0120, and all written and oral
3 information provided by the Planning Department, the public, relevant public agencies,
4 SFPUC and other experts and the administrative files for the Project; and

5 WHEREAS, This Board, by Resolution No. 371-09 adopted on September 22, 2009,
6 a copy of which is on file with the Clerk of the Board in File No. 090979 and which is
7 incorporated herein by this reference and considered part of the record before this Board,
8 adopted findings under CEQA related to the Project, including the statement of overriding
9 considerations and the MMRP; and

10 WHEREAS, In Planning case 2009.0558R, the Department of City Planning found
11 the acquisition of subsurface property interests for the Project to be in conformity with the
12 General Plan and consistent with the Eight Priority Policies of City Planning Code Section
13 101.1 to the extent applicable; and

14 WHEREAS, San Francisco Charter Section 9.118(c) requires Board approval of
15 leases having a term of ten (10) or more years or having anticipated revenue to the City of
16 One Million Dollars (\$1,000,000.00) or more; and

17 WHEREAS, Lease (W25137) with the California State Lands Commission ("SLC"),
18 as landlord, and the City, as tenant (the "Lease"), is for a term of twenty-five (25) years for
19 a portion of the San Francisco Bay located in Alameda and San Mateo counties, as more
20 particularly described in the Lease (the "Property"), and no rent is being charged by SLC
21 under the Lease for City to lease the Property; and

22 WHEREAS, On February 1, 2010, SLC approved the terms and conditions of the
23 Lease; and

1 WHEREAS, A copy of the Lease is on file with the Clerk of the Board under File No.
2 100516 and which is incorporated herein by this reference and is considered part of the
3 record before this Board; now, therefore, be it

4 RESOLVED, The Board has reviewed and considered the FEIR and record as a whole,
5 finds that the FEIR is adequate for its use as the decision-making body for the action taken
6 herein and hereby incorporates by reference the CEQA findings contained in Resolution No.
7 371-09; and be it

8 FURTHER RESOLVED, The Board finds that the Project mitigation measures adopted
9 by the SFPUC will be implemented as reflected in and in accordance with the MMRP; and be
10 it

11 FURTHER RESOLVED, The Board finds that since the FEIR was finalized, there
12 have been no substantial Project changes and no substantial changes in the Project
13 circumstances that would require major revisions to the FEIR due to the involvement of
14 new significant environmental effects or an increase in the severity of previously identified
15 significant impacts, and there is no new information of substantial importance that would
16 change the conclusions set forth in the FEIR; and, be it

17 FURTHER RESOLVED, That the Board hereby adopts as its own and incorporates
18 by reference herein, as though fully set forth, the findings of the Planning Department that
19 acquisition of subsurface property interests for the Project is consistent with the Eight
20 Priority Policies of City Planning Code Section 101.1; and, be it

21 FURTHER RESOLVED, That the Board authorizes the General Manager of the
22 SFPUC (the "General Manager") to execute the Lease, including all exhibits thereto, in a
23 form to be approved by the City Attorney and in form substantially similar to the Lease on
24 file with the Clerk of the Board in File No. 100516; and, be it

1 FURTHER RESOLVED, That the Board authorizes the General Manager to enter
2 into any additions, amendments or other modifications to the Lease (including, without
3 limitation, the attached exhibits) that the General Manager determines are in the best
4 interest of the City, that do not materially increase the obligations or liabilities of the City,
5 and are necessary or advisable to complete the transaction contemplated in the Lease and
6 effectuate the purpose and intent of this resolution, such determination to be conclusively
7 evidenced by the execution and delivery by the General Manager of the Lease and any
8 additions or amendments thereto; and, be it

9 FURTHER RESOLVED, That the Board authorizes the General Manager to execute
10 and enter into any additional documents as he or she deems necessary or appropriate, in
11 consultation with the City Attorney, to consummate the transactions contemplated hereby
12 or to otherwise effectuate the purpose and intent of this resolution, such determination to
13 be conclusively evidenced by the execution and delivery by the General Manager of any
14 such documents; and, be it

15 FURTHER RESOLVED, That the Board approves, confirms, and ratifies all prior
16 actions taken by the officials, employees and agents of the SFPUC, Planning Commission,
17 or the City with respect to the Lease.

18
19
20 RECOMMENDED:

21
22 
23 _____
24 Amy L. Brown
25 Director of Property



Amy L. Brown
Director of Real Estate



April 12, 2010

PUC
25 Year Lease with the California
State Lands Commission
Bay Division Pipeline Reliability Upgrade Project
Alameda and San Mateo Counties

Through Edwin M. Lee
City Administrator

Honorable Board of Supervisors
City & County of San Francisco
City Hall, Room 244
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

Dear Board Members:

RECEIVED
BOARD OF SUPERVISORS
SAN FRANCISCO
2010 APR 19 AM 10:25
BY [Signature] [Initials]

Enclosed for your consideration is a Resolution authorizing a 25 year Lease with the California State Lands Commission for the installation of a 108" diameter water pipeline within a portion of San Francisco Bay between the City of Newark in Alameda County and the City of Menlo Park in San Mateo County.

The installation of the water pipeline is part of the PUC's Water System Improvement Project to repair, replace and upgrade the system's pipelines and tunnels to provide a seismically reliable transmission system.

Although the Lease is at no rent, the San Francisco Charter Section 9.118(c) requires Board approval of leases having a term of more than 10 years.

In addition to the Resolution, enclosed for the Board file are:

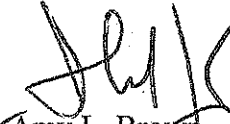
1. Lease Agreement between the California State Lands Commission and the City and County of San Francisco.
2. Public Utilities Commission Resolution No. 09-0120 approving the acquisition of the necessary property rights and all other property interests for the project.
3. City Planning's letter dated October 30, 2009 stating that the proposed acquisition of all the necessary property interests for the project are in conformity with the general plan

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and consistent with the Eight Priority Policies of Planning Code Section 101.1. In addition, an environmental impact report for the project was certified by the Planning Commission and subsequently approved by the Board by Resolution No. 371-09.

Should you have any questions or need additional information, do not hesitate to call Larry Ritter of our office at 554-9874.

Very truly yours,



Amy L. Brown
Director of Real Estate

cc: Edwin M. Lee, City Administrator

w/ Resolution:

Carolyn Stein, Deputy City Attorney

Grace Park, Deputy City Attorney

PUC:

Brian Morelli

Gary Dowd

Nathan Purkiss

Millie Tolleson

Johanna Wong

LR:sb

RECORDED AT THE REQUEST OF
AND WHEN RECORDED MAIL TO:
STATE OF CALIFORNIA
California State Lands Commission
Attn: Title Unit
100 Howe Avenue, Suite 100-South
Sacramento, CA 95825-8202

STATE OF CALIFORNIA
OFFICIAL BUSINESS
Document entitled to free recordation
pursuant to Government Code Section 27383

SPACE ABOVE THIS LINE FOR RECORDER'S USE

A.P.N. N/A
County: Alameda and San Mateo

W 25137

LEASE PRC _____

This Lease consists of this summary and the following attached and incorporated parts:

- | | |
|-----------|---|
| Section 1 | Basic Provisions |
| Section 2 | Special Provisions Amending or Supplementing Section 1 or 4 |
| Section 3 | Description of Lease Premises |
| Section 4 | General Provisions |

SECTION 1

BASIC PROVISIONS

THE STATE OF CALIFORNIA, hereinafter referred to as Lessor acting by and through the **CALIFORNIA STATE LANDS COMMISSION** (100 Howe Avenue, Suite 100-South, Sacramento, California 95825-8202), pursuant to Division 6 of the Public Resources Code and Title 2, Division 3 of the California Code of Regulations, and for consideration specified in this Lease, does hereby lease, demise and let to **CITY AND COUNTY OF SAN FRANCISCO**, hereinafter referred to as Lessee, those certain lands described in Section 3 subject to the reservations, terms, covenants and conditions of this Lease.

MAILING ADDRESS: San Francisco Public Utilities Commission
1145 Market Street, 5th Floor
San Francisco, CA 94103

LEASE TYPE: General Lease - Public Agency Use

LAND TYPE: Sovereign

LOCATION: Portion of San Francisco Bay, between the city of Newark in Alameda County and the city of Menlo Park in San Mateo County, as more particularly described in Section 3.

AUTHORIZED LAND USE OR PURPOSE: Excavation, construction, use, and maintenance of a 108 inch internal diameter water pipeline within a 16 foot diameter concrete tunnel.

TERM: 25 years; beginning March 1, 2010; ending February 28, 2035, unless sooner terminated as provided under this Lease.

CONSIDERATION: The public use and benefit; with the State reserving the right at any time to set a monetary rent if the Commission finds such action to be in the State's best interest; subject to modification by Lessor as specified in Paragraph 2(b) of Section 4 - General Provisions.

AUTHORIZED IMPROVEMENTS:

EXISTING: N/A

TO BE CONSTRUCTED: Excavation and subsequent construction and installation of a 108-inch internal diameter water pipeline within a 16-foot diameter concrete tunnel in the Lease Premises

CONSTRUCTION MUST BEGIN BY: N/A

AND BE COMPLETED BY: Within 5 years of receipt of all permits and approvals applicable to the authorized improvements

LIABILITY INSURANCE: N/A

SURETY BOND OR OTHER SECURITY: N/A

**SECTION 2
SPECIAL PROVISIONS**

**BEFORE THE EXECUTION OF THIS LEASE, SECTION 4 (GENERAL PROVISIONS)
OF THIS LEASE ARE AMENDED, REVISED OR SUPPLEMENTED AS FOLLOWS:**

1. Lessee acknowledges that the land described in Section 3 of this Lease is subject to the Public Trust and is presently available to members of the public for recreation, waterborne commerce, navigation, fisheries, open space, or other recognized Public Trust uses and that Lessee's proposed construction activities and use of the Lease Premises shall not interfere or limit the Public Trust rights of the public.
2. Lessee shall comply with the Mitigation Monitoring Program contained in the Environmental Impact Report certified and adopted by the Lessee on July 14, 2009.
3. Any contaminated soil removed during construction will be disposed of at an approved hazardous-waste disposal facility. Suitable spoil material uses may include, but are not limited to, landfill and the South Bay Salt Pond Restoration Project. If any of the material excavated from the Lease Premises is sold or used for commercial purposes by the Lessee, the Lessor reserves the right to charge a royalty.
4. Lessee shall provide to Lessor copies of all final permits and authorizations from all Federal, State, and local agencies having jurisdiction over the authorized improvements (including the U.S. Army Corps of Engineers, the Bay Area Air Quality Management District, the California Department of Fish and Game, the San Francisco Bay Regional Water Quality Control Board, the San Francisco Bay Conservation and Development Commission, and the State Water Resources Control Board).
5. Any equipment to be used on the Lease Premises is limited to that which is directly required to perform the authorized use and improvements.
6. Lessor is not responsible for any damage to any property, including any vehicles, equipment, tools, or machinery within the Lease Premises.
7. No refueling, maintenance, or repairs to any equipment or vehicles will be permitted within the Lease Premises except as otherwise needed to perform the authorized use and improvements.
8. Subject to Lessor and Lessee entering into a confidentiality or non-disclosure agreement for items (a)—(g) of this paragraph, 60 days prior to start of construction within the Lease Premises, Lessee shall provide Lessor for review and comment:
 - a. A set of final engineering design drawings for the authorized improvements as issued for construction, certified by a California Registered Civil/Structural Engineer, delineating the Lease Premises and showing the pipeline/tunnel horizontal alignment with key control points referenced to the California Coordinate System (CCS83) and vertical profile data with elevations referenced to Mean Lower Low Water (MLLW) datum where applicable or otherwise, to the local vertical control datum. In addition, details of all appurtenances are to be

- shown on the drawings.
- b. Tunnel Boring Machine (TBM) Specifications.
 - c. A set of final construction contract specifications for the authorized improvements.
 - d. A final construction time line chart showing all significant work activities that will take place in the Lease Premises during the course of construction of the authorized improvements.
 - e. A copy of the contractor's work execution plan that provides the details including but not limited to the manpower, equipment, safety procedures, construction methods and procedures to be employed for each significant activity within the Lease Premises.
 - f. A project quality control and assurance plan, including, but not limited to, details of the inspection testing procedures to be employed during construction of the authorized improvements.
 - g. Copies of all the contractor's submittals required by the project specifications for construction of the authorized improvements.
 - h. The contractor's Hazardous Spill Contingency Plan (Plan), with specific designation of the onsite person who will have responsibility for implementing the Plan. This Plan will include discussion of various major and minor spill scenarios, spill cleanup materials and equipment available onsite, a spill notification protocol and procedures, and a list of various agencies and their notification numbers. In the event of a spill during construction that impacts State waters, notification is to be made as soon as possible to the State Office of Emergency Services at (800) 852-7550 and to the Lessor's 24-hour emergency response number at (562) 590-5201.
9. Lessee shall provide a 15-day advance notice to Lessor prior to commencement of construction of the authorized improvements.
 10. All construction activities shall be carried out in accordance with all applicable safety regulations, permits, and conditions of all other agencies having jurisdiction over the authorized improvements.
 11. Subject to Lessor and Lessee entering into a confidentiality or non-disclosure agreement for items (a)—(c) of this paragraph, within 180 days of completion of the authorized improvements, Lessee shall provide to Lessor the following:
 - a. A set of "As-Built" drawings certified by a California registered Civil/structural Engineer, showing the final plan and profile of the authorized improvements, and all changes or other modification to the plans for such authorized improvements as originally approved for construction.
 - b. A post construction written report confirming completion in accordance with the approved plans, describing any field changes with the justification, any accidents or spills affecting the waterway and corrective measures taken, and any other extraordinary conditions that occurred during the course of construction of the authorized improvements. The report is to include copies of the quality control test results performed, certifications, etc including the post construction tests (if any).
 - c. A program for routine post construction operation and maintenance inspection of the authorized improvements.

12. Except in the event of an emergency, all future modifications or major repairs within the Lease Premises shall require prior review and approval by Lessor, which approval shall not be unreasonably withheld or conditioned. In the event of an urgent repair requiring immediate action, Lessee shall immediately notify Lessor at the 24-hour emergency response number (562) 590-5201.
13. The provisions of Section 4, Paragraphs 5(a)(4)(Reservations), 8 (Insurance), 9 (Surety Bond), and 12 (Restoration of Lease Premises) are not applicable.
14. The Lessee shall provide Lessor with copies of all monitoring and inspection reports relating to the Lease Premises prepared during the term of the Lease.
15. All plans for abandonment and/or removal of the pipeline and concrete tunnel within the Lease Premises and subsequent restoration of the Lease Premises, if any, must first be approved by the Lessor and shall be submitted a minimum of six months prior to expiration or sooner termination of the lease. In the event the Lessor authorizes the abandonment of all or any portion of the pipeline and concrete tunnel, Lessee may be required to enter into an abandonment agreement with the Lessor.
16. In no event shall Lessor lease, convey, or encumber the Lease Premises, in whole or in part, during the Lease term for any purpose without the prior written consent of the Lessee, such consent the Lessee may grant/deny at its sole discretion.

In the event of any conflict between the provisions of Sections 1 and 2 and Section 4 of this Lease, the provisions of Sections 1 and 2 shall prevail.

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SECTION 3

W 25137

LAND DESCRIPTION

Three parcels of State of California sovereign land situate in Alameda and San Mateo Counties, State of California, being more particularly described as follows:

PARCEL 1

A 50 foot wide strip of State of California sovereign land situate in the San Francisco Bay and lying 25 feet on each side of the following described centerline:

BEGINNING at the southeasterly terminus of the course labeled "462" as shown on Sheet 10 of 13 Sheets of that certain Record of Survey filed July 28, 1977, in Volume 8 of L.L.S. Maps at Page 76, Records of San Mateo County; thence along the westerly boundary of "PARCEL E-1" as shown on said Sheet 10 along the course labeled "463", South 38°51'48" East (South 38°51'45" East), 42.49 feet to the **TRUE POINT OF BEGINNING** of this description;

thence leaving said westerly boundary, North 62°34'22" East, 8,315.36 feet to a point on the line between points 3602 and 3605 as shown on Sheet 20 of 57 Sheets of that certain Record of Survey filed August 23, 1976, in Book 10 of Records of Survey at Page 29, Records of Alameda County, distant along said line, North 89°05'13" West (North 89°05'21" West), 1,292.01 feet from said point 3602;

thence continuing North 62°34'22" East, 2,638.13 feet to the beginning of a tangent curve concave northwesterly;

thence along said curve having a radius of 1,000.00 feet, through a central angle of 11°35'52" and an arc length of 202.42 feet to a point on the line between points 3600 and 3601 as shown on said Sheet 20, distant along said line, South 00°58'25" West, 614.13 feet from said point 3600;

thence continuing along said curve having said radius, through a central angle of 00°14'12" and an arc length of 4.13 feet;

thence North 50°44'18" East, 1,346.13 feet to the point of termination on the line between points 2761 and 2762 as shown on said Sheet 20, said line being the southerly line of "PARCEL ONE" of "Parcel Q" of the land conveyed by Leslie Salt Co. to the State of California, by Corporation Grant Deed recorded February 1, 1968, in Reel 2119 Image 305, Official Records of Alameda County, distant along said line, South 76°55'10" West (South 76°55'02" West), 30.15 feet from said point 2761.

EXCEPTING THEREFROM any portion lying landward of the low water mark of the San Francisco Bay.

Sidelines of said 50 foot strip are to be lengthened or shortened as to terminate at the westerly boundary of said "PARCEL E-1" and at the southerly boundary and its northeasterly prolongation of said "PARCEL ONE" of "Parcel Q".

The above described easement shall be vertically limited to that space lying 22.5 feet above and 22.5 feet below the following described plane: A plane commencing at an elevation of -95.0 feet along the westerly line of the above described PARCEL 1 and terminating at an elevation of -80.0 feet along the northerly line of the above described PARCEL 1, North American Vertical Datum of 1988 (NAVD 88).

PARCEL 2

A parcel of State of California sovereign land situate in the City of Fremont, County of Alameda, State of California, being a portion of "PARCEL ONE" of "Parcel Q" of the land conveyed by Leslie Salt Co. to the State of California, by Corporation Grant Deed recorded February 1, 1968, in Reel 2119 Image 305, Official Records of Alameda County, being more particularly described as follows:

BEGINNING at Point 2761 as shown on Sheet 20 of 57 Sheets of that certain Record of Survey filed August 23, 1976, in Book 10 of Records of Survey at Page 29, Records of Alameda County, said point being the **TRUE POINT OF BEGINNING** of this description;

thence along the southerly line of said "PARCEL ONE" of "Parcel Q", South 76°55'10" West (South 76°57'55" West), 86.81 feet;

thence leaving said southerly line, North 50°44'18" East, 102.39 feet to the easterly line of said "PARCEL ONE" of "Parcel Q";

thence along said easterly line, South 06°40'27" East, 45.46 feet to the **TRUE POINT OF BEGINNING**.

The above described easement shall be vertically limited to that space lying between the elevations of -57.50 feet and -102.50 feet, North American Vertical Datum of 1988 (NAVD 88).

Containing 1,961 square feet or 0.05 acres, more or less.

PARCEL 3

A parcel of State of California sovereign land situate in the City of Fremont, County of Alameda, State of California, being a portion of "PARCEL ONE" of "Parcel Q" of the land conveyed by Leslie Salt Co. to the State of California, by Corporation Grand Deed recorded February 1, 1968, in Reel 2119 Image 305, Official Records of Alameda County, being more particularly described as follows:

BEGINNING at Point 1785 as shown on Sheet 20 of 57 Sheets of that certain Record of Survey filed August 23, 1976, in Book 10 of Records of Survey at Page 29, Records of Alameda County; thence along the southerly line of said "PARCEL ONE" of "Parcel Q", South 70°06'09" West (South 70°06'01" West), 58.14 feet to the **TRUE POINT OF BEGINNING** of this description;

thence continuing along said southerly line, South 70°06'09" West, 150.80 feet;

thence leaving said southerly line, North 50°44'18" East, 571.99 feet to the northerly line of said "PARCEL ONE" of "Parcel Q";

thence along said northerly line, North 86°22'16" East, 48.63 feet;

thence continuing along said northerly line, North 89°11'44" East, 34.85 feet;

thence leaving said northerly line, South 50°44'18" West, 496.53 feet to the **TRUE POINT OF BEGINNING**.

The above described easement shall be vertically limited to that space lying 22.5 feet above and 22.5 feet below the following described plane: A plane commencing at an elevation of -76.96 feet along the southerly line of the above described PARCEL 3 and terminating at an elevation of -76.32 feet along the northerly line of the above described Parcel 3, North American Vertical Datum of 1988 (NAVD 88).

Containing 26,755 square feet or 0.61 acres, more or less.

All bearings and distances shown on this Exhibit are based upon the North American Datum of 1983 (NAD 83), California Coordinate System, Zone III, Epoch 1991.35. All distances shown hereon are grid distances. To convert to ground distance, multiply expressed distances by 1.000055883. Areas shown are calculated using grid distances. To convert to ground area, multiply the expressed area by 1.00011177.

This description was prepared by me or under my direction in conformance with the Professional Land Surveyors' Act.

 01-25-10

Michael A. Shoup, PLS 7616
License Expires 12/31/2010



END OF DESCRIPTION

SECTION 4

GENERAL PROVISIONS

1. GENERAL

These provisions are applicable to all leases, permits, rights-of-way, easements, or licenses or other interests in real property conveyed by the State Lands Commission.

2. CONSIDERATION

(a) Categories

(1) Rental

Lessee shall pay the annual rental as stated in this Lease to Lessor without deduction, delay, or offset, on or before the beginning date of this Lease and on or before each anniversary of its beginning date during each year of the Lease term.

(2) Non-Monetary Consideration

If the consideration to Lessor for this Lease is the public use, benefit, health, or safety, Lessor shall have the right to review such consideration at any time and set a monetary rental if the State Lands Commission, at its sole discretion, determines that such action is in the best interest of the State.

(b) Modification

Lessor may modify the method, amount, or rate of consideration effective on each fifth anniversary of the beginning date of this Lease. Should Lessor fail to exercise such right effective on any fifth anniversary it may do so effective on any one (1) of the next four (4) anniversaries following such fifth anniversary, without prejudice to its right to effect such modification on the next or any succeeding fifth anniversary. No such modification shall become effective unless Lessee is given at least thirty (30) days notice prior to the effective date.

(c) Penalty and Interest

Any installments of rental accruing under this Lease not paid when due shall be subject to a penalty and shall bear interest as specified in Public Resources Code Section 6224 and the Lessor's then existing administrative regulations governing penalty and interest.

3. BOUNDARIES

This Lease is not intended to establish the State's boundaries and is made without prejudice to either party regarding any boundary claims which may be asserted presently or in the future.

4. LAND USE

(a) General

Lessee shall use the Lease Premises only for the purpose or purposes stated in this Lease and only for the operation and maintenance of the improvements expressly authorized in this Lease. Lessee shall commence use of the Lease Premises within ninety (90) days of the beginning date of this Lease or within ninety (90) days of the date set for construction to commence as set forth in this Lease, whichever is later. Lessee shall notify Lessor within ten (10) days after commencing the construction of authorized improvements

and within sixty (60) days after completing them. Lessee's discontinuance of such use for a period of ninety (90) days shall be conclusively presumed to be an abandonment.

(b) Continuous Use

Lessee's use of the Lease Premises shall be continuous from commencement of the Lease until its expiration.

(c) Repairs and Maintenance

Lessee shall, at its own expense, keep and maintain the Lease Premises and all improvements in good order and repair and in safe condition. Lessor shall have no obligation for such repair and maintenance.

(d) Additions, Alterations, and Removal

(1) Additions - No improvements other than those expressly authorized in this Lease shall be constructed by the Lessee on the Lease Premises without the prior written consent of Lessor.

(2) Alteration or Removal - Except as provided under this Lease, no alteration or removal of improvements on or natural features of the Lease Premises shall be undertaken without the prior written consent of Lessor.

(e) Conservation

Lessee shall practice conservation of water, energy, and other natural resources and shall prevent pollution and harm to the environment. Lessee shall not violate any law or regulation whose purpose is to conserve resources or to protect the environment. Violation of this section shall constitute grounds for termination of the Lease. Lessor, by its executive officer, shall notify Lessee, when in his or her opinion, Lessee has violated the provisions of this section and Lessee shall respond and discontinue the conduct or remedy the condition within 30 days.

(f) Toxics

Lessee shall not manufacture or generate hazardous wastes on the Lease Premises unless specifically authorized under other terms of this Lease. Lessee shall be fully responsible for any hazardous wastes, substances or materials as defined under federal, state or local law, regulation, or ordinance that are manufactured, generated, used, placed, disposed, stored, or transported on the Lease Premises during the Lease term and shall comply with and be bound by all applicable provisions of such federal, state or local law, regulation or ordinance dealing with such wastes, substances or materials. Lessee shall notify Lessor and the appropriate governmental emergency response agency(ies) immediately in the event of any release or threatened release of any such wastes, substances, or materials.

(g) Enjoyment

Subject to the provisions of paragraph 5 (a) (2) below, nothing in this Lease shall preclude Lessee from excluding persons from the Lease Premises when their presence or activity constitutes a material interference with Lessee's use

and enjoyment of the Lease Premises as provided under this Lease.

(h) Discrimination

Lessee in its use of the Lease Premises shall not discriminate against any person or class of persons on the basis of race, color, creed, religion, national origin, sex, age, or handicap.

(i) Residential Use

No portion of the Lease Premises shall be used as a location for a residence or for the purpose of mooring a structure which is used as a residence. For purposes of this Lease, a residence or floating residence includes but is not limited to boats, barges, houseboats, trailers, cabins, or combinations of such facilities or other such structures which provide overnight accommodations to the Lessee or others.

5. RESERVATIONS, ENCUMBRANCES, AND RIGHTS-OF-WAY

(a) Reservations

- (1) Lessor expressly reserves all natural resources in or on the Lease Premises, including but not limited to timber and minerals as defined under Public Resources Code Sections 6401 and 6407, as well as the right to grant leases in and over the Lease Premises for the extraction of such natural resources; however, such leasing shall be neither inconsistent nor incompatible with the rights or privileges of Lessee under this Lease.
- (2) Lessor expressly reserves a right to go on the Lease Premises and all improvements for any purpose associated with this Lease or for carrying out any function required by law, or the rules, regulations or management policies of the State Lands Commission. Lessor shall have a right of reasonable access to the Lease Premises across Lessee owned or occupied lands adjacent to the Lease Premises for any purpose associated with this Lease.
- (3) Lessor expressly reserves to the public an easement for convenient access across the Lease Premises to other State-owned lands located near or adjacent to the Lease Premises and a right of reasonable passage across and along any right-of-way granted by this Lease; however, such easement or right-of-way shall be neither inconsistent nor incompatible with the rights or privileges of Lessee under this Lease.
- (4) Lessor expressly reserves the right to lease, convey, or encumber the Lease Premises, in whole or in part, during the Lease term for any purpose not inconsistent or incompatible with the rights or privileges of Lessee under this Lease.

(b) Encumbrances

This Lease may be subject to pre-existing contracts, leases, licenses, easements, encumbrances, and claims and is made without warranty by Lessor of title, condition, or fitness of the land for the stated or intended purpose.

6. RULES, REGULATIONS, AND TAXES

(a) Lessee shall comply with and be bound by all presently existing or subsequently enacted rules, regulations, statutes or ordinances of the State Lands Commission or any other governmental agency or entity having lawful authority and jurisdiction.

(b) Lessee understands and agrees that a necessary condition for the granting and continued existence of this Lease is that Lessee obtains and maintains all permits or other entitlements.

(c) Lessee accepts responsibility for and agrees to pay any and all possessory interest taxes, assessments, user fees or service charges imposed on or associated with the leasehold interest, improvements or the Lease Premises, and such payment shall not reduce rental due Lessor under this Lease and Lessor shall have no liability for such payment.

7. INDEMNITY

(a) Lessor shall not be liable and Lessee shall indemnify, hold harmless and, at the option of Lessor, defend Lessor, its officers, agents, and employees against and for any and all liability, claims, damages or injuries of any kind and from any cause, arising out of or connected in any way with the issuance, enjoyment or breach of this Lease or Lessee's use of the Lease Premises except for any such liability, claims, damage or injury solely caused by the negligence of Lessor, its officers, agents and employees.

(b) Lessee shall notify Lessor immediately in case of any accident, injury, or casualty on the Lease Premises.

8. INSURANCE

(a) Lessee shall obtain and maintain in full force and effect during the term of this Lease comprehensive general liability insurance and property damage insurance, with such coverage and limits as may be reasonably requested by Lessor from time to time, but in no event for less than the sum(s) specified, insuring Lessee and Lessor against any and all claims or liability arising out of the ownership, use, occupancy, condition or maintenance of the Lease Premises and all improvements.

(b) The insurance policy or policies shall name the State of California, its officers, employees and volunteers as insureds as to the Lease Premises and shall identify the Lease by its assigned number. Lessee shall provide Lessor with a certificate of such insurance and shall keep such certificate current. The policy (or endorsement) must provide that the insurer will not cancel the insured's coverage without thirty (30) days prior written notice to Lessor. Lessor will not be responsible for any premiums or other assessments on the

policy. The coverage provided by the insured (Lessee) shall be primary and non-contributing.

(c) The insurance coverage specified in this Lease shall be in effect at all times during the Lease term and subsequently until all of the Lease Premises have been either accepted as improved, by Lessor, or restored by Lessee as provided elsewhere in this Lease.

9. SURETY BOND

(a) Lessee shall provide a surety bond or other security device acceptable to Lessor, for the specified amount, and naming the State of California as the assured, to guarantee to Lessor the faithful observance and performance by Lessee of all of the terms, covenants, and conditions of this Lease.

(b) Lessor may require an increase in the amount of the surety bond or other security device to cover any additionally authorized improvements, alterations or purposes and any modification of consideration.

(c) The surety bond or other security device shall be maintained in full force and effect at all times during the Lease term and subsequently until all of the Lease Premises have been either accepted as improved, by Lessor, or restored by Lessee as provided elsewhere in this Lease.

10. ASSIGNMENT, ENCUMBRANCING OR SUBLETTING

(a) Lessee shall not either voluntarily or by operation of law, assign, transfer, mortgage, pledge, hypothecate or encumber this Lease and shall not sublet the Lease Premises, in whole or in part, or allow any person other than the Lessee's employees, agents, servants and invitees to occupy or use all or any portion of the Lease Premises without the prior written consent of Lessor, which consent shall not be unreasonably withheld.

(b) The following shall be deemed to be an assignment or transfer within the meaning of this Lease:

(1) If Lessee is a corporation, any dissolution, merger, consolidation or other reorganization of Lessee or sale or other transfer of a percentage of capital stock of Lessee which results in a change of controlling persons, or the sale or other transfer of substantially all the assets of Lessee;

(2) If Lessee is a partnership, a transfer of any interest of a general partner, a withdrawal of any general partner from the partnership, or the dissolution of the partnership.

(c) If this Lease is for sovereign lands, it shall be appurtenant to adjoining littoral or riparian land and Lessee shall not transfer or assign its ownership interest or use rights in such adjoining lands separately from the leasehold rights granted herein without the prior written consent of Lessor.

(d) If Lessee desires to assign, sublet, encumber or otherwise transfer all or any portion of the Lease Premises, Lessee shall do all of the following:

(1) Give prior written notice to Lessor;

(2) Provide the name and complete business organization and operational structure of the proposed assignee, sublessee, secured third party, or other transferee; and the nature of the use of and interest in the Lease Premises proposed by the assignee, sublessee, secured third party or other transferee. If the proposed assignee, sublessee, or secured third party is a general or limited partnership, or a joint venture, provide a copy of the partnership agreement or joint venture agreement, as applicable;

(3) Provide the terms and conditions of the proposed assignment, sublease, or encumbrance or other transfer;

(4) Provide audited financial statements for the two most recently completed fiscal years of the proposed assignee, sublessee, secured party or other transferee; and provide pro forma financial statements showing the projected income, expense and financial condition resulting from use of the Lease Premises; and

(5) Provide such additional or supplemental information as Lessor may reasonably request concerning the proposed assignee, sublessee, secured party or other transferee.

Lessor will evaluate proposed assignees, sublessees, secured third parties and other transferees and grant approval or disapproval according to standards of commercial reasonableness considering the following factors within the context of the proposed use: the proposed party's financial strength and reliability, their business experience and expertise, their personal and business reputation, their managerial and operational skills, their proposed use and projected rental, as well as other relevant factors.

(e) Lessor shall have a reasonable period of time from the receipt of all documents and other information required under this provision to grant or deny its approval of the proposed party.

(f) Lessee's mortgage or hypothecation of this Lease, if approved by Lessor, shall be subject to terms and conditions found in a separately drafted standard form (Agreement and Consent to Encumbrancing of Lease) available from Lessor upon request.

(g) Upon the express written assumption of all obligations and duties under this Lease by an assignee approved by Lessor, the Lessee may be released from all liability under this Lease arising after the effective date of assignment and not associated with Lessee's use, possession or occupation of

or activities on the Lease Premises; except as to any hazardous wastes, substances or materials as defined under federal, state or local law, regulation or ordinance manufactured, generated, used, placed, disposed, stored or transported on the Lease Premises.

(h) If the Lessee files a petition or an order for relief is entered against Lessee, under Chapters 7,9,11 or 13 of the Bankruptcy Code (11 USC Sect. 101, et seq.) then the trustee or debtor-in-possession must elect to assume or reject this Lease within sixty (60) days after filing of the petition or appointment of the trustee, or the Lease shall be deemed to have been rejected, and Lessor shall be entitled to immediate possession of the Lease Premises. No assumption or assignment of this Lease shall be effective unless it is in writing and unless the trustee or debtor-in-possession has cured all defaults under this Lease (monetary and non-monetary) or has provided Lessor with adequate assurances (1) that within ten (10) days from the date of such assumption or assignment, all monetary defaults under this Lease will be cured; and (2) that within thirty (30) days from the date of such assumption, all non-monetary defaults under this Lease will be cured; and (3) that all provisions of this Lease will be satisfactorily performed in the future.

11. DEFAULT AND REMEDIES

(a) Default

The occurrence of any one or more of the following events shall immediately and without further notice constitute a default or breach of the Lease by Lessee:

- (1) Lessee's failure to make any payment of rental, royalty, or other consideration as required under this Lease;
- (2) Lessee's failure to obtain or maintain liability insurance or a surety bond or other security device as required under this Lease;
- (3) Lessee's vacation or abandonment of the Lease Premises (including the covenant for continuous use as provided for in paragraph 4) during the Lease term;
- (4) Lessee's failure to obtain and maintain all necessary governmental permits or other entitlements;
- (5) Lessee's failure to comply with all applicable provisions of federal, state or local law, regulation or ordinance dealing with hazardous waste, substances or materials as defined under such law;
- (6) Lessee's Failure to commence to construct and to complete construction of the improvements authorized by this Lease within the time limits specified in this Lease; and/or

- (7) Lessee's failure to comply with applicable provisions of federal, state or local laws or ordinances relating to issues of Health and Safety, or whose purpose is to conserve resources or to protect the environment.

(b) Lessee's failure to observe or perform any other term, covenant or condition of this Lease to be observed or performed by the Lessee when such failure shall continue for a period of thirty (30) days after Lessor's giving written notice; however, if the nature of Lessee's default or breach under this paragraph is such that more than thirty (30) days are reasonably required for its cure, then Lessee shall not be deemed to be in default or breach if Lessee commences such cure within such thirty (30) day period and diligently proceeds with such cure to completion.

(c) Remedies

In the event of a default or breach by Lessee and Lessee's failure to cure such default or breach, Lessor may at any time and with or without notice do any one or more of the following:

- (1) Re-enter the Lease Premises, remove all persons and property, and repossess and enjoy such premises;
- (2) Terminate this Lease and Lessee's right of possession of the Lease Premises. Such termination shall be effective upon Lessor's giving written notice and upon receipt of such notice, Lessee shall immediately surrender possession of the Lease Premises to Lessor;
- (3) Maintain this Lease in full force and effect and recover any rental, royalty, or other consideration as it becomes due without terminating Lessee's right of possession regardless of whether Lessee shall have abandoned the Lease Premises; and/or
- (4) Exercise any other right or remedy which Lessor may have at law or equity.

12. RESTORATION OF LEASE PREMISES

(a) Upon expiration or sooner termination of this Lease, Lessor upon written notice may take title to any or all improvements, including fills, or Lessor may require Lessee to remove all or any such improvements at its sole expense and risk; or Lessor may itself remove or have removed all or any portion of such improvements at Lessee's sole expense. Lessee shall deliver to Lessor such documentation as may be necessary to convey title to such improvements to Lessor free and clear of any liens, mortgages, loans or any other encumbrances.

(b) In removing any such improvements Lessee shall restore the Lease Premises as nearly as possible to the conditions existing prior to their installation or construction.

STATE OF CALIFORNIA - STATE LANDS COMMISSION

LEASE NO.

This Lease shall become effective only when approved by and executed on behalf of the State Lands Commission of the State of California and a duly executed copy has been delivered to Lessee. The submission of this Lease by Lessor, its agent or representative for examination by Lessee does not constitute an option or offer to lease the Lease Premises upon the terms and conditions contained herein, or a reservation of the Lease Premises in favor of Lessee. Lessee's submission of an executed copy of this Lease to Lessor shall constitute an offer to Lessor to lease the Lease Premises on the terms and conditions set forth herein.

IN WITNESS WHEREOF, the parties hereto have executed this Lease as of the date hereafter affixed.

LESSEE:

**SAN FRANCISCO PUBLIC UTILITIES
COMMISSION**

By: _____

Title: _____

Date: _____

LESSOR:

**STATE OF CALIFORNIA
STATE LANDS COMMISSION**

By: _____

Title: _____

Date: _____

**NOTARY ACKNOWLEDGEMENT
REQUIRED**

This Lease was authorized by the
California State Lands Commission on

(Month Day Year)

