File No. 180550 Committee Item No. 1
Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

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Prepared by: John Carroll **Date:** July 13, 2018
Prepared by: John Carroll **Date:** _____

[Conditional Land Disposition and Acquisition Agreement - 2000 Marin Street - Potential Exchange of 639 Bryant Street]

Resolution approving a Conditional Land Disposition and Acquisition Agreement ("Agreement") with 2000 Marin Property, L.P. for the City's future transfer of real property at 639 Bryant Street (Assessor's Parcel Block No. 3777, Lot No. 052) in exchange for real property at 2000 Marin Street (Assessor's Parcel Block No. 4346, Lot No. 002), including the reimbursement of certain SFPUC's costs; finding that the Agreement is a conditional land acquisition agreement under California Environmental Quality Act Guidelines, Section 15004(b)(2)(A), with closing conditioned on City discretionary approval after the completion of environmental review.

WHEREAS, The City and County of San Francisco, under the jurisdiction of the San Francisco Public Utilities Commission ("SFPUC"), owns certain real property known as 639 Bryant Street, Assessor's Parcel Block No. 3777, Lot No. 052 (the "City Property"), an approximately 1.37 acre parcel improved with a warehouse and parking lot, that is used for heavy equipment and materials storage, parking, construction staging, and other related purposes; and

WHEREAS, The SPFUC leases adjacent property at 651 Bryant Street, Assessor's Parcel Block No. 3777, Lot No. 050 (the "City Leased Premises"), for related office and warehouse purposes under a lease that expires in October 2019, but with a right to extend the lease for 10 years; and

WHEREAS, 2000 Marin Property, L.P., a Delaware limited partnership ("Developer"), owns certain real property known as 2000 Marin Street, Assessor's Parcel Block No. 4346, Lot No. 002 (the "Marin Property"), an approximately 7.98 acre parcel with a 74,000 square foot building built in 1989; and

WHEREAS, Developer proposes to acquire the City Property in exchange for the Marin Property, and seeks to develop a mixed-use project on the City Property, the City Leased Premises, and other adjacent parcels with approximately 923,000 square feet of office, 73,000 square feet of residential/PDR, 80,000 square feet of residential, and a 40,000 square foot public plaza (the "Development Project"); and

WHEREAS, On April 17, 2018, the Board of Supervisors adopted Resolution No. 115-18 (File No. 180370) supporting negotiations for a potential exchange of the City Property for the Marin Property, subject to City analysis and approvals following any required environmental review; and

WHEREAS, In 2011, the San Francisco Planning Department began a multi-year public and cooperative interagency planning process for the Central SOMA Plan (Planning Department Case No. 2011.1356EMTZU); and

WHEREAS, The City has not yet completed environmental review under the California Environmental Quality Act ("CEQA") (California Public Resources Code, Sections 21000 *et seq.*) for the Central SOMA Plan, but the environmental review that is being performed will include analysis of potential uses of and development controls applicable to the City Property and adjoining parcels; and

WHEREAS, Developer and the City have negotiated a Conditional Land Disposition and Acquisition Agreement, a copy of which is on file with the Clerk of the Board of Supervisors in File No. 180550 (the "Agreement"), which, upon the satisfaction of certain conditions, provides for the exchange of the City Property for the Marin Property, Developer's obligation to construct or place certain facilities on the Marin Property for City's use and relocate the SFPUC's personal property from the City Property and the City Leased Premises to the Marin Property (the "Developer Services"), and the payment by Developer to the

SFPUC for certain SFPUC costs incurred in connection with the proposed property exchange (the "Developer Payment"); and

WHEREAS, The Agreement does not require the City to approve the Central SOMA Plan or any proposed development, including any development of the City Property or the Marin Property; and

WHEREAS, The City's obligation to complete the property exchange is conditioned on, among other things, the City's approval of the property exchange at its sole discretion following the completion of all required environmental review; and

WHEREAS, Developer's obligation to complete the property exchange is conditioned on, among other things, the receipt of all governmental approvals necessary for Developer to proceed with the Developer Project, including zoning changes, and the City's waiver or reduction of certain development impact fees in exchange for Developer's dedication of a public plaza to the City as part of the Developer Project; and

WHEREAS, The City will review and consider each of the environmental review documents that relate respectively to the Central SOMA Plan, the Developer Project, and the City's plan to develop and use the Marin Property (individually, a "Project" and collectively, the "Projects") before deciding whether to approve each Project, including any associated rezoning, Municipal Code or General Plan amendments or waivers, and design, demolition, and building permits; and

WHEREAS, The City retains absolute discretion to: require modifications in one or more of the Projects to mitigate significant adverse environmental impacts, select feasible alternatives that avoid significant adverse impacts of one or more of the Projects, require the implementation of specific measures to mitigate the significant adverse environmental impacts of one or more of the Projects, as identified through environmental review, reject all or part of one or more of the Projects as proposed if the economic and social benefits of the Project do

not outweigh otherwise unavoidable significant adverse impacts of that Project, and approve one or more of the Projects upon a finding that the economic and social benefits of the Project outweigh otherwise unavoidable significant adverse environmental impacts of that Project; and

WHEREAS, Although the City has obtained appraisals of the City Property and the Marin Property that state that the value of the City Property exceeds the value of the Marin Property; the combined value of the Marin Property, the Developer Services, and the Developer Payment will exceed the value of the City Property; and

WHEREAS, The Board understands and agrees that if the combined value of the Marin Property, the Developer Services, and the Developer Payment exceed the value of the City Property, the excess value shall be deemed a gift by Developer to the City; and

WHEREAS, After completion of environmental review and before closing of the property exchange, if any, the Agreement requires the Board of Supervisors and the Mayor, each at their respective sole and absolute discretion, to approve the property exchange; and

WHEREAS, The San Francisco Public Utilities Commission (the "Commission"), by Commission Resolution No. 18-0121, authorized the General Manager of the SFPUC to execute the Agreement, subject to approval by the Board of Supervisors; and

WHEREAS, Entering into the Agreement with Developer is in the City's best interest, and: the Commission has found that the existing space at the City Property will not meet the SFPUC's anticipated future utility yard operations needs, so either expansion of the existing facility or securing a replacement facility will be necessary in the near future; the Commission has found that the Marin Property is expected to result in improved and more integrated SFPUC utility operations on a site that is five times larger than the City Property, with excellent access to transportation routes, and therefore acquisition of the Marin Property would render the City Property surplus to the SFPUC's utility needs; and the proposed use of

the City Property by Developer may yield more appropriate land uses within the Central SOMA Plan Area; and

WHEREAS, This resolution is not an approval of any of the Projects or a commitment to proceed with the property exchange, and this resolution does not constitute an "Approval," as that term is defined by CEQA Guidelines, Section 15352; now, therefore, be it

RESOLVED, That the Board of Supervisors finds that the Agreement is a conditional land acquisition agreement as described in CEQA Guidelines, Section 15004(b)(2)(A), and closing is conditioned on City's discretionary approval of the property exchange following the completion of environmental review; and, be it

FURTHER RESOLVED, That the Board of Supervisors hereby approves the Agreement and authorizes the execution and performance of the Agreement by the Director of Property and the SFPUC General Manager in substantially the form presented to the Board in File No. 180550, together with any other documents that are necessary or advisable to effectuate the proposed property exchange subject to satisfaction of each of the conditions in the Agreement, including the City's subsequent discretionary approval; and, be it

FURTHER RESOLVED, Nothing in this resolution limits the discretion of the Board with respect to the approval or rejection of any of the Projects, and the Board of Supervisors understands that conditions for the benefit of Developer, including the issuance of project approvals for the Development Project, may be waived by Developer.

CITY AND COUNTY OF SAN FRANCISCO

BOARD OF SUPERVISORS

BUDGET AND LEGISLATIVE ANALYST

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July 13, 2018

TO: Government Audit and Oversight Committee

FROM: Budget and Legislative Analyst

SUBJECT: July 18, 2018 Government Audit and Oversight Committee Meeting

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Item 1 File 18-0550	Department San Francisco Public Utilities Commission (SFPUC) Office of Economic and Workforce Development (OEWD)

EXECUTIVE SUMMARY

Legislative Objectives

- The proposed resolution would approve the Conditional Land Disposition and Acquisition Agreement between the City, through the SFPUC, and 2000 Marin Property, L.P. in which the SFPUC would transfer ownership of the City's parcel at 639 Bryant Street to 2000 Marin Property, L.P. in exchange for 2000 Marin Street.

Key Points

- Resolution 18-0370, adopted by the Board of Supervisors in April 2018, urged the SFPUC to negotiate a property exchange of City-owned property 639 Bryant Street for 2000 Marin Street, owned by Tishman-Speyer (parent company of 2000 Marin Property L.P.). The property exchange would facilitate the temporary relocation of the Flower Mart, currently located at 6th and Brannan Streets on a site slated for office and retail development, to 2000 Marin Street.
- SFPUC uses 639 Bryant Street for the Power Enterprise warehouse and parking of large equipment. Under the proposed Agreement, SFPUC would relocate some Power Enterprise and Water Enterprise facilities to 2000 Marin Street.
- Tishman-Speyer plans a 1.2 million square foot mixed-use development bounded by 4th, 5th, Bryant, and Brannan Streets, including SFPUC's property at 639 Bryant Street. The proposed Agreement, provides for construction of a public park as part of this development, which would be transferred to the City on completion.
- 2000 Marin Property L.P. would construct temporary facilities at 2000 Marin Street for SFPUC, subject to reimbursement by SFPUC, pending completion of a study by SFPUC to determine the best use of 2000 Marin Street. 2000 Marin Property L.P. would also negotiate a lease with a third party for the portion of 2000 Marin Street not used by SFPUC (the proposed Agreement specifies that the lease would be negotiated with Kilroy Realty, the parent company of KR Flower Mart, LLC, to relocate the Flower Mart to 2000 Marin Street).

Fiscal Impact

- The appraised value of 639 Bryant Street of $63,875,000 is $275,000 more than the appraised value of 2000 Marin Street of $63,600,000. Under the proposed agreement, 2000 Marin Property L.P. would reimburse City costs up to $1,070,000.

Policy Consideration

- While SFPUC staff states that the property exchange of the existing City property at 639 Bryant Street for 2000 Marin Street is necessary to accommodate future expansion of the SFPUC's Power and Water Enterprises, the reasons and scope of the expansion are not identified.
- The appraised value of the property at 2000 Marin Street of $63.6 million does not account for potential environmental contamination. The property value could be less than the appraisal if the environmental site assessment finds that the property cannot be used for the SFPUC's intended purpose due to environmental contamination.
- The Planning Department is expected to request waiver of Transportation Sustainability Fees charged to Tishman-Speyer (the parent company of 2000 Marin Property L.P.) for the mixed use development of the area bounded by 4th, 5th, Bryant, and Brannan Streets (which includes 639 Bryant Street) as consideration for the public park to be developed by Tishman-Speyer. The loss of these fees could potentially be offset by assessing such fees to other development projects, or through another funding mechanism such as the Central SOMA Community Facilities District special tax.

Recommendations

- Request the Planning Commission in considering potential waiver of Transportation Sustainability Fees for the future mixed-use development of the property bounded by 4th, 5th, Brannan, and Bryant Streets to (a) not include the Developer's reimbursements of $245,000 to SFPUC for transaction costs in calculating the fee waiver, (b) consider the impact of the potential loss of Transportation Sustainability Fee revenues on bicycle, pedestrian, street, and transit projects in SOMA, and (c) consider the reasonableness and feasibility of recouping the potential loss of Transportation Sustainability Fee revenues through development agreements with other private developers.
- Request the Planning Department to include the ongoing costs to the City to maintain the park in any agreement with the Developer to develop the park.
- Request a written report from the SFPUC General Manager on the potential scope of the Power and Water Enterprise expansions, including the (a) potential increase in customers, infrastructure, SFPUC staffing, and other revenues and expenditures associated with the expansion, and (b) timelines for the expansions.
- Amend the proposed resolution to state the Board of Supervisor's policy that, if the Phase II Environmental Site Assessment identifies contamination that makes the property unsuitable for the intended use and occupancy by the SFPUC, and if the SFPUC choses to continue with the property exchange transaction, the final property exchange transaction will (a) provide for the Developer to fully mitigate all environmental contamination to make the property suitable for the intended use and occupancy by the SFPUC, and/or (b) reduce the exchange value of the property to fully account for the costs of environmental remediation to make the property suitable for the intended use and occupancy by the SFPUC.
- Approval of the proposed resolution, as amended, is a policy matter for the Board of Supervisors.

MANDATE STATEMENT

The San Francisco City Charter section 9.118(b) states that contracts entered into by the City and County, any other contracts or agreements entered into by a department, board or commission having a term in excess of ten years, or requiring anticipated expenditures by the City and County of ten million dollars, or the modification or amendments to such contract or agreement having an impact of more than $500,000 shall be subject to approval of the Board of Supervisors by resolution.

Administrative Code Section 23.3 requires Board of Supervisors approval for the sale or conveyance of city-owned property.

BACKGROUND

The City and County of San Francisco (City), under the jurisdiction of its Public Utilities Commission (SFPUC), owns one parcel and leases one parcel in the South of Market neighborhood for its Power Enterprise.

639 Bryant Street

The City, through the SFPUC, currently owns a parcel at 639 Bryant Street for its Power Enterprise. The parcel is approximately 1.38 acres and has a warehouse and parking lot for SFPUC heavy equipment, materials storage, vehicle parking, construction staging, and operation of a hydrogen peroxide tank. In July 2018, the parcel was appraised by Clifford Advisory, LLC at $63,875,000 or $209 per square foot of gross floor area[1] ($1,140 per square foot of the site area[2]).

The appraisal for 639 Bryant Street assumes several future conditions, including but not limited to: (1) that the Central SOMA Plan, which was approved by the Planning Commission in May 2018 and makes substantial changes to the zoning of the area in which the parcel lies, is approved by the Board of Supervisors; (2) that the property receives an allocation of 689,791 square feet of Proposition M controlled office space; and (3) that the property is developed in coordination with the surrounding parcels, which are all owned by the proposed Developer.

651 Bryant Street

The City, through the SFPUC, also leases an approximately 0.44-acre parcel at 651 Bryant Street, which is adjacent to the parcel the City owns at 639 Bryant Street. The parcel contains office space and a warehouse that serve the SFPUC's Power Enterprise. The SFPUC's annual rent for this parcel is $286,560, which will increase to $293,724 in October 2018. The lease expires in October 2019; however, SFPUC has a ten-year extension option. According to Ms. Rosanna Russell, SFPUC Real Estate Director, the estimated savings from not exercising the optional ten-year lease extension is $6,637,586 or approximately $663,759 per year. The rent for 651 Bryant Street is expected to increase from $293,724 to $663,759 after October 2019

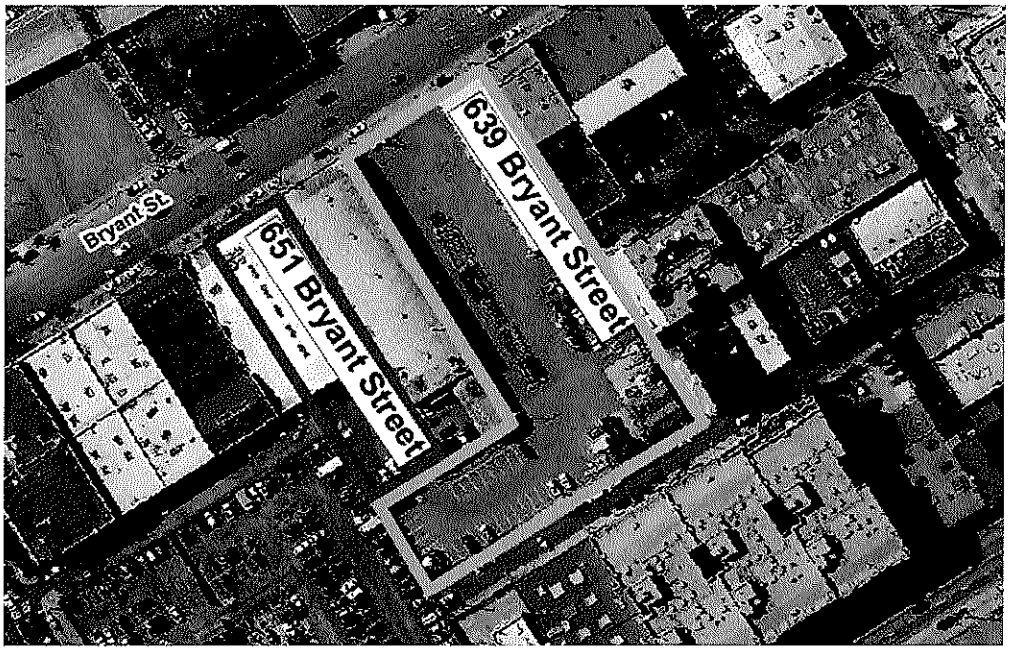
[1] Gross floor area refers to the maximum area taken by land and property improvements, including vertical structures.

[2] Site area refers to the land area of the parcel.

due to expected increases in land values resulting from the pending approval of the Central Some Plan.

The parcels at 651 Bryant and 639 Bryant are shown in Exhibit 1 below.

Exhibit 1: 639 Bryant Street and 651 Bryant Street



Source: SFPUC

2000 Marin Street

The SFPUC is seeking to exchange its parcel at 639 Bryant Street for an approximately 7.98-acre parcel located at 2000 Marin Street. If approved, the SFPUC plans to relocate its Power Enterprise facilities currently located at 639 Bryant Street and 651 Bryant Street to 2000 Marin Street. According to Ms. Russell, the SFPUC Water and Power Enterprises will require more space than it currently has on its existing owned and leased land and is therefore seeking to relocate and expand its operations at 2000 Marin Street.

In July 2018, the parcel at 2000 Marin Street was appraised by Clifford Advisory, LLC at $63,600,000 or $185 per square foot of the gross floor area. The appraised value does not take into account the parcel's known hazardous material contamination, which is pending further review. The parcel had a purchase price of $33,000,000 in April 2015, which is $30,600,000 less than the July 2018 appraised value. [3]

The parcel at 2000 Marin Street is shown below in Exhibit 2.

[3] 2000 Marin Street was formerly the location of the of the Hearst Corporation printing facility. The site was purchased by Tishman Speyer (the parent company of 2000 Marin Property L.P.) in 2015.

Exhibit 2: 2000 Marin Street

Source: SFPUC

San Francisco Flower Market and SOMA Development

The Board of Supervisors approved a resolution in April 2018 (File 18-0370) urging the SFPUC to negotiate a property exchange of 639 Bryant Street for 2000 Marin Street, owned by Tishman Speyer (the parent company of 2000 Marin Property, L.P.). The property exchange would facilitate the temporary relocation of the Flower Mart, currently located at 6th and Brannan Streets, to 2000 Marin. Kilroy Realty, which owns the 6th and Brannan Streets property, plans a mixed use retail and office development that would replace the Flower Mart's warehouse at that location.

Tishman Speyer plans a 1.2 million square foot mixed-use development bounded by 4th, 5th, Bryant, and Brannan Streets, including SFPUC's property at 639 Bryant Street. Tishman Speyer has agreed to construct a 38,000 square foot public park as part of the development, which would be transferred to the City once completed.

DETAILS OF PROPOSED LEGISLATION

The proposed resolution would approve the Conditional Land Disposition and Acquisition Agreement between the City, through the SFPUC, and 2000 Marin Property, L.P. in which the SFPUC would transfer ownership of the City's parcel at 639 Bryant Street to 2000 Marin Property, L.P. in exchange for 2000 Marin Street. The Agreement documents the framework and necessary conditions for the SFPUC to trade its parcel at 639 Bryant Street for 2000 Marin Street as well as the certain transaction-related costs for which the SFPUC will be reimbursed. The transfer of parcels is expected to take place during the second half of 2019.

Requirements for Final Transfer of Parcels

Prior to the transfer of the parcels, the City, through the SFPUC, and 2000 Marin Property, L.P. ("Developer") must certify that the following conditions are met, which will be documented in the Closing Authorization Action Agreement (which is not the Agreement currently before the Board of Supervisors). The requirements are:

1. The Developer's receipt of all governmental approvals necessary for Developer to construct temporary facilities at 2000 Marin Street, including zoning changes.
2. The SFPUC Commission's review of the environmental testing results for 2000 Marin, remediation costs, and subsequent written approval of the environmental condition of 2000 Marin, including the option to negotiate with the Developer an appropriate environmental remediation strategy.
3. The Board of Supervisors' waiver or reduction of certain development impact fees for the Developer's project at 639 Bryant Street in exchange for Developer's dedication of a public park to the City as part of the project.

The Agreement does not require the City to approve the Central SOMA Plan or any proposed development, including any development of 639 Bryant Street or 2000 Marin.

Per the proposed Agreement, the Closing Authorization Action, which will certify that all requirements of the proposed Agreement are met and allow for the exchange of parcels, will require approval by the Board of Supervisors.

FISCAL IMPACT

City Costs and Reimbursements

As shown below in Exhibit 3, the appraised value of the City's parcel at 639 Bryant Street exceeds the appraised value of the parcel it seeks to purchase at 2000 Marin Street by approximately $275,000.

Exhibit 3: Difference in Appraised Value

Appraised Value of Parcels to be exchanged	Amount
Appraised Value of 639 Bryant Street (SFPUC owned)	$63,875,000
Appraised Value of 2000 Marin Street (Developer owned)	(63,600,000)
Difference in Appraised Values	**$275,000**

As shown in Exhibit 4 below, under the proposed Conditional Agreement, the Developer would pay or reimburse the City's costs, in an amount not-to-exceed $1,070,000. The proposed Conditional Agreement would allow the SFPUC to recover up to:

- $245,000 in pre-agreement legal and appraisal costs,
- $35,000 in consultant costs to estimate SFPUC's relocation costs
- $690,000 to relocate SFPUC facilities at 639 Bryant Street and 651 Bryant Street, and

- $100,000 to assess the environmental condition of 2000 Marin Street and the SFPUC's oversight costs.

In addition, the Developer would incur the cost of relocating the hydrogen peroxide tank from 639 Bryant Street to another location, with an estimated cost to the Developer of $1,000,000.

Exhibit 4: Developer Reimbursement of City Costs

Reimbursed Costs	Amount
Pre-Agreement Costs	$245,000
Cost to Estimate Relocation Costs	35,000
Relocation Costs	690,000
Environmental Testing for 2000 Marin Street	100,000
Subtotal, Reimbursed Costs	**$1,070,000**
Relocation of Hydrogen Peroxide Tank (est.)	1,800,000
Total Developer Reimbursement and Estimated Costs	**$2,870,000**

In addition, the SFPUC estimates that it would avoid approximately $6,637,586 in rent costs by giving up its lease for 651 Bryant Street. All revenues and costs for this transaction would be recorded in the SFPUC's Water Enterprise and Power Enterprise funds, which are funded by rate payers.

Expected Development Plans for the Parcels

Once the transfer of parcels is finalized and approved by the Board of Supervisors, the SFPUC will conduct a study to determine the best use of the parcel at 2000 Marin Street.

As noted below, under the proposed Agreement, the Developer will negotiate a lease with a third party tenant for 2000 Marin Street. According to Ms. Russell, the third party tenant will be responsible to demolish the existing building at 2000 Marin Street.

The Developer will construct temporary facilities at an estimated cost of $3,400,000 - $3,900,000, which must be repaid by the SFPUC. The Developer's budget for construction of the temporary facilities, including a contingency up to 10 percent, must be approved by the City.

Relocation of the Flower Mart

The proposed Agreement requires the Developer to negotiate a lease with Kilroy Realty Corporation, which is the parent company of KR Flower Mart LLC, to temporarily relocate the Flower Mart to the remaining portions of 2000 Marin not used for SFPUC's temporary facilities, and to assign the lease to SFPUC. According to the SFPUC staff report to the July 10, 2018 Commission meeting, lease revenues are intended to be sufficient to cover the costs of constructing SFPUC's temporary facilities.

If the Developer and Kilroy Realty cannot negotiate a mutually acceptable lease, the SFPUC will work with the Developer to identity another source of revenue to reimburse the Developer for the cost of the temporary facilities at 2000 Marin Street. The SFPUC must approve any use of 2000 Marin Street. However, because the 2000 Marin Street lease is between the Developer and a third party (expected to be Kilroy Realty), the lease does not require Board of Supervisors approval.

Development Impact Fee Waivers

As noted above, the Developer has preliminary plans to develop the area bounded by 4th, 5th, Brannan, and Bryant Streets into a mixed-use project that includes a public park of approximately one acre. The Developer will construct the park, which will be transferred to the City.

The Office of Economic and Workforce Development (OEWD) and the Planning Department are negotiating with the Developer to waive certain development impact fees to offset the Developer's cost of constructing the park. As shown in Exhibit 5 below, the estimated cost to the Developer for constructing the park is $35,570,000, including an estimated $1,070,000 paid by the Developer to reimburse SFPUC for transaction and relocation costs.

The proposed Central SOMA Plan[4] states that the Planning Commission may waive the Transit Sustainability Fee for projects within the Central SOMA Plan area if the waived amount can be recovered by other funding. According to Ms. Sarah Dennis-Phillips, OEWD Deputy Director of Development, when the Developer's mixed-use project is considered for approval by the Planning Commission, the Planning Department will recommend that the Developer's Transit Sustainability Fee be waived so that the development impact fees paid by the Developer (estimated to be $35.4 million) approximately equal the cost of the public park to be constructed by the Developer.

Exhibit 5: Potential Waiver of Development Impact Fees

Estimated Costs to Developer to Construct Public Park	
Land Purchase [a]	$30,000,000
Development Costs [b]	3,500,000
Reimbursements to SFPUC	1,070,000
Total Estimated Costs	**$34,570,000**
Estimated Development Impact Fees	
Eastern Neighborhoods Infrastructure Impact Fee [c]	$17,000,000
Transportation Sustainability Fee [d]	18,400,000
Total Estimated Development Impact Fees	**$35,400,000**

Source: OEWD

[a] According to the Planning Department, the estimated land purchase price of $30 million is based on the portion of each parcel that will be dedicated to a public park (639 Bryant Street, Parcel 50, and Parcel 51) multiplied by the value per square foot.

[b] Based on park development costs of approximately $95 per square foot for 38,000 square feet.

[c] Eastern Neighborhoods Infrastructure Impact Fee for open space would be waived in consideration of the public park to be constructed by the Developer.

[d] The Proposed Central SOMA Plan allows the waiver of the Transportation Sustainability Fee.

[4] The Planning Commission approved the Central SOMA Plan in May 2018. The Plan was continued at the Land Use and Transportation Committee at the July 9, 2018 meeting to July 16, 2018, and is expected to be calendared at the Board of Supervisors meeting on July 24, 2018.

According to Ms. Dennis-Phillips, the Planning Commission could potentially recover the waived Transit Sustainability Fee through a development agreement with the KR Flower Mart, LLC or other private developer, or through another funding mechanism such as the Central SOMA Community Facilities District special tax.[5]

POLICY CONSIDERATION

The proposed resolution approving the Conditional Land Disposition and Acquisition Agreement between SFPUC and 2000 Marin Property, L.P. is consistent with the resolution adopted by the Board of Supervisors urging the exchange of 639 Bryant Street (File 18-0370). The proposed Conditional Land Disposition and Acquisition Agreement sets the conditions for the Closing Authorization Action, which is subject to future Board of Supervisors approval.

SFPUC's Use of 2000 Marin Street

As noted above, the SFPUC will incur estimated costs of up to $3.9 million for temporary facilities while conducting a study to determine the SFPUC's best utility use of 2000 Marin Street. While the SFPUC staff report to the July 10, 2018 Commission meeting states that the property exchange of existing City property at 639 Bryant Street for 2000 Marin Street is necessary to accommodate future expansion of the SFPUC's Power and Water Enterprises, the reasons and scope of the expansion are not identified. The Board of Supervisors should amend the proposed resolution to request a written report from the SFPUC General Manager on the potential scope of the Power and Water Enterprise expansions, including the (a) potential increase in customers, infrastructure, SFPUC staffing, and other revenues and expenditures associated with the expansion, and (b) timelines for the expansions.

Potential Impact of Environmental Contamination at 2000 Marin

2000 Marin Street was previously used by the Hearst Corporation as a printing plant. According to the appraisal report by Clifford Advisory, LLC, the appraised value of $63.6 million does not account for potential environmental contamination; the appraisal report was completed prior to completion of the Phase I Environmental Site Assessment to identify potential or existing environmental contamination.

The proposed Conditional Land Disposition and Acquisition Agreement provides for the Developer to conduct a Phase II Environmental Site Assessment, which could include soil and other physical testing of the site for contamination[6]. Based on the results of the assessment, the SFPUC will prepare an estimate of the costs of remediating 2000 Marin Street for the SFPUC's proposed industrial uses. According to the SFPUC Commission's resolution, adopted on July 10, 2018, the Commission will review the Phase II Environmental Site Assessment results, projected remediation costs, and the environmental condition of 2000 Marin Street. If the SFPUC Commission determines, based on the Phase II Environmental Site Assessment results,

[5] City Administrative Code Chapter 56 allows the City to enter into development agreements with private developers in exchange for assurances to the developer that the project may proceed in accordance with specified policies, rules, and regulations, and subject to conditions of approval.

[6] The City will select a licensed engineering or environmental firm to conduct the assessment and the Developer will pay the costs of the assessment.

that the property is contaminated in a way that makes the property unsuitable for commercial development, the Commission may (a) extend the time period for the property exchange, (b) terminate the exchange, or (c) negotiate with the Developer "an appropriate remediation strategy". According to the Conditional Land Disposition and Acquisition Agreement, the City's acceptance of the environmental condition of 2000 Marin Street will occur only after the SFPUC Commission has an opportunity to review and approve the condition.

Because the appraised value of 2000 Marin Street may be less than $63.6 million, the Board of Supervisors should consider amending the proposed resolution to state the Board's policy that, if the Phase II Environmental Site Assessment identifies contamination that makes the property unsuitable for the intended use and occupancy by the SFPUC, and if the SFPUC choses to continue with the property exchange transaction, the final property exchange transaction will (a) provide for the Developer to fully mitigate all environmental contamination to make the property suitable for the intended use and occupancy by the SFPUC, and/or (b) reduce the exchange value of the property to fully account for the costs of environmental remediation to make the property suitable for the intended use and occupancy by the SFPUC.

Future Mixed Use Development

According to the proposed resolution, the proposed use of the SFPUC property at 639 Bryant Street by the Developer may yield more appropriate land uses within the Central SOMA Plan area. According to OEWD, potential use by the Developer is a mixed-use development of the property bounded by 4th, 5th, Brannan, and Bryant Streets, which includes a public park.

Potential Development Impact Fee Waivers

The Planning Department plans to request the Planning Commission to waive Transportation Sustainability Fees for 2000 Marin L.P. (the Developer) for the proposed mixed-use development of the property bounded by 4th, 5th, Brannan, and Bryant Streets. According to OEWD staff, the loss of the Transportation Sustainability Fee revenues, estimated to be $18.4 million (see Exhibit 5 above), could potentially be offset by assessing such fees to KR Flower Mart, L.P. or other private developer through a development agreement in accordance with Administrative Code Chapter 56.

In addition, the Developer is requesting that reimbursements to SFPUC, capped at $1.07 million by the Conditional Land Disposition and Acquisition Agreement, be considered as part of the costs of the public park development by 2000 Marin L.P. The Board of Supervisors should request the Planning Commission in considering potential waiver of Transportation Sustainability Fees for the future mixed-use development of the property bounded by 4th, 5th, Brannan, and Bryant Streets to not include Developer's reimbursements to SFPUC for transaction costs ($245,000 for legal and other costs related to the Conditional Land Disposition and Acquisition, shown in Exhibit 4 above) in calculating the fee waiver.

Also, consistent with provisions of the Central SOMA Plan, which states that any portion of the Transit Sustainability Fee that is waived in consideration of the development of a public park, the fee revenues should be replaced by other funding mechanisms to ensure the City's transportation system is not negatively impacted, the Board of Supervisors should request the Planning Commission to (a) consider the impact of the potential loss of Transportation

Sustainability Fee revenues on bicycle, pedestrian, street, and transit projects in SOMA, and (b) consider the reasonableness and feasibility of recouping the potential loss of Transportation Sustainability Fee revenues through development agreements with other private developers.

Future City Costs for the Public Park

As noted above, the potential mixed-use development of the property bounded by 4th, 5th, Brannan, and Bryant Streets could include a public park to be developed by the Developer and transferred to the City. The Board of Supervisors should request the Planning Department to include the ongoing costs to the City to maintain the park in any agreement with the Developer to develop the park.

RECOMMENDATIONS

1. Request the Planning Commission in considering potential waiver of Transportation Sustainability Fees for the future mixed-use development of the property bounded by 4th, 5th, Brannan, and Bryant Streets to (a) not include the Developer's reimbursements of $245,000 to SFPUC for transaction costs in calculating the fee waiver, (b) consider the impact of the potential loss of Transportation Sustainability Fee revenues on bicycle, pedestrian, street, and transit projects in SOMA, and (c) consider the reasonableness and feasibility of recouping the potential loss of Transportation Sustainability Fee revenues through development agreements with other private developers.
2. Request the Planning Department to include the ongoing costs to the City to maintain the park in any agreement with the Developer to develop the park.
3. Request a written report from the SFPUC General Manager on the potential scope of the Power and Water Enterprise expansions, including the (a) potential increase in customers, infrastructure, SFPUC staffing, and other revenues and expenditures associated with the expansion, and (b) timelines for the expansions.
4. Amend the proposed resolution to state the Board of Supervisor's policy that, if the Phase II Environmental Site Assessment identifies contamination that makes the property unsuitable for the intended use and occupancy by the SFPUC, and if the SFPUC choses to continue with the property exchange transaction, the final property exchange transaction will (a) provide for the Developer to fully mitigate all environmental contamination to make the property suitable for the intended use and occupancy by the SFPUC, and/or (b) reduce the exchange value of the property to fully account for the costs of environmental remediation to make the property suitable for the intended use and occupancy by the SFPUC.
5. Approval of the proposed resolution, as amended, is a policy matter for the Board of Supervisors.

CONDITIONAL LAND DISPOSITION AND ACQUISITION AGREEMENT

by and between the

CITY AND COUNTY OF SAN FRANCISCO

and

2000 MARIN PROPERTY, L.P.

for the conveyance and exchange of

639 Bryant Street, San Francisco, California

and

2000 Marin Street, San Francisco, CA

_____, 2018

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CONDITIONAL LAND DISPOSITION AND ACQUISITION AGREEMENT

This **CONDITIONAL LAND DISPOSITION AND ACQUISITION AGREEMENT** ("**Agreement**"), dated for reference purposes only as of _____ __, 2018 (the "**Reference Date**"), is by and between the CITY AND COUNTY OF SAN FRANCISCO, a California municipal corporation ("**City**"), on the one hand, and 2000 MARIN PROPERTY, L.P., a Delaware limited partnership ("**2000 Marin Property**"), on the other hand. In this Agreement, 2000 Marin Property may be referred to as "**Developer**," and City and Developer may each be referred to as a "**Party**" and together as the "**Parties**."

RECITALS

A. City owns that certain real property and improvements located at 639 Bryant Street (Block 3777, Lot 052) in San Francisco, California (the "**City Property**"), as more particularly described in the attached **Exhibit A**, which, together with all of City's interest in any rights, privileges, and easements incidental or appurtenant thereto, are referred to in this Agreement as "**City Property**." The San Francisco Public Utilities Commission ("**SFPUC**") has exclusive jurisdiction over the City Property and uses the City Property for heavy equipment and materials storage, parking, construction staging, and other related purposes. A hydrogen peroxide tank used in connection with City's wastewater system (the "**HP Tank**") is installed on the surface of the City Property. The City Property is the sole industrial yard serving the SFPUC's Power Enterprise and affords the SFPUC easy freeway access to service the SFPUC's customers on Treasure Island and in other areas of San Francisco.

B. Pursuant to a Lease dated as of May 12, 2009 (the "**651 Bryant Lease**") between William H Banker, Jr., Successor Trustee of The Banker Trust dated April 20, 1992; Fillmore C. Marks, Trustee of The Fillmore and Barbara Marks 1992 Trust; Fillmore Douglas Marks; William C. Marks, and Bradford F. Marks (collectively, "**Landlord**"), as landlord, and City, as tenant, City leases that certain real property and improvements located at 651 Bryant Street, San Francisco, California (Block 3777, Lot 050) ("**City Leased Premises**"). City uses the City Leased Premises for office and warehouse purposes. The 651 Bryant Lease provides for an initial term that expires on October 18, 2019.

C. Developer owns that certain real property and improvements located at 2000 Marin Street and also referred to as 1901 Cesar Chavez Street in San Francisco, California ("**Replacement Property**"), as more particularly described in the attached **Exhibit B**. As used in this Agreement, the term "Replacement Property" shall include all of the Developer's interest in the real property, improvements, fixtures, rights, privileges, and easements incidental or appurtenant to the Replacement Property.

D. Developer desires to acquire the City Property, the City Leased Premises, and other adjacent parcels (collectively, the "**Development Project Area**") in order to pursue a development project on the City Property, the City Leased Premises, and other adjacent parcels which currently is contemplated to include up to four buildings ranging in height from 70 to 185 feet, containing approximately 922,921 gross square feet of office; 72,291 gross square feet of residential/PDR; and 79,291 gross square feet of residential; and incorporating an approximately 40,000 square foot public park (the "**Development Project**").

E. Pursuant to a Parking License Agreement dated March 30, 2017, as amended by a First Amendment to Parking License Agreement dated June 16, 2017, and as further amended by a Second Amendment to Parking License Agreement dated December 5, 2017 (as amended, the "**Chariot License Agreement**"), Chariot Transit Inc., a Delaware corporation ("**Chariot**") licenses a portion of the Replacement Property from Developer. The Chariot License Agreement has a term that is month-to-month, terminable by either Developer or Chariot, at the option of either of them, by written notice to the other of such termination given at least thirty (30) days prior to the proposed termination date.

F. Pursuant to Parking License Agreement dated May 24, 2018, Lava Mae, a California nonprofit corporation ("**Lava Mae**") licenses a portion of the Replacement Property from Developer (the "**Lava Mae License Agreement**"). The Lava Mae License Agreement has a term that is month-to-month, terminable by either the Developer or Lava Mae, at the option of either of them, by written notice to the other of such termination given at least thirty (30) days prior to the proposed termination date.

G. Subject to the terms and conditions of this Agreement, including City's retained discretion described in Recital I and Section 4.1 below, the Parties have conditionally agreed to a phased transaction whereby each party will develop, design, review, and consider the use of each Property. Subsequently, Developer would transfer to City the Replacement Property and, in exchange, City would transfer City's interest in the City Property to Developer (or its nominee) (the "**Exchange Transaction**"). Each of the City Property, Replacement Property, and City Leased Premises are sometimes individually referred to as a "**Property**" and sometimes collectively referred to as the "**Properties**."

H. Before consummation of the Exchange Transaction, the Parties contemplate that Developer shall **(i)** cause a third party acceptable to City to prepare, and then provide to City, a written Phase 2 Environmental Site Assessment Report with respect to the Replacement Property (a "**Phase 2 ESA**"); **(ii)** after completion of all required Environmental Review (defined below in Recital J) and issuance of all Construction Approvals (defined below in Section 1.5(a)), make certain improvements to the portion of the Replacement Property (the "**Developer Work Area**" [as described in Section 1.5(a) below and depicted in the attached **Exhibit F-1**]) to make it ready for City's occupancy after consummation of the Exchange Transaction; and **(iii)** enter into a lease that will provide for a lease of a portion of the Replacement Property ("**Replacement Property Lease Area**" [as described in Section 1.5(c) below and depicted in the attached **Exhibit F-1**]), with a lease term, rent, and all other terms and conditions in a form acceptable to the SFPUC's Commission, at its sole discretion, to Kilroy Realty Corporation, a Maryland corporation, or its affiliate KR Flower Mart LLC, a Delaware limited liability company (individually or collectively, "**Kilroy**"). Developer (as lessor under such lease) will assign to City, and, in connection with any such lease, enter into any related construction agreement in a form acceptable to the SFPUC's Commission that will provide for Kilroy's obligation to construct certain improvements on the Replacement Property Lease Area that, upon consummation of the Exchange Transaction, Developer will assign to City provided, however, if such lease is not completed by Closing, City and Developer will work together to identify and secure an alternative revenue source acceptable to the SFPUC's Commission that will generate sufficient revenue to allow the SFPUC to repay Developer the Reimbursable Costs (defined below in Section 1.5(d)) as contemplated in Section 1.5(d).

I. As further consideration to City, and at Developer's sole expense, subsequent to the consummation of the Exchange Transaction, Developer shall relocate the HP Tank from the City Property to a location either on or under the public park to be constructed pursuant to the Development Project, another location owned by Developer, or on or under a public street adjacent to or within the Development Project and, if necessary, provide City with **(i)** a license, easement, or other instrument acceptable to City that will allow City to access the HP Tank during the period prior to its relocation and **(ii)** an easement or other instrument acceptable to City that will grant to City irrevocable real estate rights to access, operate, maintain, repair, and replace the HP Tank at its new location.

J. This Agreement is to establish a framework for the Exchange Transaction and sets forth the terms and conditions under which the Exchange Transaction would occur, subject to all necessary approvals and environmental review required by the California Environmental Quality Act (California Public Resources Code Sections 21000 *et seq.*) ("**CEQA**"), and other applicable laws, including the CEQA Guidelines (California Code of Regulations, title 14, Sections 15000 *et seq.*), and Chapter 31 of the San Francisco Administrative Code ("**Environmental Review**"). The approval of the closing of the Exchange Transaction is conditional upon completion of all such approvals and Environmental Review.

K. The SFPUC authorized its General Manager to execute and deliver this Agreement pursuant to SFPUC Resolution No. ____. Pursuant to Resolution No. ____-18, File No. 18____ (the "**CLDAA Resolution**"), City's Board of Supervisors and Mayor have authorized City's Director of Property to execute and deliver this Agreement.

L. The parties acknowledge that under CEQA, the CEQA Guidelines, and Chapter 31 of the San Francisco Administrative Code, City cannot enter into final agreements until City has completed Environmental Review of all material aspects of the Exchange Transaction in accordance with CEQA and such laws and that City has not yet completed Environmental Review with respect to the proposed Exchange Transaction. Section 15004(b)(2) of the CEQA Guidelines directs that "public agencies shall not undertake actions concerning the proposed public project that would have a significant adverse effect or limit the choice of alternatives or mitigation measures, before completion of CEQA compliance. For example, agencies shall not formally decide to proceed with the use of a site for facilities which would require CEQA review, regardless of whether the agency has made any final purchase of the site for these facilities, except that agencies may designate a preferred site for CEQA review and may enter into land acquisition agreements when the agency has conditioned the agency's future use of the site on CEQA compliance." The Parties intend for this Agreement to constitute a conditional, phased, land acquisition agreement and that City shall complete all necessary Environmental Review of the Properties prior to taking any final approval action for the consummation of the Exchange Transaction. The Parties' obligation to complete the consummation of the Exchange Transaction in accordance with the terms and conditions of this Agreement (as further defined in Section 7.1 below, the "**Closing**") is conditioned upon City's completion of all required Environmental Review and all approvals and authorizations ("**Approvals**") in connection with such Environmental Review and as otherwise required by all applicable state and local law.

AGREEMENT

ACCORDINGLY, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, City and Developer hereby agree as follows:

ARTICLE 1: DEFINITIONS; PROPERTY EXCHANGE AND ESCROW

1.1 **Definitions**. For purposes of this Agreement, initially capitalized terms shall have the meanings ascribed to them in this Section:

"**651 Bryant Lease**" means the Lease dated as of May 12, 2009 between Landlord, as landlord, and City, as tenant, with respect to the City Leased Premises.

"**Agents**" when used with respect to either Party shall mean the agents, employees, officers, contractors, and representatives of such Party.

"**Alternate Revenue Source**" has the meaning assigned to such term in Section 1.5(c) below.

"**Applicable Laws**" shall mean all present and future applicable laws, ordinances, rules, regulations, resolutions, statutes, permits, authorizations, orders, requirements, covenants, conditions, and restrictions, whether or not in the contemplation of the Parties, that may affect or be applicable to the Property or any part of the Property (including, without limitation, any subsurface area) or the use of the Property. "Applicable Laws" shall include, without limitation, any environmental, earthquake, life safety and disability laws, and all consents or approvals required to be obtained from, and all rules and regulations of, and all building and zoning laws of, all federal, state, county and municipal governments, the departments, bureaus, agencies or commissions thereof, authorities, board of officers, any national or local board of fire underwriters, or any other body or bodies exercising similar functions, having or acquiring jurisdiction of the City Property or the Replacement Property, as applicable.

"**Approvals**" means all required Environmental Review and all approvals and authorizations in connection with such Environmental Review and as otherwise required by all applicable state and local law in connection with the Closing of the Exchange Transaction and performance of the transactions and actions contemplated by this Agreement.

"**Approved Final Plans and Budget**" has the meaning assigned to such term in Section 1.5(b)(i) below.

"**Attorneys' Fees and Costs**" shall mean any and all reasonable attorneys' fees, costs, expenses, and disbursements, including, but not limited to, consultants' and expert witnesses' fees and costs, travel time and associated costs, transcript preparation fees and costs, document copying, exhibit preparation, courier, postage, facsimile, long-distance and communications expenses, court costs, and the costs and fees associated with any other legal, administrative or alternative dispute resolution proceeding, fees and costs associated with execution upon any judgment or order, and costs on appeal. For purposes of this Agreement, City's reasonable attorneys' fees shall be based on the fees regularly charged by private attorneys in San Francisco with comparable experience notwithstanding City's use of its own attorneys.

"**Cancellation Date**" means the date that this Agreement is cancelled or terminated prior to Closing pursuant to its terms by either Party.

"**CEQA**" means the California Environmental Quality Act (California Public Resources Code Sections 21000 *et seq.*

"**Certificate of Compliance**" has the meaning assigned to such term in Section 1.5(b)(iii) below.

"**Chariot**" has the meaning assigned to such term in Recital E above.

"**Chariot License Agreement**" has the meaning assigned to such term in Recital E above.

"**City**" means the City and County of San Francisco, a California municipal corporation.

"**City Approval Condition**" has the meaning assigned to such term in Section 10.26.

"**City Condition Precedent**" has the meaning assigned to such term in Section 6.1 below.

"**City Deed**" has the meaning assigned to such term in Section 3.1(a) below.

"**City Leased Premises**" means that certain real property and improvements located at 651 Bryant Street, San Francisco, California (Block 3777, Lot 050) that City leases from Landlord pursuant to the 651 Bryant Lease.

"**City Property**" means that certain real property and improvements located at 639 Bryant Street (Block 3777, Lot 052) in San Francisco, California, as more particularly described in the attached **Exhibit A**, together with all of City's interest in any rights, privileges, and easements incidental or appurtenant thereto.

"**City Property Permitted Title Exceptions**" has the meaning assigned to such term in Section 3.1(a) below.

"**City Property Title Report**" means that certain current preliminary title report of the City Property, prepared by Escrow Company under Order No. FWPN-TO14001255-JM, and dated October 10, 2014.

"**City Title Policy**" has the meaning assigned to such term in Section 3.2 below.

"**CLDAA Resolution**" means Resolution No. ____-18, File No. 18____ pursuant to which City's Board of Supervisors and Mayor authorized City's Director of Property to execute and deliver this Agreement.

"**Closing**" means the consummation of the Exchange Transaction in accordance with the terms and conditions of this Agreement (as further defined in Section 7.1 below).

"**Closing Costs**" means the following costs payable by Developer at Closing: **(i)** all premiums and associated costs for the City Title Policy and Developer Title Policy, **(ii)** all survey costs, **(iii)** escrow costs, and **(iv)** all recording fees arising out of any aspect of the Exchange Transaction.

"**Closing Date**" has the meaning assigned to such term in Section 7.1 below.

"**Closing Authorization Action**" has the meaning assigned to such term in Section 6.1(d) below.

"**Completion Notice**" has the meaning assigned to such term in Section 1.5(b)(iii) below.

"**Construction Approvals**" has the meaning assigned to such term in Section 1.5(a) below.

"**Cost Limit**" has the meaning assigned to such term in Section 1.4(c)(iv) below.

"**CSEIR**" means the Central SOMA Environmental Impact Report for environmental review of a proposed Central SOMA Plan (Case No. 2011.1356E) undertaken by City.

"**CSP**" means the proposed Central SOMA Plan (Case No. 2011.1356E) undertaken by City.

"**Development Project**" means the development project that Developer intends to construct and develop on the City Property, the City Leased Premises, and other parcels of real property adjacent to the City Property and the City Leased Premises, as generally described in Recital D above and as may be revised during the planning and environmental review processes.

"**Development Project Area**" means the City Property, the City Leased Premises, and other adjacent parcels to be acquired by Developer in order to pursue the Development Project.

"**Developer**" means 2000 Marin Property, L.P., a Delaware limited partnership and its permitted successors and assigns of Developer's interests under this Agreement that have been transferred in accordance with this Agreements.

"**Developer Approvals**" has the meaning assigned to such term in Section 4.2 below.

"**Developer Condition Precedent**" has the meaning assigned to such term in Section 6.3 below.

"**Developer Deed**" has the meaning assigned to such term in Section 3.1(b) below.

"**Developer Lease Payments**" has the meaning assigned to such term in Section 1.6(b) below.

"**Developer Parties**" means, collectively, any direct or indirect partner, member, manager, shareholder, director, officer, principal, employee, or agent of Developer.

"**Developer Title Policy**" has the meaning assigned to such term in Section 3.2 below.

"**Developer Work Area**" has the meaning assigned to such term in Section 1.5(a) below.

"**Developer's Broker**" has the meaning assigned to such term in Section 10.9 below.

"**Developer's Work**" has the meaning assigned to such term in Section 1.5(a) below.

"**Effective Date**" has the meaning assigned to such term in Section 10.26 below.

"**Environmental Costs**" has the meaning assigned to such term in Section 1.4(c)(iii) below.

"**Environmental Cost Limit**" has the meaning assigned to such term in Section 1.4(c)(iii) below.

"**Environmental Laws**" means the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA", also commonly known as "Superfund" law), as amended, (42 U.S.C. Sections 9601 et seq.) or under Section 25281 or 25316 of the California Health & Safety Code; any "hazardous waste" as defined in Section 25117 or listed under Section 25140 of the California Health & Safety Code.

"**Environmental Review**" means all necessary approvals and environmental review required by CEQA, and other Applicable Laws, including the CEQA Guidelines (California Code of Regulations, title 14, Sections 15000 *et seq.*), and Chapter 31 of the San Francisco Administrative Code.

"**Escrow Company**" means Chicago Title Insurance Company located at 388 Market Street, Suite 1300, San Francisco, CA 94111.

"**Exchange Transaction**" means the phased transaction contemplated by this Agreement whereby each party will develop, design, review, and consider the use of each Property and, subsequently, after satisfaction of all conditions to Closing set forth in this Agreement, including the completion of all Environmental Review and the granting of all Approvals, Developer would transfer to City the Replacement Property and, in exchange, City would transfer the City Property to Developer (or its nominee).

"**Extended Closing**" has the meaning assigned to such term in Section 3.1(c) below.

"**FEIR**" means any final environmental impact report approved or adopted by City in connection with the proposed Exchange Transaction.

"**Final Completion Notice**" has the meaning assigned to such term in Section 1.5(b)(iv) below.

"**Final Plans and Budget**" has the meaning assigned to such term in Section 1.5(b)(i) below.

"**FSA**" has the meaning assigned to such term in Section 10.22(b) below.

"**Gate**" means the metal gate along the boundary between the City Property and the City Leased Premises.

"**Hazardous Material**" shall mean any material that, because of its quantity, concentration, or physical or chemical characteristics, is deemed by any federal, state, or local governmental authority to pose a present or potential hazard to human health or safety or to the environment. "Hazardous Material" includes, without limitation, any material or substance defined as a "hazardous substance," or "pollutant" or "contaminant" under any Environmental Laws; any asbestos and asbestos containing materials (whether or not such materials are part of the structure of any existing improvements on the Property, any improvements to be constructed on the Property, or are naturally occurring substances on, in, or about the Property); and petroleum, including crude oil or any fraction, and natural gas or natural gas liquids. "Hazardous Material" shall not include any material used or stored at the Property in limited quantities and required in connection with the routine operation and maintenance of the Property, if such use and storage complies with all Applicable Laws relating to the use, storage, disposal, and removal of such material.

"**HP Tank**" has the meaning assigned to such term in Recital A above.

"**HP Tank Plans**" has the meaning assigned to such term in Section 1.7(a) above.

"**Kilroy**" means Kilroy Realty Corporation, a Maryland corporation, and/or its affiliate KR Flower Mart. LLC, a Delaware limited liability company.

"**Landlord**" means William H Banker, Jr., Successor Trustee of The Banker Trust dated April 20, 1992; Fillmore C. Marks, Trustee of The Fillmore and Barbara Marks 1992 Trust; Fillmore Douglas Marks; William C. Marks, and Bradford F. Marks in their collective capacity as landlord pursuant to the 651 Bryant Lease, together with their permitted successors and assigns under and pursuant to the 651 Bryant Lease.

"**Lava Mae**" has the meaning assigned to such term in Recital E above.

"**Lava Mae License Agreement**" has the meaning assigned to such term in Recital E above.

"**Limited Scope of Construction**" has the meaning assigned to such term in Section 1.5(a) below.

"**Loss**" or "**Losses**" shall mean any and all claims, demands, losses, liabilities, damages (including foreseeable and unforeseeable consequential damages), liens, obligations, interest, injuries, penalties, fines, lawsuits and other proceedings, judgments, and awards and reasonable costs and expenses of whatever kind or nature, known or unknown, foreseen or unforeseen, or contingent or otherwise, including, without limitation, Attorneys' Fees and Costs.

"**Moving Date**" has the meaning assigned to such term in Section 1.5(d) below.

"**Moving Services**" has the meaning assigned to such term in Section 1.5(a) below.

"**Park Fee Waiver**" means a developer impact fee waiver or credit acceptable to Developer that City's Planning Commission, and, if necessary, Board of Supervisors and Mayor, each acting at its sole and absolute discretion after the completion of all Environmental Review, may grant to Developer with respect to the approximately 40,000 square foot public plaza anticipated to be transferred to City in connection with the Development Project, if approved and constructed. Nothing in this Agreement authorizes or approves the Development Project or the Park Fee Waiver, which, as noted in Article 4, will occur, if at all, following Environmental Review.

"**Party**" means City or Developer; "**Parties**" means both City and Developer.

"**Permanent Instrument**" has the meaning assigned to such term in Section 1.7(a) below.

"**Phase 2 ESA**" shall have the meaning assigned to such term in Recital H above.

"**Pre-Agreement Costs**" has the meaning assigned to such term in Section 1.4(c)(ii) below.

"**Property**" means the City Property, the Replacement Property, or the City Leased Premises.

"**Properties**" means the City Property, the Replacement Property, and the City Leased Premises.

"**Punchlist**" has the meaning assigned to such term in Section 1.5(b)(iii) below.

"**Reimbursable Costs**" has the meaning assigned to such term in Section 1.5(d)(i) below.

"**Reimbursable Costs Schedule**" has the meaning assigned to such term in Section 1.5(d)(i) below.

"**Reimbursement Documents**" has the meaning assigned to such term in Section 1.5(d)(viii) below.

"**Replacement Property**" means that certain real property and improvements located at 2000 Marin Street and sometimes referred to as 1901 Cesar Chavez Street in San Francisco, California, as more particularly described in the attached **Exhibit B**, together with all of the Developer's interest in the real property, improvements, fixtures, rights, privileges, and easements incidental or appurtenant to the Replacement Property.

"**Replacement Property Documents**" means the documents listed on the attached **Exhibit C**.

"**Replacement Property Lease**" has the meaning assigned to such term in Section 1.5(c) below.

"**Replacement Property Lease Area**" has the meaning assigned to such term in Section 1.5(c)(i) below.

"**Replacement Property Permitted Title Exceptions**" has the meaning assigned to such term in Section 3.1(b) below.

"**Replacement Property Title Report**" means that certain current preliminary title report of the Replacement Property, prepared by Escrow Company under Order No. 15605292-156-TJK-JM, and dated March 30, 2018.

"**SFPUC**" means the Public Utilities Commission of the City and County of San Francisco.

"**TCO**" has the meaning assigned to such term in Section 1.5(b)(iii) below.

"**Temporary Instrument**" has the meaning assigned to such term in Section 1.7(a) below.

"**Temporary SFPUC Facility**" has the meaning assigned to such term in Section 1.5(a) below.

"**Title Defect**" has the meaning assigned to such term in Section 3.1(c) below.

"**Transaction Costs**" has the meaning assigned to such term in Section 1.4(c)(iii) below.

"**Vacate and Move**" has the meaning assigned to such term in Section 1.5(a) below.

1.2 Exchange of Property. Subject to the terms and conditions in this Agreement, upon City's approval of the Exchange Transaction and authorization for a Closing, City shall convey the City Property to Developer or its affiliated designee, and Developer shall convey the Replacement Property to City.

1.3 Escrow. Developer (at Developer's sole cost) shall open an escrow with respect to the Exchange Transaction with Chicago Title Insurance Company ("**Escrow Company**") located at 388 Market Street, Suite 1300, San Francisco, CA 94111 and deposit a fully executed copy of this Agreement with Escrow Company. This Agreement shall serve as instructions to Escrow Company as the escrow holder for consummation of the Exchange Transaction. Developer and City shall execute such additional or supplementary instructions as may be reasonably appropriate to enable the Escrow Company to comply with the terms of this Agreement and effect Closing; provided, however, that if there is any conflict between the provisions of this Agreement and any additional supplementary instructions, the terms of this Agreement shall control.

1.4 Exchange Values; Additional Consideration.

(a) Based on a MAI appraisal of the City Property by Clifford Advisory, LLC dated July 2, 2018, which assumed that the City Property would be developed and used in a manner consistent with the CSP (defined below in Section 4.1), the Parties agree that,

for purposes of the Exchange Transaction, the fair market value of the City Property is no more than Sixty-Three Million Eight Hundred Seventy-Five Thousand Dollars ($63,875,000).

(b) Based on a MAI appraisal of the Replacement Property by Clifford Advisory, LLC dated July 2, 2018, the Parties agree that, for purposes of the Exchange Transaction, the fair market value of the Replacement Property is no more than Sixty-Three Million Six Hundred Thousand Dollars ($63,600,000).

(c) In addition to exchanging the Replacement Property for the City Property, Developer will:

(i) reimburse the SFPUC for the consultant costs to estimate such relocation to the Replacement SFPUC Facility in an amount not to exceed Thirty-Five Thousand Dollars ($35,000); and

(ii) pay all of City's actual out-of-pocket transaction costs that City incurred on or prior to the Effective Date in an amount not to exceed Two Hundred Forty-Five Thousand Dollars ($245,000) ("**Pre-Agreement Costs**"). The Pre-Agreement Costs include all of City's costs incurred on or prior to the Effective Date because of, or in connection with:

(A) City's negotiation, evaluation, preparation, and approval of the Letter of Intent dated March 18, 2015 and mutually executed and delivered by the Parties;

(B) City's negotiation, evaluation, preparation, and approval of this Agreement;

(C) City's cooperation with Developer in its investigation of the physical and environmental condition, title, and suitability for Developer's use of the City Property, and

(D) City's investigation of the physical condition, title, and suitability for City's use of the Replacement Property, and otherwise because of, or in connection with, the proposed Exchange Transaction, including, without limitation, all of the following personnel, internal, and out-of-pocket costs that City incurs prior to the Effective Date:

(1) costs resulting from, or in connection, with the negotiation, review, evaluation, preparation, and approval of the Letter of Intent;

(2) costs resulting from, or in connection with, the preparation and review of staff reports to the SFPUC and Board of Supervisors, Review and any legislation or resolutions necessary for Agreement approval;

(3) costs resulting from, or in connection with, the preparation and review of responses to City's Budget and Legislative Analyst's questions relative to any legislation to be introduced in connection with this Agreement or the Exchange Transaction;

(4) costs resulting from, or in connection with the preparation and review of responses to queries, and meetings with key members of City's Board of Supervisors and/or the SFPUC relative to the proposed Exchange Transaction;

(5) costs resulting from, or in connection, with the production of mapping or other ancillary documents relative to this Agreement;

(6) costs resulting from, or in connection, with, the production of records relative to the City Property in connection with the proposed Exchange Transaction;

(7) costs resulting from, or in connection with, any title review, or physical characteristics review with respect to the Replacement Property or review of other matters in connection with the proposed Exchange Transaction as contemplated by Section 2.1 or Section 4.1, including all actual costs relating to the hiring of consultants and the performing of studies as may be necessary to perform any such reviews; and

(8) all other costs or fees associated with City's review in connection with the evaluation, negotiation and planning, of the proposed Exchange Transaction.

City's Pre-Agreement Costs do not and shall not include, however, any amounts expended in connection with the evaluation, negotiation, documentation, preparation, or implementation of this Agreement or otherwise in connection with the proposed Exchange Transaction to the extent such amounts consist of compensation for the services of the Director of Property John Updike of City's Department of Real Estate and the SFPUC's Real Estate Director Rosanna Russell.

(iii) City's actual out-of-pocket costs incurred on or prior to the Closing Authorization Action resulting from, or in connection with, City's environmental review and investigation of the Replacement Property (including all actual costs relating to the hiring of consultants and the performing of studies as may be necessary to perform any such review or investigation) in connection with the proposed Exchange Transaction ("**Environmental Costs**"), which shall include any costs incurred by City in connection with the Phase 2 ESA. The Environmental Costs shall be subject to a maximum environmental review and investigation cost limit of One Hundred Thousand Dollars ($100,000) ("**Environmental Cost Limit**"); and

(iv) City's actual out-of-pocket transaction and relocation costs ("**Transaction Costs**"), subject to a maximum relocation cost limit ("**Cost Limit**") of Six Hundred Ninety Thousand Dollars ($690,000) incurred during the period commencing on the day after the Effective Date and ending on the earlier of **(A)** the date that this Agreement is terminated pursuant to its terms, or **(B)** the Closing (defined below). Subject to the Cost Limit, Transaction Costs will include all costs that City incurs after the Effective Date because of, or in connection with, City's proposed transfer to Developer of the City Property, proposed vacation of the City Property and the City Leased Premises, proposed acquisition of and relocation to the Replacement Property, and otherwise in connection with the Exchange Transaction, including, without limitation, all of the following:

(1) all City fees and costs applicable to or resulting from the processing or review of applications for any permit or approval (including permits or applications for amendments to City's General Plan, Planning Code, or Zoning Map) or any City land use approval, entitlement, or permits that are necessary for the implementation of the Exchange Transaction;

(2) all City fees and costs applicable to or resulting from any environmental review relative to any City approval to be issued in connection with the Exchange Transaction, including all actual costs relating to the hiring of consultants and the performing of studies as may be necessary to perform such environmental review;

(3) all costs that City incurs associated with any appraisals conducted pursuant to Section 1.4;

(4) all personnel, third-party, vendor, and out-of-pocket costs incurred in the evaluation, documentation, preparation, and implementation of Environmental Review undertaken by City with respect to the City Property and the Replacement Property in connection with the Exchange Transaction;

(5) all escrow costs and fees that City is required to pay pursuant to this Agreement, including but not limited to: title insurance, title insurance premiums, property taxes, transfer taxes, closing costs, and other costs or fees associated with City's review of title with respect to the Exchange Transaction, or otherwise in connection with the evaluation, negotiation, planning, and consummation of the Exchange Swap Transaction;

(6) costs of relocating City's personal property and equipment to the Replacement Property from the City Property and City Leased Premises (which may include costs and fees payable

to third-party relocation firms retained by City pursuant to bidding procedures required by law); and

(7) any costs, including attorneys' and consultants' fees, incurred in connection with the evaluation, negotiation, documentation, preparation, and implementation of this Agreement, escrow instructions, and any other documents or instruments entered into by City in connection with the Exchange Transaction.

City's Transaction Costs shall not include: **(w)** Developer's Closing Costs and transfer tax obligations payable by Developer pursuant to Section 7.5 below; **(x)** any actual cost in any way related to the preparation, improvement, or modification of the Replacement Property to facilitate the move by City to the Replacement Property, including, without limitation, any costs related to cabling and any data setup; **(y)** any amounts previously paid by Developer as Pre-Agreement Costs or Environmental Costs; or **(z)** any amounts expended in connection with the Exchange Transaction to the extent such amounts were paid as compensation or salary to the Director of Property John Updike of City's Department of Real Estate and the SFPUC's Real Estate Director Rosanna Russell.

(d) Developer shall pay City's Pre-Agreement Costs and Environmental Costs within forty-five (45) days of Developer's receipt of City's invoice detailing its Pre-Agreement Costs, and its Environmental Costs, subject to the Environmental Cost Limit, incurred prior to the Effective Date. Notwithstanding any other provision of this Agreement, Developer's obligation to pay City's Pre-Agreement Costs and its Environmental Costs, subject to the Environmental Cost Limit, shall survive the termination or cancellation of this Agreement. Developer shall pay City's Transaction Costs within forty-five (45) days after receipt of City's invoice detailing the Transaction Costs, subject to the Cost Limit, which invoice shall be prepared by City and sent to Developer within thirty (30) days after the earlier of the date of the Closing Date (defined in Section 7.1 below) or the date (the "**Cancellation Date**") that this Agreement is cancelled or terminated prior to Closing pursuant to its terms by either Party.

1.5 City's Vacation of City Property and Developer's Relocation of City's Personal Property; Developer's Work; Replacement Property Lease and Improvements to Replacement Property; City's Reimbursement Obligation for Construction Costs.

(a) City's Vacation of City Property and Developer's Relocation of City's Personal Property. City shall vacate the City Property and the City Leased Premises entirely on a specified date (as set forth below) and move ("**Vacate and Move**") to a to-be-built temporary facility and associated fencing as described below (the "**Temporary SFPUC Facility**") on the portion of the Replacement Property designated as the "Developer Work Area" (the "**Developer Work Area**") on the attached **Exhibit F-1**. At its sole cost, and as a condition to City's obligation to Vacate and Move, Developer shall provide, or cause to be provided, and pay for all services necessary to move and relocate all of City's personal property from the City Property and the City Leased Premises to the new Temporary SFPUC Facility (the "**Moving Services**"). As a condition to City's

obligation to Vacate and Move, Developer shall obtain all necessary approvals from all federal, state, or local governmental authorities and agencies with jurisdiction ("**Construction Approvals**") for the construction of the Temporary SFPUC Facility, which will include appropriate fencing acceptable to the SFPUC on and completely surrounding the Developer Work Area, in accordance with the parameters and criteria set forth on the attached **Exhibit F** (the "**Limited Scope of Construction**"). Once the Construction Approvals are obtained by Developer, Developer shall complete all construction of the Temporary SFPUC Facility (Developer's obligations to obtain the Construction Approvals and complete the construction of the Temporary SFPUC Facility are sometimes referred to collectively below as "**Developer's Work**") in accordance with the requirements and timeline set forth in Section 1.5(b) below:

(b) Developer's Work.

(i) Development of Final Plans and Budget. Promptly after the Effective Date, but prior to the Closing Authorization Action described in Section 6.1(d) below, City and Developer shall work together cooperatively to develop final plans and specifications, with a detailed budget (the "**Final Plans and Budget**") for Developer's Work. Any projected fees, costs, or other expenses incurred by Developer in connection with the application for, granting, or expedition of, the Construction Approvals, including, without limitation, application fees, permit fees, plan review fees, construction management fees, expeditor's fees, or attorneys' or consultants' fees, shall be pro-rated, as necessary, to ensure that only those costs and fees that are directly related to the construction of the Temporary Facility are included within the Final Plans and Budget. Any projected amounts designated as cost-overrun reserves or contingency monies shall be no greater than ten percent (10%) of all other amounts contained within the Final Plans and Budget. Within thirty (30) days after the Effective Date, Developer shall submit a draft copy of Developer's proposed Final Plans and Budget to City for its review and approval. City will either approve such proposed draft, or return it to Developer with comments and proposed revisions, within ten (10) business days of receipt. If City returns comments and proposed revisions to such proposed draft, Developer will prepare and deliver to City an additional draft within ten (10) business days of receipt of City's comments and proposed revisions. This process shall be repeated until a draft of the Final Plans and Budget is acceptable to, and approved in writing by, both City and Developer (the "**Approved Final Plans and Budget**").

(ii) Construction of Temporary SFPUC Facility. As soon as reasonably practicable after the Parties' mutual approval of the Approved Final Plans and Budget, Developer shall obtain all Construction Approvals. As soon as reasonably practicable after the Closing Authorization Action, Developer shall commence construction, and diligently continue construction until completed, of the Temporary SFPUC Facility on the Developer Work Area in accordance with the Final Plans and Budget. City shall cooperate with Developer on a regular basis during the construction process as necessary to enable Developer to complete the construction as soon as possible. The construction of the Temporary

SFPUC Facility will be completed within ninety (90) days after the Closing Authorization Action, as such period may be extended by Developer at its discretion.

(iii) Completion of the Work and City Inspection. Upon completion of the Developer's Work and the issuance by City's Department of Building Inspection of a temporary certificate of occupancy with respect to the completed Developer's Work at the Replacement Property (a "**TCO**"), Developer shall deliver a notice to City (the "**Completion Notice**"), accompanied by a copy of the TCO, advising City of the completion of the Temporary SFPUC Facility. Within ten (10) business days following its receipt of the Completion Notice and TCO, City shall inspect the completed Temporary SFPUC Facility and either **(A)** approve the Temporary SFPUC Facility, as built, by providing Developer an executed certificate of full compliance in the form attached as **Exhibit G** (the "**Certificate of Compliance**") or **(B)** provide Developer with a punchlist of items to be corrected (a "**Punchlist**") to the Temporary SFPUC Facility.

(iv) Punchlist Work. If City delivers to Developer a Punchlist, Developer shall promptly make any necessary corrections in a good and workmanlike manner. City shall work cooperatively as reasonably necessary with Developer to facilitate the completion of the items specified in the Punchlist. Upon completion of the corrections, Developer shall deliver a second notice to City (the "**Final Completion Notice**") advising City of the completion of the items specified in the Punchlist. City shall then have ten (10) business days following receipt of the Final Completion Notice to inspect the Temporary SFPUC Facility (as updated by the completion of the items in the Punchlist) and to deliver to Developer an executed copy of the Certificate of Compliance. If there remains additional corrective work because any item(s) on the Punchlist are not satisfactory to City, City shall nonetheless deliver to Developer an executed copy of the Certificate of Compliance, together with a written request to Developer to perform the additional corrective work. Notwithstanding its receipt of an executed Certificate of Compliance, Developer shall remain obligated to promptly complete such additional corrective work to City's reasonable satisfaction. Developer's receipt of the executed Certificate of Compliance shall be a condition of Closing.

(c) Replacement Property Lease and Improvements to Replacement Property. Promptly after the Effective Date, Developer shall negotiate to obtain a lease and any necessary construction or other associated agreements (collectively, the "**Replacement Property Lease**") with Kilroy. The Replacement Property Lease will provide for:

(i) the lease to Kilroy of the portion of the Replacement Property designated as the "Replacement Property Lease Area" on the attached **Exhibit F-1** (the "**Replacement Property Lease Area**") for the use and occupancy by the San Francisco Flower Mart; LLC, a California limited liability company, and its associated vendors;

(ii) a lease term, rental, and all other terms and conditions acceptable to, and approved in writing, by the SFPUC's Commission, acting at its sole discretion;

(iii) the demolition and removal of the building currently existing on the Replacement Property and the subsequent construction of improvements on the Replacement Property Lease Area by or on behalf of Kilroy in a manner approved in writing by the SFPUC and necessary for occupancy and use of the Replacement Property Lease Area by the San Francisco Flower Mart during the term of the Replacement Property Lease; and

(iv) the assignability of all of Developer's rights and obligations as lessor under the Replacement Property Lease to the SFPUC at Closing.

Upon the SFPUC Commission's approval of the form of the Replacement Property Lease, Developer shall deliver copies of all documents or instruments that constitute the Replacement Property Lease, each executed on behalf of Kilroy, as lessee, and Developer, as lessor, and, if requested by City, an assignment acceptable to the SFPUC's Commission, acting at its sole discretion, of all of Developer's rights and obligations under each document or instrument that constitutes a part of the Replacement Property Lease, together with a consent to each such assignment executed by Kilroy if required by the SFPUC.

In the event that Kilroy and Developer are unable to reach a mutually acceptable lease and such other agreements in a form acceptable to the SFPUC's Commission, acting at its sole discretion, City and Developer shall work together to identify and secure another revenue source (an "**Alternate Revenue Source**") acceptable to the SFPUC's Commission, acting at its sole discretion, that will generate sufficient revenue to allow City to fully meet its monthly and ongoing obligations to repay Developer the Reimbursable Costs (defined below in Section 1.5(d)) as contemplated in Section 1.5(d) and otherwise be in a form and content acceptable to the SFPUC's Commission, acting at its sole discretion.

Either:

(A) delivery to City of a fully executed Replacement Property Lease (as approved by the SFPUC's Commission in writing at its sole discretion) and such assignment(s) as are requested by City or

(B) the identification and securing of an Alternate Revenue Source (as approved by the SFPUC's Commission in writing at its sole discretion), enforceable by City,

shall be a condition of Closing.

(d) City's Reimbursement Obligation for Construction Costs. City shall reimburse Developer for its incurred construction costs to perform the Developer's Work, subject to the following conditions:

(i) Within five (5) business days of the Closing, Developer shall deliver to City a schedule detailing the total amount of construction costs payable by City pursuant to this Agreement ("**Reimbursable Costs**"), which schedule (the "**Reimbursable Costs Schedule**") shall include a statement of the actual construction costs incurred by or on behalf of Developer in the performance of the Developer's Work, a description of each material aspect of the Developer's Work performed, hours expended, rates paid for the Developer's Work, related material costs, and, if then or subsequently requested by City, copies of invoices and other evidence of the claimed Reimbursable Costs. In the event City disputes any amount included within the Reimbursable Costs Schedule submitted by Developer, City shall notify Developer within fifteen (15) business days of its receipt of the Reimbursable Costs Schedule and the Parties shall meet promptly and work cooperatively to resolve such dispute(s).

(ii) Any fees, costs, or other expenses incurred by Developer in connection with the application for, granting, or expedition of, the Construction Approvals, including, without limitation, application fees, permit fees, plan review fees, construction management fees, expeditor's fees, or attorneys' or consultants' fees; provided that all such costs and fees shall be pro-rated, as necessary, to ensure that only those costs and fees that are directly related to the construction of the Temporary Facility are included within the Reimbursable Costs.

(iii) Any projected amounts designated as cost-overrun reserves or contingency monies that are included within the Reimbursable Costs shall be no greater than ten percent (10%) of all other amounts contained within the Final Plans and Budget.

(iv) In no event whatsoever will the amount of the Reimbursable Costs payable by City exceed the amount stated in the final budget included within the Approved Final Plans and Budget agreed to by the Parties pursuant to the provisions of Section 1.5(b)(i) above.

(v) In no event whatsoever will any portion of the Reimbursable Costs payable by City bear or be increased by any interest, finance fees, or similar charges.

(vi) In no event whatsoever will any portion of the Reimbursable Costs payable by City include or be increased by any fees, compensation, or profits payable to or collected by Developer or its affiliates, directly or indirectly, in connection with the Developer's Work, including, without limitation, any amounts in the nature of development, management, or development management fees payable to, or collected by, Developer or its affiliates.

(vii) Until the sum of Reimbursable Costs payable to Developer are fully paid, City shall pay such Reimbursable Costs in equal monthly installments in amounts equal to the monthly base rent payable by Kilroy pursuant to the

Replacement Property Lease or as are generated monthly from an Alternate Revenue Source if accepted by City pursuant to the provisions of Section 1.5(c) above.. City's obligation to make such monthly installment payments shall commence on the first day of the calendar month that is at least thirty (30) days after City's receipt of either **(A)** the first base rent payment pursuant to the Replacement Property Lease after the assignment to, and assumption by, City of all of Developer's rights and obligations under the Replacement Property Lease, as lessor, to City at Closing or **(B)** or the first monthly payment under or pursuant to any such Alternate Revenue Source accepted by City. Once the full amount of Reimbursable Costs has been paid to Developer, City shall be solely entitled to all amounts payable by Kilroy under the Replacement Property Lease or otherwise pursuant to an Alternate Revenue Source accepted by City.

(viii) Prior to, and as a condition of, the Closing Authorization Action, the Parties shall agree in writing to the final form of an agreement and, if necessary, other documents to evidence and state City's obligations to pay Developer the Reimbursable Costs pursuant to the terms and conditions stated in this Agreement. (the "**Reimbursement Documents**"); provided that City's obligation to pay Developer the Reimbursable Costs shall not be secured by any lien, mortgage, deed of trust, or other security interest.

City hereby acknowledges and agrees that the Closing Authorization Action shall not occur until City has fully and finally approved the Final Plans and Budget and the Reimbursement Documents (each of which shall be attached as exhibits to the Closing Authorization Action) and the Parties have mutually executed and delivered the Reimbursement Documents. After the Closing and on a date mutually agreed to by the Parties that is no later than thirty (30) days after the Closing (the "**Moving Date**"), Developer shall perform the Moving Services and City shall Vacate and Move.

1.6 City Leased Premises. Prior to the Closing Date, at its sole election, Developer may acquire the City Leased Premises from Landlord. Whether or not Developer has done so, at any time after the Effective Date, if Developer so requests in writing, City shall exercise its option rights under the 651 Bryant Lease to extend its term for an additional ten (10)-year period.

(a) If Developer acquires the City Leased Premises prior to the Closing Date, Developer will:

(i) allow City to continue to occupy the City Leased Premises pursuant to the 651 Bryant Lease (including the obligation to pay rent as required by the 651 Bryant Lease), from the date Developer acquires the City Leased Premises until the Moving Date, and

(ii) On the Moving Date, terminate the 651 Bryant Lease at no cost to City resulting from such termination prior to the expiration of the 651 Bryant Lease term. In connection with such termination, City will have no obligation to comply with, and will not have any liability to Developer with respect to, the condition or cleanliness of the City Leased Premises.

(b) If Developer proceeds with the Closing prior to acquiring the City Leased Premises, Developer will pay or reimburse City for, and indemnify and hold City harmless from, all sums with respect to the period from and after the Moving Date otherwise payable by City to Landlord pursuant to the 651 Bryant Lease (including, without limitation and to the extent payable pursuant to the 651 Bryant Lease, base rent, real estate taxes, building insurance expenses, and all sums paid or payable by City to Landlord in connection with the termination of the 651 Bryant Lease prior to the expiration of the 651 Bryant Lease term or attributable to City's obligations pursuant to provisions of Section 20 of the 651 Bryant Lease (entitled "Surrender of Property)) (collectively, the "**Developer Lease Payments**"). In addition, at Closing, Developer shall have the option to either

(i) require City by written notice to assign to Developer its interest in the 651 Bryant Lease (assuming that Landlord consents to such assignment and a complete release of all of City's obligations under the 651 Bryant Lease arising or accruing after the date of such assignment), and, in the event the Moving Date has not yet occurred at the time of such assignment and release, City shall continue to occupy, as Developer's subtenant, the City Leased Premises pursuant to the 651 Bryant Lease (including the obligation to pay rent as required by the 651 Bryant Lease), from the date Developer accepts such assignment until the Moving Date; or

(ii) request City by written notice to continue to occupy City Leased Premises pursuant to the 651 Bryant Lease (including the obligation to pay rent as required by the 651 Bryant Lease) until the Moving Date.

1.7 **Relocation of HP Tank**. As further consideration to City, and at Developer's sole expense, subsequent to the Closing, Developer shall relocate the HP Tank from the City Property to a location mutually acceptable to the Parties that shall be on or under the public park to be constructed pursuant to the Development Project, a location owned by Developer, or on or under a public street adjacent to or within the Development Project. Such relocation shall be accomplished in accordance with the following provisions:

(a) **Development of Plans to Relocate HP Tank**. Promptly after the Effective Date, but prior to the Closing Authorization Action described in Section 6.1(d) below, City and Developer shall work together cooperatively to **(i)** develop final plans and specifications for the relocation of the HP Tank to a location mutually agreeable to the Parties that is either on or under the public park to be constructed pursuant to the Development Project, on or under land owned by Developer, or on or under a public street adjacent to or within the Development Project (the "**HP Tank Plans**"); **(ii)** negotiate, prepare, and execute an instrument acceptable to City that provides for a license or temporary easement (the "**Temporary Instrument**") that will allow City to continue to access, operate, maintain, repair, and replace the HP Tank after Closing in its current location on the City Property until such time as the Developer relocates the HP Tank; and **(iii)** if the Parties agree to relocate the HP Tank to a location on or under land to be owned by Developer, negotiate, prepare, and execute an instrument acceptable (the "**Permanent Instrument**") to City that provides for City's permanent and irrevocable

rights to access, operate, maintain, repair, and replace the HP Tank in its new location. The delivery of the Temporary Instrument executed on behalf of the Developer shall be a condition of Closing.

(b) Relocation of HP Tank. As soon as reasonably practicable after the Parties' mutual approval of the HP Plans, and at Developer's sole cost, Developer shall obtain all necessary approvals from all federal, state, or local governmental authorities and agencies with jurisdiction for such relocation of the HP Tank and, once the relevant approvals are obtained, Developer shall relocate the HP Tank to the location agreed to by the Parties. City shall cooperate with Developer on a regular basis during the construction process as reasonably necessary to facilitate the granting of such approvals and the relocation of the HP Tank.

(c) Completion of the HP Tank Relocation and City Inspection. Upon completion of all of Developer's construction work required by the HP Plans, Developer shall notify City in writing of the completion of such work. Within ten (10) business days following its receipt of such notice, City shall inspect the relocated HP Tank and any related appurtenances constructed pursuant to the HP Plans, and either **(i)** deliver to Developer City's written approval of the relocated HP Tank and such related appurtenances, as built, or **(ii)** provide Developer with a Punchlist of items to be corrected with respect to the HP Tank or such related appurtenances.

(d) Punchlist Work. If City delivers to Developer a Punchlist, Developer shall promptly make any necessary corrections in a good and workmanlike manner. City shall work cooperatively as reasonably necessary with Developer to facilitate the completion of the items specified in the Punchlist. Upon completion of the corrections, Developer shall deliver a second notice to City advising City of the completion of the items specified in the Punchlist. City shall then have ten (10) business days following receipt of such notice to inspect the relocated HP Tank and any related appurtenances constructed pursuant to the HP Plans (as updated by the completion of the items in the Punchlist). If there remains additional corrective work because any item(s) on the Punchlist are not satisfactory to City, Developer shall promptly complete such additional corrective work to City's reasonable satisfaction.

Upon completion of the relocation of the HP Tank and all Punchlist items to City's satisfaction, and, if the relocated HP Tank is installed at a location on or under land owned by Developer, Developer shall deliver a fully executed Permanent Instrument acceptable to City.

ARTICLE 2: INVESTIGATIONS

2.1 Documents. City agrees and acknowledges that, prior to entering into this Agreement, it received all of the documents and items (the "**Replacement Property Documents**") listed on the attached **Exhibit C.**

2.2 Developer's Independent Investigation. Developer represents and warrants to City that, as of the Reference Date, Developer had the opportunity to perform a diligent and thorough inspection and investigation of all matters related to the City Property, either

independently or through Developer's Agents (defined in Section 10.15 below), including, without limitation, the following:

(a) All matters affecting title to the City Property, including all documents and matters identified in that certain current preliminary title report of the City Property, prepared by Escrow Company under Order No. FWPN-TO14001255-JM, and dated October 10, 2014 ("**City Property Title Report**");

(b) The quality, nature, adequacy, and physical condition of the City Property, including, but not limited to, all other physical and functional aspects of the City Property:

(c) The environmental condition of the City Property, including an environmental report by a licensed engineering or environmental firm selected by Developer that shows to Developer's sole satisfaction that that the City Property is suitable for commercial development with implementation of appropriate remediation or mitigation of hazardous soils and groundwater; and

(d) Developer's review and approval of the form and substance of all the documents related to the Exchange Transaction and all other matters relating to the City Property and its intended use, including receipt of a formal MAI appraisal and its investigation of the City Property's current zoning and use designation.

2.3 Developer's Discovery of Hazardous Materials. If there is a release of a Hazardous Material (defined below) on the City Property between the Reference Date and the Closing Date, Developer may elect to **(a)** reasonably extend the time periods for review of environmental conditions and for execution of this Agreement in order to allow Developer to remove such materials in a manner acceptable to Developer, **(b)** terminate this Agreement and/or any other agreement or instrument entered into with City (other than Developer's obligation to pay, to the extent incurred prior to such termination, the Pre-Agreement Costs, Environmental Costs (subject to the Environmental Cost Limit) and Transaction Review Costs (subject to the Cost Limit), all of which obligations shall survive the termination of this Agreement) in connection with the Exchange Transaction contemplated by this Agreement by giving notice to City or **(c)** negotiate with City an appropriate remediation strategy for such environmental condition.

2.4 As-Is Condition of City Property; Release of City. Developer represents and warrants to City that, as of the Reference Date, Developer has had the opportunity to perform a diligent and thorough inspection and investigation of each and every aspect of the City Property, either independently or through its Agents, including, without limitation, the following matters: DEVELOPER SPECIFICALLY ACKNOWLEDGES AND AGREES THAT CITY IS CONVEYING AND DEVELOPER IS ACQUIRING CITY'S INTEREST IN THE CITY PROPERTY ON AN "AS IS WITH ALL FAULTS" BASIS. DEVELOPER IS RELYING SOLELY ON ITS INDEPENDENT INVESTIGATION AND, OTHER THAN THE REPRESENTATIONS AND WARRANTIES OF CITY EXPRESSLY SET FORTH IN THIS AGREEMENT, NOT ON ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, FROM CITY OR ITS AGENTS AS TO ANY

MATTERS CONCERNING THE CITY PROPERTY, ITS SUITABILITY FOR DEVELOPER'S INTENDED USES, OR ANY OF THE PROPERTY CONDITIONS OF THE CITY PROPERTY. EXCEPT AS EXPRESSLY SET FORTH IN SECTION 5.2 BELOW, CITY DOES NOT GUARANTEE THE LEGAL, PHYSICAL, GEOLOGICAL, ENVIRONMENTAL, ZONING, OR OTHER CONDITIONS OF THE CITY PROPERTY OR THE SUITABILITY OF THE CITY PROPERTY FOR ANY USE, NOR DOES IT ASSUME ANY RESPONSIBILITY FOR THE COMPLIANCE OF THE CITY PROPERTY OR ITS USE WITH ANY APPLICABLE LAWS (DEFINED IN SECTION 10.8). IT IS DEVELOPER'S SOLE RESPONSIBILITY TO DETERMINE ALL BUILDING, PLANNING, ZONING, AND OTHER REGULATIONS AND APPLICABLE LAWS, INCLUDING ANY PUBLIC TRUST CLAIMS, RELATING TO THE CITY PROPERTY AND THE USES TO WHICH IT MAY BE PUT.

As part of its agreement to accept the City Property in its "as is and with all faults" condition, Developer, on behalf of itself and its successors and assigns, waives any right to recover from, and forever releases and discharges, City and its respective Agents, and their respective heirs, successors, legal representatives, and assigns, from any and all Losses (defined in Section 2.9 below), whether direct or indirect, known or unknown, or foreseen or unforeseen, that may arise on account of or in any way be connected with **(a)** the use of the City Property by City or its Agents or invitees or **(b)** the physical, geological, or environmental condition of the City Property. In connection with the foregoing release, Developer expressly waives the benefits of Section 1542 of the California Civil Code, which provides as follows:

> "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR EXPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN TO HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR."

By placing its initials below, Developer specifically acknowledges and confirms the validity of the releases made above and the fact that Developer was represented by counsel who explained, at the time of this Agreement was made, the consequences of the above releases.

INITIALS: _____: _____: _____

2.5 City's Independent Investigations. City represents and warrants to Developer that, as of the Reference Date, except as provided below with respect to the results of a forthcoming Phase 2 ESA, City had the opportunity to perform a diligent and thorough inspection and investigation of all matters related to the Replacement Property, either independently or through City's Agents, including, without limitation, the following:

(a) All matters affecting title to the Replacement Property, including all documents and matters identified in that certain current preliminary title report of the Replacement Property, prepared by Escrow Company under Order No. 5605292-156-TJK-JM and dated March 30, 2018 ("**Replacement Property Title Report**"). City shall have forty-five (45) days following receipt of preliminary title report to review all matters affecting title to the

Replacement Property, including copies of all documents referred to in such preliminary title report;

(b) The quality, nature, adequacy, and physical condition of the Replacement Property, including, but not limited to, all other physical and functional aspects of the Replacement Property; and

(c) The environmental condition of the Replacement Property, including review of all reports delivered by Developer as part of the Replacement Property Documents relating to the environmental condition of the Replacement Property, including but not limited to any such reports provided to Developer by the then-current owner. Notwithstanding the content of such reports and anything else to the contrary in this Section 2.5, however, City withholds its acceptance of the environmental condition of the Replacement Property until after the SFPUC's Commission has an opportunity to review and approve such condition after receipt of a Phase 2 ESA prepared by a licensed engineering or environmental firm selected by City but to be retained and paid for by Developer promptly after the Effective Date that shows to the SFPUC's Commission's sole satisfaction that the Replacement Property (including soil and groundwater conditions and the improvements) has not been contaminated or is threatened to be contaminated with any hazardous material in a manner that makes the Replacement Property unsuitable for commercial development, occupancy, or use with implementation of appropriate remediation or mitigation of hazardous soils and groundwater. Developer shall be solely responsible for obtaining any necessary approvals in connection with the performance of such Phase 2 ESA that may be required by any federal, state, or local governmental authorities or agencies (including, without limitation, the California Department of Toxic Substances Control) with jurisdiction over the Replacement Property or activities conducted on or about the Replacement Property. The SFPUC's Commission's written approval of the environmental condition of the Replacement Property after review of the Phase 2 ESA described above shall be a condition of Closing.

(d) City's review and approval of the form and substance of all the documents related to the Exchange Transaction and all other matters relating to the Replacement Property and its intended use, including receipt of a formal MAI appraisal, investigation of the property's current zoning and use designation, and review of all reports and records in Developer's possession or reasonably available to Developer.

2.6 City's Discovery of Hazardous Materials. If the SFPUC's Commission's review of the Phase 2 ESA results in the SFPUC's Commission's determination that the Replacement Property is contaminated with any hazardous material in a manner that may make the Replacement Property unsuitable for commercial development, occupancy, or use without implementation of remediation or mitigation of hazardous soils and groundwater that are acceptable to the SFPUC's Commission, the SFPUC's Commission may elect to **(a)** reasonably extend the time periods for review of environmental conditions and for execution of this Agreement in order to allow City to remove such materials in a manner acceptable to the SFPUC, **(b)** terminate this Agreement and/or any other agreement or instrument entered into with Developer (other than Developer's obligation to pay, to the extent incurred prior to such termination, the Pre-Agreement Costs, Environmental Costs (subject to the Environmental Cost

Limit) and Transaction Review Costs (subject to the Cost Limit), all of which obligations shall survive the termination of this Agreement) in connection with the Exchange Transaction contemplated by this Agreement by giving notice to Developer, or **(c)** negotiate with Developer an appropriate remediation strategy for such environmental condition. If the negotiations contemplated by clause (c) of the foregoing sentence do not result in agreements that are acceptable to the SFPUC's Commission, at its sole discretion, the SFPUC's Commission will retain its right to terminate this Agreement as provided in clause (b) of the foregoing sentence.

2.7 As-Is Condition of Replacement Property; Release of Developer. City represents and warrants to Developer that, as of the Reference Date, City has had the opportunity to perform a diligent and thorough inspection and investigation of each and every aspect of the Replacement Property, either independently or through its Agents, including, without limitation, the following matters: CITY SPECIFICALLY ACKNOWLEDGES AND AGREES THAT DEVELOPER IS CONVEYING AND CITY IS ACQUIRING DEVELOPER'S FEE INTEREST IN THE REPLACEMENT PROPERTY ON AN "AS IS WITH ALL FAULTS" BASIS. CITY IS RELYING SOLELY ON ITS INDEPENDENT INVESTIGATION AND, OTHER THAN THE REPRESENTATIONS AND WARRANTIES OF DEVELOPER EXPRESSLY SET FORTH HEREIN, NOT ON ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, FROM DEVELOPER OR ITS AGENTS AS TO ANY MATTERS CONCERNING THE REPLACEMENT PROPERTY, THE SUITABILITY FOR CITY'S INTENDED USES OR ANY OF THE PROPERTY CONDITIONS THEREOF. EXCEPT AS EXPRESSLY SET FORTH IN SECTION 5.1 BELOW, DEVELOPER DOES NOT GUARANTEE THE LEGAL, PHYSICAL, GEOLOGICAL, ENVIRONMENTAL, ZONING, OR OTHER CONDITIONS OF THE REPLACEMENT PROPERTY, OR THE SUITABILITY FOR ANY USE, NOR DOES IT ASSUME ANY RESPONSIBILITY FOR THE COMPLIANCE OF THE REPLACEMENT PROPERTY OR ITS USE WITH ANY APPLICABLE LAWS. IT IS CITY'S SOLE RESPONSIBILITY TO DETERMINE ALL BUILDING, PLANNING, ZONING, AND OTHER REGULATIONS AND APPLICABLE LAWS RELATING TO THE REPLACEMENT PROPERTY AND THE USES TO WHICH EACH MAY BE PUT.

As part of its agreement to accept the Replacement Property and in their "as is and with all faults" condition, City, on behalf of itself and its successors and assigns, waives any right to recover from, and forever releases and discharges, Developer and its Agents, and their respective heirs, successors, legal representatives and assigns, from any and all Losses, whether direct or indirect, known or unknown, or foreseen or unforeseen, that may arise on account of or in any way be connected with **(a)** the use of the Replacement Property by Developer and its Agents or **(b)** the physical, geological, or environmental condition of the Replacement Property. In connection with the foregoing release, City expressly waives the benefits of Section 1542 of the California Civil Code, which provides as follows:

> "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR EXPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN TO HIM OR HER MUST HAVE MATERIALLY AFFECTED THE SETTLEMENT WITH THE DEBTOR."

By placing its initials below, City specifically acknowledges and confirms the validity of the releases made above and the fact that City was represented by counsel who explained, at the time of this Agreement was made, the consequences of the above releases.

INITIALS: City: _____

2.8 Results of Investigations. If Closing does not occur for any reason, each Party shall promptly deliver, or cause to be delivered, to the other Party all copies of any reports relating to any testing or other inspection of the applicable property performed by such Party or its respective Agents.

2.9 Indemnification of City. Developer shall indemnify and hold harmless City and its officers, agents, and employees from and, if requested, shall defend them against, any and all loss, cost, damage, injury, liability, and claims (as further defined below, "**Losses**") arising or resulting directly or indirectly from **(a)** Developer's breach of its obligations arising under this Agreement, **(b)** any administrative, legal, or equitable action or proceeding instituted by any person or entity other than City challenging the validity of this Agreement, the Development Project, the Approvals and/or any final environmental impact report approved or adopted by City in connection with the proposed Exchange Transaction (a "**FEIR**"), or other actions taken pursuant to CEQA, or other approvals under federal, state, or City laws relating to the Exchange Transaction or the Development Project, (**c**) any relocation claims by any existing tenant or occupant relating to City's acquisition of the Replacement Property, Developer's acquisition of the 651 Bryant Street property, or this Exchange Agreement, and **(d)** any action taken by City or Developer in furtherance of this Agreement, or the Exchange Transaction, except to the extent that such indemnity is void or otherwise unenforceable under any Applicable Laws, and except to the extent such Loss is the result of City's gross negligence or willful misconduct. Such indemnity shall include, without limitation, Attorneys' Fees and Costs (defined below) and City's cost of investigating any claims against City. All indemnifications set forth in this Agreement shall survive its expiration or termination.

"**Loss**" or "**Losses**" shall mean any and all claims, demands, losses, liabilities, damages (including foreseeable and unforeseeable consequential damages), liens, obligations, interest, injuries, penalties, fines, lawsuits and other proceedings, judgments, and awards and reasonable costs and expenses of whatever kind or nature, known or unknown, foreseen or unforeseen, or contingent or otherwise, including, without limitation, Attorneys' Fees and Costs.

"**Attorneys' Fees and Costs**" shall mean any and all reasonable attorneys' fees, costs, expenses, and disbursements, including, but not limited to, consultants' and expert witnesses' fees and costs, travel time and associated costs, transcript preparation fees and costs, document copying, exhibit preparation, courier, postage, facsimile, long-distance and communications expenses, court costs, and the costs and fees associated with any other legal, administrative or alternative dispute resolution proceeding, fees and costs associated with execution upon any judgment or order, and costs on appeal. For purposes of this Agreement, City's reasonable attorneys' fees shall be based on the fees regularly charged by private attorneys in San Francisco with comparable experience notwithstanding City's use of its own attorneys.

2.10 Property Agreements; No New Improvements. Except as otherwise expressly permitted by this Agreement, from the Effective Date until the Closing or earlier termination of this Agreement, neither Party, shall enter into any binding lease or contract with respect to the Property or construct any improvements on the Property, without first obtaining the other Party's prior, written consent to such action, which consent shall not be unreasonably withheld or delayed.

ARTICLE 3: TITLE

3.1 Permitted Title Exceptions; Cure of Defects.

(a) Title to City Property; Permitted Title Exceptions. At Closing, City shall quitclaim interest in and to the City Property to Developer by quitclaim deed substantially in the form attached as **Exhibit D** (the "**City Deed**"). Title to City Property shall be subject to **(i)** liens of local real estate taxes and assessments not yet due or payable; **(ii)** any required reservation of rights as determined by City; **(iii)** all existing exceptions and encumbrances, whether or not disclosed by a current preliminary title report or the public records or any other documents reviewed by Developer pursuant to Section 2.1 or Section 2.2, and any other exceptions to title that would be disclosed by an accurate and thorough investigation, survey, or inspection of the City Property; **(iv)** all items of which Developer has actual or constructive notice or knowledge; and **(v)** such other exceptions as are approved by Developer at its sole discretion and will not affect the value or intended use of the City Property. All of the foregoing exceptions to title shall be referred to collectively as "**City Property Permitted Title Exceptions.**"

(b) Title to Replacement Property. Developer shall convey to City by a grant deed or deeds, substantially in the form attached as **Exhibit E** (the "**Developer Deed**"), the fee simple title to the Replacement Property, free and clear of all liens, encumbrances, and other title exceptions including leases (recorded or unrecorded) and other contracts, whether or not of record, except for **(i)** a lien for real property taxes and assessments not yet due or payable and **(ii)** such other exceptions as are approved by City its sole discretion and will not affect the value or intended use of the Replacement Property ("**Replacement Property Permitted Title Exceptions**").

(c) Title Defect. If at the time scheduled for Closing, a Property is **(i)** subject to possession by others, **(ii)** subject to rights of possession other than those of Developer or City, as the case may be, or **(iii)** encumbered by a lien, encumbrance, covenant, assessment, easement, lease, tax, or other matter (except for a City Property Permitted Title Exception or a Developer Property Permitted Title Exception, or anything caused by the action or inaction of the acquiring Party) that would materially affect the proposed development or use of such property, as determined by the acquiring Party at its sole discretion ("**Title Defect**"), City or Developer, as the case may be, will have up to sixty (60) days from the date scheduled for Closing to cause the removal of the Title Defect. The Closing will be extended to the earlier of five (5) business days after the Title Defect is removed or the expiration of such sixty (60)-day period ("**Extended Closing**").

(d) Remedies With Respect to Uncured Title Defect. If a Title Defect still exists at the date specified for the Extended Closing, unless the Parties mutually agree to further extend such date, the acquiring Party of such affected Property may by written notice to the other Party either **(i)** terminate this Agreement or **(ii)** accept conveyance of such affected Property. If the acquiring Party accepts conveyance of such affected Property, the Title Defect will be deemed waived but solely with respect to any action by the acquiring Party against the other Party. If the acquiring Party does not accept conveyance of the affected Property and fails to terminate this Agreement within seven (7) days after the date specified for the Extended Closing, or any extension provided above, either Party may terminate this Agreement upon three (3) days' written notice to the other Party. If this Agreement is terminated under this Section, neither Party shall have any further remedies under this Agreement against the other Party with respect to such termination nor any other rights or remedies, except for those that expressly survive the termination of this Agreement.

3.2 Title Insurance. At Closing, each party will receive **(a)** title insurance from Escrow Company, insuring good and marketable title of the Property to be conveyed to such party pursuant to this Agreement, under an ALTA owner's form extended coverage policy in amounts equivalent to the appraisal of the respective Property to be conveyed to such party referred to Section 1.4, with the title policy to be issued to City with respect to the Replacement Property (the "**City Title Policy**") subject only to the City Property Permitted Title Exceptions and the title policy to be issued to Developer with respect to the City Property (the "**Developer Title Policy**") subject only to the Replacement Property Permitted Title Exceptions, as the case may be, and containing such endorsements as such party may request, and **(b)** a current ALTA survey of the Properties in accordance with the requirements of City, Developer, and the Escrow Company.

ARTICLE 4: CEQA COMPLIANCE; PROJECT APPROVALS

4.1 CEQA Compliance. In the Spring of 2013, City's Planning Department commenced the Central SOMA Environmental Impact Report ("**CSEIR**") for environmental review of a proposed Central SOMA Plan (Case No. 2011.1356E) ("**CSP**"). The City Property is located within the Central SOMA Plan Area. The Parties anticipate that the CSEIR will include analysis of potential uses of the City Property and will include zoning and development controls applicable to the City Property and adjoining parcels. City may not transfer the City Property under this Agreement and neither the Closing nor the Exchange Transaction shall occur until any and all Environmental Review required by CEQA and other Applicable Laws is completed and all required City approvals based on such Environmental Review and on public review have been obtained. Despite execution of this Agreement, the Closing and consummation of the Exchange Transaction shall be dependent upon further City Approvals and actions after completion of the Environmental Review process and on other public review and hearing processes. Acting in its regulatory capacity, City will review and consider the final environmental documents relating to the proposed Exchange Transaction before deciding whether to approve the Exchange Transaction, including, without limitation, the Closing, any associated rezoning, Municipal Code or General Plan amendments, or other matters related to the proposed Exchange Transaction. City, including the SFPUC and Board of Supervisors, will retain the sole and absolute discretion to: **(a)** make such modifications to the proposed Exchange

Transaction as are deemed necessary to mitigate significant impacts identified in the Environmental Review; **(b)** select other feasible alternatives to avoid such impacts; **(c)** balance the benefits against unavoidable significant impacts prior to taking final action if such significant impacts cannot otherwise be avoided; or **(d)** determine not to proceed with the proposed Exchange Transaction based upon the information generated by the environmental review process.

If **(x)** the CSEIR or any other environmental document analyzing the Exchange Transaction is not adopted and approved as required by Applicable Laws on or before March 31, 2019 or **(y)** as a result of the Environmental Review or other public approval process, there are any proposed material modifications to this Agreement or other transaction documents that are not acceptable to the Parties at their respective sole discretion, then, except as otherwise expressly provided regarding the payment of the Pre-Agreement Costs, Environmental Costs (subject to the Environmental Cost Limit) and Transaction Review Costs (subject to the Cost Limit), all of which obligations shall survive the termination of this Agreement), there shall not be deemed to be any understanding of the Parties to proceed with the Exchange Transaction and either Party may terminate this Agreement upon delivery of written notice of such termination to the other party.

4.2 Developer Project Approvals. Developer will retain discretion not to proceed with the Exchange Transaction unless, on or prior to March 31, 2019, City adopts zoning controls and Developer secures any other approvals, entitlements, or authorizations from City or any other governmental entity with jurisdiction (whether as part of the CSP or otherwise), including the Park Fee Waiver, which zoning controls, approvals, entitlements, or authorizations (collectively, "**Developer Approvals**") have become final and non-appealable, that will permit a first phase consisting of a minimum of 710,187 square feet of office at the Development Project Area to proceed by March 31, 2019. If, prior to the earlier of the Closing or March 31, 2019, any Developer Approval is denied or granted with conditions, environmental mitigation measures, alternatives, or modifications or if there is any modification to the Exchange Transaction under Section 4.1 above unacceptable to Developer in the exercise of Developer's sole and absolute discretion, Developer may terminate this Agreement (together with all other obligations of the Developer referred to herein) after exercising reasonable efforts to remove, ameliorate, or otherwise address such conditions, measures, alternatives, or modifications; provided that Developer's obligation to pay, or reimburse City, for all of City's Pre-Agreement Costs (if not previously paid), Environmental Costs (if not previously paid and subject to the Environmental Cost Limit) and Transaction Review Costs (if not previously paid and subject to the Cost Limit), incurred prior to the date of such termination shall survive such termination.

ARTICLE 5: REPRESENTATIONS AND WARRANTIES

5.1 Representations and Warranties of Developer. Developer represents and warrants to and covenants with City as of the Effective Date and as of the Closing Date:

(a) To Developer's actual knowledge, there are no violations of any material Applicable Laws with respect to the Replacement Property, except with respect to any violations of Environmental Laws (defined below in Section 5.1(j)) that may exist with respect to the Replacement Property.

(b) On or before the Reference Date, to Developer's actual knowledge, Developer has delivered to City all of the Replacement Property Documents, which include all relevant documents and material information pertaining to the physical and environmental condition and operation of the Replacement Property in Developer's possession as of the Reference Date. Developer shall notify City should it acquire relevant documents or material information pertaining to the physical and environmental condition and operation of the Replacement Property between the Reference Date and the Closing Date.

(c) To Developer's actual knowledge, no document or instrument furnished or to be furnished by Developer to City contains or will contain any material untrue statement or will omit a material fact that would make such document or instrument misleading in a material manner.

(d) To Developer's actual knowledge, there are no **(i)** easements or rights of way that are not of record with respect to the Replacement Property, **(ii)** disputes with regard to the location of the boundaries of the Replacement Property nor any claims or actions involving the location of any boundary except as disclosed in the ALTA survey described in Section 3.2, nor **(iii)** encroachments onto the Replacement Property, and any structure on the Replacement Property does not encroach onto any neighboring land except as disclosed in the ALTA survey described in Section 3.2).

(e) To Developer's actual knowledge, Developer owns the Replacement Property (or shall own the Replacement Property at Closing), with full right to convey the same, and, except for Developer obligations pursuant to this Agreement, Developer has not granted any option or right of first refusal or first opportunity to any other person or entity to acquire any interest in the Replacement Property.

(f) Developer has not instituted, nor been served with process with respect to, any pending litigation with respect to the Replacement Property and, to Developer's actual knowledge, there is no litigation threatened against Developer with respect to the Replacement Property or any basis therefor.

(g) To Developer's actual knowledge, at the time of Closing, except for matters of record, there will be no outstanding written or oral contracts made by Developer applicable to the Replacement Property that have not been fully paid for and Developer shall cause to be discharged all mechanics' or materialmen's liens arising from any labor or materials furnished to the Replacement Property prior to the time of Closing.

(h) Developer is an entity duly organized and validly existing under the laws of the State of Delaware and in good standing under the laws of the State of Delaware; this Agreement and all documents executed by Developer that are to be delivered to City at the Closing are, or at the Closing will be, duly authorized, executed, and delivered by Developer, or at the Closing will be, legal, valid, and binding obligations of such party, enforceable against such party in accordance with their respective terms, and are, or at the Closing will be, sufficient to convey good and marketable title (if they purport to do so),

and do not, and at the Closing will not, violate any provision of any agreement or judicial order to which such party is a party or to which or the Replacement Property is subject.

(i) To Developer's actual knowledge, there are not any known Hazardous Materials (defined below) at, on, or in the Replacement Property, except as disclosed in the Replacement Property Documents;

As used in this Agreement, the term "**Hazardous Material**" shall mean any material that, because of its quantity, concentration, or physical or chemical characteristics, is deemed by any federal, state, or local governmental authority to pose a present or potential hazard to human health or safety or to the environment. "Hazardous Material" includes, without limitation, any material or substance defined as a "hazardous substance," or "pollutant" or "contaminant" under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA", also commonly known as "Superfund" law), as amended, (42 U.S.C. Sections 9601 et seq.) or under Section 25281 or 25316 of the California Health & Safety Code; any "hazardous waste" as defined in Section 25117 or listed under Section 25140 of the California Health & Safety Code (all of such laws are collectively referred to as "**Environmental Laws**"); any asbestos and asbestos containing materials (whether or not such materials are part of the structure of any existing improvements on the Property, any improvements to be constructed on the Property, or are naturally occurring substances on, in, or about the Property); and petroleum, including crude oil or any fraction, and natural gas or natural gas liquids. "Hazardous Material" shall not include any material used or stored at the Property in limited quantities and required in connection with the routine operation and maintenance of the Property, if such use and storage complies with all Applicable Laws relating to the use, storage, disposal, and removal of such material.

(j) Developer is not a "foreign person" within the meaning of Section 1445(f)(3) of the Federal Tax Code and Developer is not subject to withholding under Section 18662 of the California Revenue and Taxation Code.

(k) Developer has not been suspended by or prohibited from contracting with, any federal, state, or local governmental agency. If Developer has been so suspended or prohibited from contracting with any governmental agency, it shall immediately notify City of same and the reasons therefor together with any relevant facts or information requested by City. Any such suspension or prohibition may result in the termination or suspension of this Agreement.

(l) To Developer's actual knowledge, it knows of no facts nor has Developer failed to disclose any fact that would prevent City from using the Replacement Property as contemplated by this Agreement.

For the purposes of such representations, the phrase "Developer's actual knowledge" shall mean, at the time of the applicable representation, the actual knowledge of Carl Shannon, who serves as Developer's Senior Managing Director.

5.2 Representations and Warranties of City. City represents and warrants to and covenants with Developer as of the Effective Date (except as otherwise indicated below) and as of the Closing Date:

(a) To City's actual knowledge, there are not now, and at the time of the Closing will not be, any violations of any material Applicable Laws with respect to the City Property, except with respect to any violations of Environmental Laws that may exist with respect to the City Property.

(b) To City's actual knowledge, no document or instrument furnished or to be furnished by City to Developer contains or will contain any material untrue statement or will omit a material fact that would make such document or instrument misleading in a material manner.

(c) To City's actual knowledge, there are no **(i)** easements or rights of way that are not of record with respect to the City Property, **(ii)** disputes with regard to the location of the boundaries of the City Property nor any claims or actions involving the location of any boundary except as disclosed in the ALTA survey described in Section 3.2, nor **(iii)** encroachments onto the City Property, and any structure on the City Property does not encroach onto any neighboring land except as disclosed in the ALTA survey described in Section 3.2).

(d) To City's actual knowledge, City is the owner of the City Property, with full right to convey the same, and, except for City's obligations pursuant to this Agreement, City has not granted any option or right of first refusal or first opportunity to any other person or entity to acquire any interest in any of the City Property.

(e) To City's actual knowledge, City has not instituted, nor been served with process with respect to, any pending litigation with respect to the City Property and there is no litigation threatened against City with respect to the City Property or any basis therefor.

(f) To City's actual knowledge, at the time of Closing, except for matters of record, there will be no outstanding written or oral contracts made by City for any improvements on the City Property that have not been fully paid for and City shall cause to be discharged all stop notices or similar encumbrances arising from any labor or materials furnished to the City Property prior to the time of Closing.

(g) To City's actual knowledge, City controls access through the metal gate along the boundary between the City Property and the City Leased Premises (the "**Gate**") and City maintains all remotes, keys, and other devices providing such access through the Gate. Upon the Moving Date, City shall provide Developer with all keys, remotes and other devices related to the Gate in City's possession and discontinue any use of the Gate by City or any of its Agents and related parties.

(h) To City's actual knowledge, City is the sole user of the Gate and no third parties, including without limitation, the owners of 645 Bryant Street (Block 3777, Lot 051), have access or use of the Gate.

(i) To City's actual knowledge, there is no limitation on City's ability to remove the Gate and City has complete and absolute control over the Gate.

(j) To City's actual knowledge, there are not now, and at the time of the Closing will be, no known Hazardous Materials at, on, or in the City Property.

For the purposes of such representations, the phrase "City's actual knowledge" shall mean, at the time of the applicable representation, the actual knowledge of the SFPUC's Deputy General Manager Michael Carlin.

5.3 Developer's Indemnity. Developer, on behalf of itself and its successors and assigns, shall indemnify, defend, and hold harmless City, its agents, and their respective successors and assigns from and against any and all Losses, excluding consequential or punitive damages, up to and including an aggregate amount of Two Hundred Fifty Thousand Dollars ($250,000.00) to the extent resulting from any intentional or negligent breach of Developer's representations or warranties set forth in this Article 5. The foregoing indemnification shall survive the Closing or any termination of this Agreement for a period of twelve (12) months.

5.4 City's Indemnity. City, on behalf of itself and its successors and assigns, shall indemnify, defend, and hold harmless Developer, its agents, and their respective successors and assigns from and against any and all Losses, excluding consequential or punitive damages, up to and including an aggregate amount of Two Hundred Fifty Thousand Dollars ($250,000.00) to the extent resulting from any intentional or negligent breach of City's representations or warranties set forth in this Article 5. The foregoing indemnification shall survive the Closing or any termination of this Agreement for a period of twelve (12) months.

5.5 Hazardous Substance Disclosure. California law requires sellers to disclose to buyers the presence or potential presence of certain Hazardous Materials. Accordingly, each Party is hereby advised that occupation of the other Party's property may lead to exposure to Hazardous Materials such as, but not limited to, gasoline, diesel, and other vehicle fluids, vehicle exhaust, office maintenance fluids, tobacco smoke, methane, and building materials containing chemicals, such as formaldehyde. By execution of this Agreement, each party acknowledges that the notices and warnings set forth above satisfy the requirements of California Health and Safety Code Section 25359.7 and related statutes.

ARTICLE 6: CONDITIONS PRECEDENT FOR CITY APPROVAL OF CLOSING AND CLOSING

6.1 City's Conditions Precedent to City Approval of Closing and Acceptance of Replacement Property. City's obligation to accept the Replacement Property, convey the City Property, and otherwise perform its obligations with respect to the Exchange Transaction will be subject to the satisfaction of the following conditions (each, a "**City Condition Precedent**"), as determined by City at its sole and absolute discretion:

(a) Review of Survey and Title. City's acceptance of the Replacement Property shall be subject to City's and Escrow Company's review and acceptance of a current ALTA survey or, at City's discretion, a current CLTA survey, of the Replacement Property and any and all other documents relating to title not previously disclosed and

reviewed pursuant to Section 2.5, which would allow Escrow Company to issue to City the City Title Policy described in Section 3.2 above.

(b) Review of Physical Condition Replacement Property. City's inspection, investigation, review, and approval of the mechanical, physical, and structural condition of the Replacement Property (including any issues relating to the presence of hazardous materials on or about the Replacement Property). The Replacement Property shall be free of users, tenants and other occupants.

(c) Acceptance of the Environmental Condition of the Replacement Property by the SFPUC's Commission. The SFPUC's Commission's written approval of the environmental condition of the Replacement Property.

(d) CEQA Compliance. City's compliance with all Applicable Laws, including, without limitation, CEQA and City's Environmental Quality Regulations (San Francisco Administrative Code Section 31) as described in Section 4.1, and the granting of all Approvals.

(e) Approval by City's SFPUC, Board of Supervisors, and Mayor. SFPUC approves this Agreement and, after the completion of all Environmental Review related to the Exchange Transaction, City's Board of Supervisors and Mayor, at their respective sole and absolute discretion, by enacting an appropriate resolution or ordinance (the "**Closing Authorization Action**") approve the Exchange Transaction, the Closing, and any other agreement, instrument, or matter relating to the proposed Exchange Transaction that is subject to any such approval as required by applicable law.

(f) No Defaults. No event of default (or event which, upon the giving of notice or the passage of time or both, shall constitute an event of default) under this Agreement shall exist on the part of Developer under this Agreement, and each of Developer's representations and warranties under this Agreement shall be true and correct in all material respects.

(g) Approved Final Plans and Budget. Mutual delivery and signed approval by the Parties of the Approved Final Plans and Budget and the HP Tank Plans.

(h) Developer's Performance. Developer shall have performed all of the obligations under this Agreement it is required to perform on or before the Closing, including, without limitation:

(i) depositing into Escrow any sums required to be paid by Developer under this Agreement and an FSA (defined below in Section 10.22) approved by City;

(ii) issuance to Developer of all Construction Approvals, completion of the Developer's Work in accordance with all Construction Approvals, and the delivery of a final Certificate of Completion and a TCO;

(iii) either **(A)** delivery to City of copies of all documents or instruments that constitute the Replacement Property Lease in a form approved by the SFPUC's Commission in writing, each executed on behalf of Kilroy, as lessee, and Developer, as lessor, and, if requested by City, an assignment acceptable to City of all of Developer's rights and obligations under each document or instrument that constitutes a part of the Replacement Property Lease, together with a consent to each such assignment executed by Kilroy if required by City, or **(B)** approval of the SFPUC's Commission in writing of the form and enforceability of an Alternate Revenue Source acceptable to the SFPUC's Commission, acting at its sole discretion; and

(iv) delivery of a Temporary Instrument, executed on behalf of the Developer.

(i) Reimbursement Documents. The Parties shall have mutually executed and delivered the final Reimbursement Documents as set forth in Section 1.5(d).

(j) City Title Policy. The Escrow Company shall be irrevocably committed to issue the City Title Policy at Closing on payment by Developer of all required premiums, as set forth in Section 3.2.

(k) Lack of Proceedings or Litigation Regarding Replacement Property. There shall be no pending or threatened **(i)** condemnation, environmental, or other pending governmental proceedings with respect to the Replacement Property that would materially and adversely affect City's use thereof or **(ii)** litigation affecting the Replacement Property.

(l) No Material Adverse Changes. There shall be no material adverse change in the condition of the Replacement Property from the Effective Date to the Closing Date, unless such change results solely from the acts of City or its Agents.

6.2 Failure of City's Conditions Precedent; Cooperation of Developer. Each City Condition Precedent is intended solely for City's benefit. If any City Condition Precedent is not satisfied by the Closing Date or by the date otherwise provided above, at its sole election and by written notice to Developer, City may extend the date for satisfaction of the condition, waive the condition in whole or part, conditionally waive the condition in whole or in part, or terminate this Agreement. Notwithstanding anything to the contrary in the foregoing, if any such conditional waiver is not acceptable to Developer, at its sole discretion, Developer may reject such conditional waiver, in which event the original City Condition Precedent shall remain effective, and if not satisfied, shall entitle City to terminate this Agreement. If City elects to so terminate this Agreement, then upon any such termination, neither Party shall have any further rights nor obligations hereunder except for those that expressly survive termination of this Agreement, including, without limitation, Developer's obligation to pay, or reimburse City, for all of City's Pre-Agreement Costs (if not previously paid), Environmental Costs (if not previously paid and subject to the Environmental Cost Limit) and Transaction Review Costs (if not previously paid and subject to the Cost Limit), incurred prior to the date of such termination.

Developer shall cooperate with City and do all acts as may be reasonably requested by City to fulfill any City Condition Precedent, including, without limitation, execution of any documents, applications, or permits. Developer's representations and warranties to City shall not be affected or released by City's waiver or fulfillment of any City Condition Precedent.

6.3 Developer Conditions Precedent. Developer's obligation to convey the Replacement Property, accept the City Property, and otherwise perform its obligations with respect to the Exchange Transaction (other than Developer's obligation to pay, or reimburse City, for all of City's Pre-Agreement Costs, Environmental Costs (subject to the Environmental Cost Limit) and Transaction Review Costs (subject to the Cost Limit) pursuant to this Agreement) will be subject to the satisfaction of the following conditions (each, a "**Developer Condition Precedent**"), as determined by Developer at its sole and absolute discretion:

(a) Review of Survey and Title. Developer's acceptance of the City Property shall be subject to Developer's and Escrow Company's review and acceptance of a current ALTA survey or, at Developer's discretion, a current CLTA survey, of the City Property (at Developer's cost) and any and all other documents relating to title not previously disclosed and reviewed pursuant to Section 2.2, which would allow Escrow Company to issue to Developer the Developer Title Policy described in Section 3.2 above.

(b) Review of Physical Condition City Property. Developer's inspection, investigation, review and approval of the mechanical, physical, and structural condition of the City Property (including any issues relating to the presence of hazardous materials on or about the Replacement Property).

(c) CEQA Compliance. City's compliance with all Applicable Laws, including, without limitation, CEQA and City's Environmental Quality Regulations (San Francisco Administrative Code Section 31) as described in Section 4.1, and the granting of all Approvals...

(d) Approval by City's SFPUC, Board of Supervisors, and Mayor. SFPUC, at its sole and absolute discretion, approves this Agreement and City's Board of Supervisors and Mayor, at their respective sole and absolute discretion, approve the Central SOMA Plan, and adopt or enact the Closing Authorization Action and thereby approve this Agreement, and any other agreement, instrument, or matter relating to the proposed Exchange Transaction that is subject to any such approval as required by applicable law.

(e) Developer Approvals. Developer shall have obtained the Developer Approvals as set forth in Section 4.2, including the Park Fee Waiver.

(f) Certificate of Compliance. Developer shall have obtained the Certificate of Compliance from City as set forth in Section 1.5(b).

(g) Reimbursement Documents. The Parties shall have mutually executed and delivered the final Reimbursement Documents as set forth in Section 1.5(d).

(h) Construction Approvals and TCO. Developer has obtained all Construction Approvals and a TCO.

(i) City's Approval and Acceptance of Replacement Property Lease or Alternate Revenue Source. Delivery to Developer of City's written approval and acceptance of either a Replacement Property Lease or an Alternate Revenue Source.

(j) Assignment of 651 Bryant Lease. If, pursuant to Section 1.6(b)(i) above, Developer has required City to assign to Developer its interest in the 651 Bryant Lease, and Landlord has granted its written consent to such assignment and a complete release of all of City's obligations under the 651 Bryant Lease arising or accruing after the date of such assignment, delivery of a fully executed copy of such assignment and a fully executed copy of such release.

6.4 Failure of Developer Conditions Precedent. Each Developer Condition Precedent is intended solely for the benefit of Developer. If any Developer Condition Precedent is not satisfied on or before the required completion date specified therefor (or by the date otherwise provided above or as such date may be extended as permitted hereby), at its option and by written notice to City, Developer may extend the date for satisfaction of the condition, waive the condition in whole or in part or conditionally waive in whole or in part, in writing the condition precedent or terminate this Agreement. Notwithstanding anything to the contrary in the foregoing, if any such conditional waiver is not acceptable to City, at its sole discretion, City may reject such conditional waiver, in which event the original Developer Condition Precedent shall remain effective, and if not satisfied, shall entitle Developer to terminate this Agreement. If Developer elects to so terminate this Agreement, neither Party shall have any further rights or obligations hereunder except for those that expressly survive the termination of this Agreement, including, without limitation, Developer's obligation to pay, or reimburse City, for all of City's Pre-Agreement Costs (if not previously paid), Environmental Costs (if not previously paid and subject to the Environmental Cost Limit) and Transaction Review Costs (if not previously paid and subject to the Cost Limit), incurred prior to the date of such termination.

6.5 Notification Obligations. During the period commencing on the Effective Date through and ending on the Closing Date, City shall promptly deliver written notice to notify Developer if City becomes aware of or receives notice of any actual or threatened litigation with respect to the City Property, any violation of any Applicable Laws affecting or related to the City Property (except with respect to any violations of Environmental Laws that may exist with respect to the City Property), or any other material adverse change in the condition of the City Property. Such notification shall include all material facts known by City relative to such matter.

During the period commencing on the Effective Date through and ending on the Closing Date, Developer shall promptly deliver written notice to City if Developer becomes aware of or receives notice of any actual or threatened litigation with respect to the Replacement Property, any violation of any Applicable Laws affecting or related to the Replacement Property (except with respect to any violations of Environmental Laws that may exist with respect to the City Property), or any other material adverse change in the condition of the Replacement Property. Such notification shall include all material facts known by Developer relative to such matter.

ARTICLE 7: CLOSING

7.1 Closing Date. Subject to the satisfaction of all conditions contained in this Agreement, including the enacting by City of the Closing Authorization Action, "**Closing**" shall mean the consummation, through Escrow Company, of the Exchange Transaction pursuant to the terms and conditions of this Agreement, on a business day mutually agreed upon by City and Developer as the Closing Date but in any event no later than thirty (30) days after the receipt by Developer of the Certificate of Compliance referred to in Section 1.5, as such date may be extended from time to time with the written consent of both Developer and City ("**Closing Date**"). All funds shall be delivered in cash and immediately available funds to the Escrow Company by the close of business on the business day that is immediately prior to the Closing Date.

7.2 Deposit of Documents by City for Closing. At or before the Closing, City shall deposit the following items into Escrow:

(a) the City Deed, duly executed and acknowledged by City and conveying the City Property to Developer (or to Developer's affiliate nominee, which is hereby approved, or to Developer's non-affiliate nominee, which is subject to City's reasonable approval) subject to the City Property Permitted Title Exceptions;

(b) a certified copy of the CLDAA Resolution;

(c) certified copies of the Closing Authorization Action and any other resolution, ordinance, or other approvals issued by City's Board of Supervisors and Mayor as required pursuant to Section 6.1(d);

(d) executed copy of the Certificate of Compliance; and

(e) Such other instruments as are reasonably required by the Escrow Company or otherwise required to effect the Closing in accordance with the terms of this Agreement.

7.3 Deposit of Documents and Cash by Developer for Closing. At or before the Closing, Developer shall deposit the following items into Escrow:

(a) the Developer Deed, duly executed and acknowledged by Developer and conveying the Replacement Property to City subject to the Developer Property Permitted Title Exceptions;

(b) any funds, delivered in cash, that Developer is required to deposit into Escrow in accordance with this Agreement, including, without limitation:

(i) an FSA approved by City.

(ii) any Developer Lease Payments payable to Landlord at or before Closing pursuant to Section 1.6, if applicable, in connection with the termination of the 639 Bryant Lease;

(iii) any City-invoiced and unpaid Pre-Agreement Costs, Environmental Costs (subject to the Environmental Cost Limit), and Transaction Review Costs (subject to the Cost Limit);

(iv) all Closing Costs (as defined, and pursuant to, Section 7.5(a) below);

(v) all transfer taxes (as described, and pursuant to, Section 7.5(b) below); and

(vi) any pro-rated real property taxes pursuant to Section 7.6 below; and

(c) Such other instruments as are reasonably required by the Escrow Company or otherwise required to effect Closing in accordance with the terms of this Agreement.

7.4 Duties of Escrow Company at Closing. As of Closing, the Escrow Company shall

(a) record in the Official Records the following instruments in the following order of recording: **(i)** certified copies of the CLDAA Resolution, the Closing Authorization Action, and any other resolution or ordinance issued by City's Board of Supervisors and Mayor as required pursuant to Section 6.1(d), **(ii)** the City Deed, and **(iii)** the Developer Deed; and

(b) issue the City Title Policy to City and the Developer Title Policy to Developer, both at Developer's expense.

Unless the Parties otherwise expressly agree in writing at or prior to the Closing Date, as of Closing, all pre-conveyance conditions of the Parties with respect to each Property shall be deemed satisfied or waived by the Party or Parties benefited by such condition.

7.5 Expenses.

(a) Generally. Developer will pay at Closing the following costs ("**Closing Costs**"): **(i)** all premiums and associated costs for the City Title Policy and Developer Title Policy, **(ii)** all survey costs, **(iii)** escrow costs, and **(iv)** all recording fees arising out of any aspect of the Exchange Transaction.

(b) Transfer Taxes. Developer shall pay the transfer taxes applicable solely to the City Property. Only for purposes of determining city and county transfer taxes, and notwithstanding the fair market value determination of the Replacement Property as calculated in accordance with Section 1.4(b), the consideration being paid by Developer in connection with the Exchange Transaction shall be deemed to be equal to the fair market value of the City Property as determined in accordance with Section 1.4(a). To the extent the actual fair market value of the Replacement Property as determined in accordance with Section 1.4(b) exceeds the fair market value of the City Property as

determined in accordance with Section 1.4(a), such additional amount shall be deemed a gift, credited to City at Closing and not subject to documentary transfer tax. Developer shall have no obligation to pay the transfer taxes, if any, applicable to the Replacement Property.

7.6 Prorations. Real property taxes and other normal operating expenses will be prorated as of 12:01 A.M. on the Closing Date.

7.7 Timing of Payment of Pre-Agreement Costs, Environmental Costs, and Transaction Costs; Effects of Nonpayment.

(a) Promptly after the Effective Date, City shall prepare and submit to Developer City's written invoice(s) detailing its Pre-Agreement Costs (if not previously paid) and Environmental Costs (if not previously paid and subject to the Environmental Cost Limit). Except for any such costs that Developer contests in good faith, Developer shall pay City all such costs within thirty (30) days of Developer's receipt of such invoice(s).

(b) After the Effective Date, Developer shall pay City the Transaction Costs, subject to the Cost Limit, in installments as they accrue no later than thirty (30) days following receipt of City's written invoice detailing such costs, which invoices may be issued monthly, quarterly, or periodically as City determines at its discretion.

(c) Should there be a dispute regarding any amount claimed by City as Pre-Agreement Costs, Environmental Costs, or Transaction Costs, the Parties shall meet and attempt in good faith to promptly resolve the dispute. Upon Developer's request, City shall provide reasonable documentation of any disputed costs. Once the dispute is resolved, Developer shall promptly pay City any disputed amounts reasonably substantiated by City.

(d) City shall not be required to process any requests for approval or take other actions under this Agreement during any period in which payments from Developer of Pre-Agreement Costs, Environmental Costs, or Transaction Costs (as the case may be) that are payable by Developer pursuant to this Agreement are past due and continue to be unpaid (except with respect to unsubstantiated costs disputed in good faith by Developer) after notice to Developer of such nonpayment from City. Any such nonpayment shall constitute a default under this Agreement. Notwithstanding the foregoing, on or before the Closing, City and Developer shall cooperate to agree to a reconciliation procedure, pursuant to which each party will reimburse or credit the other party for any Transaction Costs or other sums previously paid by the other party that were not owed or payable by such other party pursuant to this Agreement.

7.8 Possession. At or prior to Closing, Developer shall deliver possession of the Replacement Property free of occupants, users and tenants (with realty improvements remaining, but all personalty removed from Replacement Property).

7.9 Post-Closing Obligation. Within thirty (30) days after the Closing Date, City shall **(a)** Vacate and Move and **(b)** deliver possession of the City Property free of occupants,

users and tenants (with realty improvements remaining, but all personalty removed from City Property by Developer).

7.10 Other Documents; Cooperation. Each Party shall perform such further acts and execute and deliver such additional documents and instruments as may be reasonably required in order to carry out the provisions of this Agreement and the intentions of the Parties.

ARTICLE 8: RISK OF LOSS

8.1 Insurance. Neither Party shall be obligated to maintain any third-party comprehensive liability insurance or property insurance for its respective property.

ARTICLE 9: DEFAULT AND REMEDIES

9.1 Default; Right to Specific Performance. If either Party fails to perform its obligations under this Agreement (except as excused by the other Party's default), including, without limitation, a failure to convey the City Property or the Replacement Property at the time and in the manner provided for by this Agreement, at its sole election, the Party claiming default may make written demand for performance. If the Party receiving such demand for performance fails to comply with such written demand within thirty (30) days after receipt of such notice, the Party claiming default will have the option to **(a)** waive such default, **(b)** demand specific performance or pursue any other rights and remedies to which such party may be entitled either in law or in equity and/or **(c)** terminate this Agreement, in each case by written notice to the defaulting Party. If a Party becomes aware of a default by the other Party under this Agreement before the Closing Date and elects to proceed with the Closing, then the Party that elects to proceed shall be deemed to have waived the default.

9.2 Termination. If any Party terminates this Agreement pursuant to this Article 9, such Party shall have the right to seek all legal remedies available to such Party, including specific performance.

9.3 Exculpation. Developer's liability arising out of or in connection with this Agreement shall be limited to Developer's assets and any proceeds of insurance policies required of Developer by this Agreement and City shall not look to any property or assets of any direct or indirect partner, member, manager, shareholder, director, officer, principal, employee, or agent of Developer (collectively, "**Developer Parties**") in seeking either to enforce Developer's obligations or to satisfy a judgment for Developer's failure to perform such obligations and none of the Developer Parties shall be personally liable for the performance of Developer's obligations under this Agreement. In no event shall either party be liable for, and each party, on behalf of itself and, to the extent applicable to such party, its respective officers, employees, elected officials, supervisors, boards, commissions, commissioners, direct or indirect partners, members, managers, shareholders, directors, officers, principals, employees, and agents, hereby waives any claim against the other party for, any indirect or consequential damages, including loss of profits or business opportunity, arising under or in connection with this Agreement. Further, in no event shall either party's respective officers, employees, elected officials, supervisors, boards, commissions, commissioners, direct or indirect partners, members, managers, shareholders, directors, officers, principals, employees, or agents be liable to the other party for any punitive damages provided, however, that neither City nor the Developer shall be

excused from any punitive damages imposed by a court of competent jurisdiction, after all appeal periods have run with their having been no appeal. Notwithstanding the foregoing, at City's request, Developer will provide security with a value of not less than the sum of the Pre-Agreement Costs, the Environmental Cost Limit, and the Cost Limit for the performance of the Developer's obligations pursuant to this Agreement to pay to City its Pre-Agreement Costs, Environmental Costs, and Transaction Review Costs (to the extent not payable or secured by insurance to be provided by Developer pursuant to, or in connection with, this Agreement), which security, at Developer's option and if reasonably acceptable to City, may be provided in a commercially reasonable form by a letter of credit, a performance bond or similar instrument, or a guaranty by an affiliate of Developer (such as the affiliate of Developer which controls the rights to purchase the 598 Brannan Street property).

ARTICLE 10: GENERAL PROVISIONS

10.1 Notices. Any notice, consent, or approval required or permitted to be given under this Agreement shall be in writing shall be in writing and shall be given by **(a)** hand delivery, against receipt, **(b)** reliable next-business-day courier service that provides confirmation of delivery, or **(c)** United States registered or certified mail, postage prepaid, return receipt required, to the address(es) set forth below or to such other address as either party may from time to time specify in writing to the other upon five (5) days' prior written notice in the manner provided above. The Parties' initial addresses are:

If to Developer:

2000 Marin Property, L.P.
c/o Tishman Speyer
One Bush Street, Suite 450
San Francisco, California 94104
Attention: Carl D. Shannon
Telephone: (415) 344-6630
E-mail: cshannon@tishmanspeyer.com

With a copy to:

DLA Piper LLP (US)
555 Mission Street, Suite 2400
San Francisco, California 94105
Attn: Stephen Cowan, Esq.
Telephone: (415) 615-6000
E-mail: stephen.cowan@dlapiper.com

If to City:

Andrico Penick, Acting Director of Property
City and County of San Francisco
25 Van Ness Ave. Suite 400
San Francisco, CA 94102
Telephone: (415) 554-9823
E-mail: andrico.penick@sfgov.org

Real Estate Services Division
San Francisco Public Utilities Commission
525 Golden Gate Avenue, 10th Floor

San Francisco, CA 94102
Attn: Real Estate Director
E-mail: RES@sfwater.org

With a copy to: Office of the City Attorney
Room 234, City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102
Attn: Richard Handel
E-mail: richard.handel@sfcityatty.org
Telephone: (415) 554-6760

A properly addressed notice transmitted by one of the foregoing methods shall be deemed received upon confirmed delivery, attempted delivery, or rejected delivery. Any facsimile numbers are provided for convenience of communication only; neither party may give official or binding notice by fax. The effective time of a notice shall not be affected by the receipt, prior to receipt of the original, of a faxed copy of a notice.

10.2 Amendments. Except as otherwise provided in this Agreement, this Agreement may be amended or modified only by a written instrument executed by City and Developer. The Director of Property of City, the SFPUC's General Manager, or any successor City officer as designated by law shall have the authority to consent to any non-material changes to this Agreement. For purposes hereof, "non-material change" shall mean any change that does not materially reduce the consideration to City under this Agreement or otherwise materially increase the liabilities or obligations of City under this Agreement. Material changes to this Agreement shall require the approval of City's Board of Supervisors by resolution or ordinance.

10.3 Severability. If any provision of this Agreement, or its application to any party or circumstance, is held invalid by any court, the invalidity or inapplicability of such provision shall not affect any other provision of this Agreement or the application of such provision to any other party or circumstance, and the remaining portions of this Agreement shall continue in full force and effect, unless enforcement of this Agreement as so modified by and in response to such invalidation would be unreasonable or grossly inequitable under all of the circumstances or would frustrate the fundamental purposes of this Agreement.

10.4 Non-Waiver. Except as expressly set forth herein to the contrary, a Party's delay or failure to exercise any right under this Agreement shall not be deemed a waiver of that or any other right contained in this Agreement.

10.5 Successors and Assigns. This Agreement shall be binding upon, and inure to the benefit of, the Parties and their respective successors, heirs, legal representatives, administrators, and assigns. Developer may assign this Agreement to any party with City's consent, which shall not be unreasonably withheld or delayed so long as the proposed assignee provides sufficient security, or demonstrates its means, to City's reasonable satisfaction, to secure Developer's obligations to perform its obligations under this Agreement, including payment of City's Pre-Agreement Costs, Environmental Costs, and Transaction Review Costs (to the extent not payable or secured by insurance to be provided by Developer pursuant to, or in connection with, this

Agreement). In addition, at its sole discretion, Developer may designate another party to take title to the City Property at the Closing.

10.6 Consents and Approvals. Any approvals or consents of City required under this Agreement may be given by the SFPUC's General Manager, unless otherwise provided in the City's Charter or applicable City ordinances.

10.7 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California and City's Charter and Administrative Code.

10.8 Applicable Laws. "**Applicable Laws**" shall mean all present and future applicable laws, ordinances, rules, regulations, resolutions, statutes, permits, authorizations, orders, requirements, covenants, conditions, and restrictions, whether or not in the contemplation of the Parties, that may affect or be applicable to the Property or any part of the Property (including, without limitation, any subsurface area) or the use of the Property. "Applicable Laws" shall include, without limitation, any environmental, earthquake, life safety and disability laws, and all consents or approvals required to be obtained from, and all rules and regulations of, and all building and zoning laws of, all federal, state, county and municipal governments, the departments, bureaus, agencies or commissions thereof, authorities, board of officers, any national or local board of fire underwriters, or any other body or bodies exercising similar functions, having or acquiring jurisdiction of the City Property or the Replacement Property, as applicable. The term "Applicable Law" shall be construed to mean the same as the above in the singular as well as the plural.

10.9 No Brokers or Finders. Each Party warrants to the other Party that, other than developer's broker, who has been identified by Developer to City ("**Developer's Broker**"), who will be paid by Developer at Closing, no other broker or finder was instrumental in arranging or bringing about this transaction and that there are no claims or rights for brokerage commissions or finder's fees in connection with the transactions contemplated by this Agreement. If any other party brings a claim for a commission or finder's fee based on any contact, dealings, or communication with Developer (including any claim asserted by Developer's Broker relating in any way to the Exchange Transaction or this Agreement) or City, then the Party through whom such party makes a claim shall defend the other Party(ies) from such claim, and shall indemnify, protect, defend, and hold harmless the indemnified Party from any Losses that the indemnified Party incurs in defending against the claim. The provisions of this Section shall survive the Closing, or, if the conveyance is not consummated for any reason, any termination of this Agreement.

10.10 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

10.11 Interpretation of Agreement.

(a) Exhibits. Whenever an "Exhibit" is referenced, it means an attachment to this Agreement unless otherwise specifically identified. All such Exhibits are incorporated herein by reference.

(b) Captions. Whenever a section, article, or paragraph is referenced, it refers to this Agreement unless otherwise specifically identified. The captions preceding the articles and sections of this Agreement have been inserted for convenience of reference only. Such captions shall not define or limit the scope or intent of any provision of this Agreement.

(c) Words of Inclusion. The use of the term "including," "such as" or words of similar import when following any general term, statement, or matter shall not be construed to limit such term, statement, or matter to the specific items or matters, whether or not language of non-limitation is used with reference thereto. Rather, such terms shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such statement, term, or matter.

(d) References. Wherever reference is made to any provision, term, or matter "in this Agreement," "herein," or "hereof" or words of similar import, the reference shall be deemed to refer to any and all provisions of this Agreement reasonably related thereto in the context of such reference, unless such reference refers solely to a specific numbered or lettered, section, or paragraph of this Agreement or any specific subdivision thereof.

(e) Recitals. If there is any conflict or inconsistency between the Recitals and any of the remaining provisions of this Agreement, the remaining provisions of this Agreement shall prevail. The Recitals in this Agreement are included for convenience of reference only and are not intended to create or imply covenants under this Agreement.

10.12 Entire Agreement. This Agreement (including the exhibits) contains all the representations and the entire agreement between the Parties with respect to the subject matter herein. Any prior correspondence, memoranda, agreements, warranties, or representations relating to such subject matter are superseded in total by this Agreement (and such other agreements to the extent referenced herein). No prior drafts of this Agreement or changes from those drafts to the executed version of this Agreement shall be introduced as evidence in any litigation or other dispute resolution proceeding by either Party or any other person or entity and no court or other body shall consider those drafts in interpreting this Agreement.

10.13 Cooperative Drafting. This Agreement has been drafted through a cooperative effort of both Parties, and both Parties have had an opportunity to have this Agreement reviewed and revised by legal counsel. No Party shall be considered the drafter of this Agreement, and no presumption or rule that an ambiguity shall be construed against the Party drafting the clause shall apply to the interpretation or enforcement of this Agreement.

10.14 Survival. Except as otherwise specifically stated in this Agreement, any and all other representations, warranties, and indemnities of the Parties contained herein (including the Exhibits), shall survive the Closing or termination of this Agreement.

10.15 Parties and Their Agents. As used herein, the term "**Agents**" when used with respect to either Party shall include the agents, employees, officers, contractors, and

representatives of such Party. Developer is comprised of more than one party, and Developer's obligations under this Agreement shall be joint and several among such Parties.

10.16 Attorneys' Fees. If either Party hereto fails to perform any of its respective obligations under this Agreement or if any dispute arises between the Parties hereto concerning the meaning or interpretation of any provision of this Agreement, then the defaulting Party or the Party not prevailing in such dispute, as the case may be, shall pay any and all reasonable Attorneys' Fees and Costs incurred by the other Party on account of such default or in enforcing or establishing its rights hereunder, including without limitation, court costs. Any such Attorneys' Fees and Costs incurred by either Party in enforcing a judgment in its favor under this Agreement shall be recoverable separately from and in addition to any other amount included in such judgment, and such Attorneys' Fees and Costs obligation is intended to be severable from the other provisions of this Agreement and to survive and not be merged into any such judgment. For purposes of this Agreement, the reasonable fees of attorneys of the Office of City Attorney of the City and County of San Francisco shall be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of the law for which such services were rendered who practice in the City of San Francisco in law firms with approximately the same number of attorneys as employed by the City Attorney's Office.

10.17 Time of Essence. Time is of the essence with respect to the performance of the Parties' respective obligations contained herein.

10.18 Tropical Hardwoods and Virgin Redwoods. City urges companies not to import, purchase, obtain or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood, or virgin redwood wood product.

10.19 Sunshine Ordinance. Developer understands and agrees that under City's Sunshine Ordinance (San Francisco Administrative Code, Chapter 67) and the State Public Records Law (Gov. Code Section 6250 *et seq.*), this Agreement and any and all records, information, and materials submitted to City hereunder are public records subject to public disclosure. Developer hereby acknowledges that City may disclose any records, information, and materials submitted to City in connection with this Agreement.

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

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

10.22 First Source Hiring Program.

(a) Incorporation of Administrative Code Provisions by Reference. The provisions of Chapter 83 of the San Francisco Administrative Code are incorporated in this Section by reference and made a part of this Agreement as though fully set forth in this Agreement. Contractor shall comply fully with, and be bound by, all of the provisions that apply to this Agreement under such Chapter, including but not limited to the remedies provided therein. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 83.

(b) First Source Hiring Agreement. As an essential term of, and consideration for, any contract or property contract with City, not exempted by the FSHA, the Contractor shall enter into a first source hiring agreement (an "**FSA**") with City, on or before the effective date of the contract or property contract. Contractors shall also enter into an FSA with City for any other work that it performs in City. Such FSA shall:

(i) Set appropriate hiring and retention goals for entry level positions. The employer shall agree to achieve these hiring and retention goals, or, if unable to achieve these goals, to establish good faith efforts as to its attempts to do so, as set forth in the agreement. The FSA shall take into consideration the employer's participation in existing job training, referral, and/or brokerage programs. Within the discretion of the FSHA, subject to appropriate modifications, participation in such programs may be certified as meeting the requirements of Chapter 83. Failure either to achieve the specified goal, or to establish good faith efforts will constitute noncompliance and will subject the employer to the provisions of Section 83.10 of Chapter 83.

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

(iii) Set appropriate requirements for providing notification of available entry level positions to the San Francisco Workforce Development System so that the System may train and refer an adequate pool of qualified economically disadvantaged individuals to participating employers. Notification should include

such information as employment needs by occupational title, skills, and/or experience required, the hours required, wage scale and duration of employment, identification of entry level and training positions, identification of English language proficiency requirements, or absence thereof, and the projected schedule and procedures for hiring for each occupation. Employers should provide both long-term job need projections and notice before initiating the interviewing and hiring process. These notification requirements will take into consideration any need to protect the employer's proprietary information.

(iv) Set appropriate record keeping and monitoring requirements. The First Source Hiring Administration shall develop easy-to-use forms and record keeping requirements for documenting compliance with the FSA. To the greatest extent possible, these requirements shall utilize the employer's existing record keeping systems, be nonduplicative, and facilitate a coordinated flow of information and referrals.

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

(vi) Set the term of the requirements.

(vii) Set appropriate enforcement and sanctioning standards consistent with Chapter 83.

(viii) Set forth City's obligations to develop training programs, job applicant referrals, technical assistance, and information systems that assist the employer in complying with Chapter 83.

(c) Hiring Decisions. Contractor shall make the final determination of whether an Economically Disadvantaged Individual referred by the System is "qualified" for the position.

(d) Exceptions. Upon application by Employer, the First Source Hiring Administration may grant an exception to any or all of the requirements of Chapter 83 in any situation where it concludes that compliance with this Chapter would cause economic hardship.

(e) Liquidated Damages. Developer agrees:

(i) To be liable to City for liquidated damages as provided in this Section;

(ii) Require the developer to include notice of the requirements of Chapter 83 in leases, subleases, and other occupancy contracts.

(iii) To be subject to the procedures governing enforcement of breaches of contracts based on violations of contract provisions required by Chapter 83 as set forth in this Section;

(iv) That Developer's commitment to comply with Chapter 83 is a material element of City's consideration for this Agreement; that the failure of Developer to comply with the contract provisions required by Chapter 83 will cause harm to City and the public that is significant and substantial but extremely difficult to quantity; that the harm to City includes not only the financial cost of funding public assistance programs but also the insidious but impossible to quantify harm that City's community and its families suffer as a result of unemployment; and that the assessment of liquidated damages of up to $5,000 for every notice of a new hire for an entry level position improperly withheld by Developer from the first source hiring process, as determined by the FSHA during its first investigation of a contractor, does not exceed a fair estimate of the financial and other damages that City suffers as a result of the contractor's failure to comply with its first source referral contractual obligations.

(v) That the continued failure by a contractor to comply with its first source referral contractual obligations will cause further significant and substantial harm to City and the public, and that a second assessment of liquidated damages of up to $10,000 for each entry level position improperly withheld from the FSHA, from the time of the conclusion of the first investigation forward, does not exceed the financial and other damages that City suffers as a result of a contractor's continued failure to comply with its first source referral contractual obligations;

(vi) That in addition to the cost of investigating alleged violations under this Section, the computation of liquidated damages for purposes of this Section is based on the following data:

(A) The average length of stay on public assistance in San Francisco's County Adult Assistance Program is approximately 41 months at an average monthly grant of $348 per month, totaling approximately $14,379; and

(B) In 2004, the retention rate of adults placed in employment programs funded under the Workforce Investment Act for at least the first six months of employment was 84.4%. Since qualified individuals under the First Source program face far fewer barriers to employment than their counterparts in programs funded by the Workforce Investment Act, it is reasonable to conclude that the average length of employment for an individual whom the First Source Program refers to an employer and who is hired in an entry level position is at least one year;

therefore, liquidated damages that total $5,000 for first violations and $10,000 for subsequent violations as determined by FSHA constitute a fair, reasonable, and conservative attempt to quantify the harm caused to City by the failure of a contractor to comply with its first source referral contractual obligations.

(vii) That the failure of contractors to comply with Chapter 83, except property contractors, may be subject to the debarment and monetary penalties set forth in Sections 6.80 et seq. of the San Francisco Administrative Code, as well as any other remedies available under the contract or at law; and

(viii) That in the event City is the prevailing party in a civil action to recover liquidated damages for breach of a contract provision required by Chapter 83, the contractor will be liable for City's costs and reasonable attorneys' fees.

Violation of the requirements of Chapter 83 is subject to an assessment of liquidated damages in the amount of $5,000 for every new hire for an Entry Level Position improperly withheld from the first source hiring process. The assessment of liquidated damages and the evaluation of any defenses or mitigating factors shall be made by the FSHA.

(f) Subcontracts. Any subcontract entered into by Developer shall require the subcontractor to comply with the requirements of Chapter 83 and shall contain contractual obligations substantially the same as those set forth in this Section.

10.23 Other City Clauses. With respect to the construction and operation of the Development Project, Developer shall comply with the provisions specified in the San Francisco Administrative Code, Environmental Code, or City Charter relating to Resource Efficient City Buildings (E.C. Section 705 as of the Effective Date), Prevailing Wages for Construction (SF City Charter Section A7.204 and A.C. Section 6.24), and Equal Benefits (A.C. Section 12C).

10.24 Relationship of the Parties. The relationship between the Parties is solely that of transferor and transferee of real property.

10.25 Prohibition Against Making Contributions to City; Notification of Limitations on Contributions. Through its execution of this Agreement, Developer acknowledges that it is familiar with Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with City for the selling or leasing of any land or building to or from City whenever such transaction would require the approval by a City elective officer, the board on which that City elective officer serves, or a board on which an appointee of that individual serves, from making any campaign contribution to **(a)** 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 commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. Developer acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of $50,000 or more. Developer further acknowledges that the prohibition on contributions applies to each Developer; each member of Developer's board of directors, and Developer's chief

executive officer, chief financial officer, and chief operating officer; any person with an ownership interest of more than twenty percent (20%) in Developer; any subcontractor listed in the contract; and any committee that is sponsored or controlled by Developer. Additionally, Developer acknowledges that Developer must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126. Developer further agrees to provide to City the names of each person, entity, or committee described above.

10.26 Effective Date. This Agreement shall become effective upon the business first day ("**Effective Date**") on which each of the following events has occurred: **(a)** the Parties have duly executed and delivered this Agreement, and **(b)** the City Approval Condition (as defined below) has been satisfied. The Parties shall confirm in writing the Effective Date of this Agreement once such date has been established pursuant to this Section; provided, however, the failure of the Parties to confirm such date in writing shall not have any effect on the validity of this Agreement. Where used in this Agreement or in any of its attachments, references to "Effective Date" will mean the Effective Date as established and confirmed by the Parties pursuant to this Section.

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, DEVELOPER ACKNOWLEDGES AND AGREES THAT NO OFFICER OR EMPLOYEE OF CITY HAS AUTHORITY TO COMMIT CITY TO THIS AGREEMENT UNLESS AND UNTIL A RESOLUTION OR ORDINANCE OF CITY'S BOARD OF SUPERVISORS THAT APPROVES OF THIS AGREEMENT AND AUTHORIZES THE TRANSACTIONS CONTEMPLATED HEREBY HAS BEEN DULY ENACTED. THEREFORE, ANY OBLIGATIONS OR LIABILITIES OF CITY HEREUNDER ARE CONTINGENT UPON THE DUE ENACTMENT OF SUCH A RESOLUTION OR ORDINANCE ("**CITY APPROVAL CONDITION**"), AND THIS AGREEMENT SHALL BE NULL AND VOID IF CITY'S BOARD OF SUPERVISORS AND MAYOR DO NOT APPROVE THIS AGREEMENT AT THEIR RESPECTIVE SOLE DISCRETION. SIMILARLY, NOTWITHSTANDING SATISFACTION OF THE CITY APPROVAL CONDITION, NO OFFICER OR EMPLOYEE OF CITY HAS AUTHORITY TO COMMIT CITY TO THE CLOSING OF THE EXCHANGE TRANSACTION CONTEMPLATED BY THIS AGREEMENT UNLESS AND UNTIL A RESOLUTION OR ORDINANCE OF CITY'S BOARD OF SUPERVISORS THAT APPROVES OF AND AUTHORIZES THE CLOSING AND THE CONSUMMATION OF THE EXCHANGE TRANSACTION HAS BEEN DULY ENACTED. THEREFORE, ANY OBLIGATIONS OR LIABILITIES OF CITY HEREUNDER ARE CONTINGENT UPON THE DUE ENACTMENT OF SUCH RESOLUTIONS OR ORDINANCES AND APPROVAL OF THE TRANSACTIONS CONTEMPLATED HEREBY BY ANY EMPLOYEES, DEPARTMENTS, OR COMMISSIONS OF CITY SHALL NOT BE DEEMED TO IMPLY THAT SUCH RESOLUTIONS OR ORDINANCES WILL BE ENACTED NOR WILL ANY SUCH APPROVAL CREATE ANY BINDING OBLIGATIONS ON CITY.

[Signature page follows]

The Parties have duly executed this Agreement as of the respective dates written below.

DEVELOPER:

2000 MARIN PROPERTY, L.P.,
a Delaware limited partnership

Date: _____, 2018

By: _____
Name: _____
Its: _____

CITY:

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation

Date: _____, 2018

By_____
Harlan L. Kelly, Jr., General Manager
San Francisco Public Utilities Commission

By_____
Andrico Penick, Acting Director of Property

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

By: _____
Richard Handel, Deputy City Attorney

[CONSENT OF ESCROW COMPANY ON FOLLOWING PAGE]

CONSENT OF ESCROW COMPANY:

Escrow Company agrees to act as escrow holder in accordance with the terms of this Agreement. Escrow Company's failure to execute below shall not invalidate this Agreement between City and Developer.

ESCROW COMPANY:

CHICAGO TITLE INSURANCE COMPANY

By: _____
Its: _____
Date: _____

EXHIBIT A

CITY PROPERTY LEGAL DESCRIPTION

Real property in the City of San Francisco, County of San Francisco, State of CALIFORNIA, described as follows:

Commencing at a point on the southerly line of Bryant Street distant thereon 275 feet southwesterly from the southwesterly line of Fourth Street, and running thence southwesterly along said southeasterly line of Bryant Street 137 feet 6 inches; thence at right angles southeasterly 275 feet; thence at right angles southwesterly 137 feet 6 inches; thence at right angles southeasterly 80 feet to the northwesterly line of Freelon Street, if extended; thence at right angles northeasterly 275 feet; and thence at right angles northwesterly 355 feet to the southeasterly line of Bryant Street and the point of commencement; being a portion of One Hundred Vara Lots Numbers 180 and 186 in One Hundred Vara Block Number 376.

EXHIBIT B

REPLACEMENT PROPERTY LEGAL DESCRIPTION

The land referred to is situated in the County of San Francisco, City of San Francisco, State of California, and is described as follows:

Beginning at the intersection of the Northerly line of Marin Street (70' Wide) and the Southwesterly line of Evans Avenue (80' Wide); thence Northwesterly along said line of Evans Avenue, 362.15 feet to the beginning of a nontangent curve to the right and to which beginning a radius point deflects 175° 07' 48" to the right, 540.00 feet; thence Easterly, along said curve 181.81 feet, through a central angle of 19° 17' 27" to a point distant 41.20 feet Southerly from the Southerly line of Cesar Chavez Street (75' Wide); thence 0.20 feet Northerly along a line perpendicular to said Southerly line of Cesar Chavez Street to a point distant 41.00 feet South of said Southerly line; thence Easterly along last said line, 772.26 feet to the Easterly line of Lot 16, of Parcel Map recorded December 10, 1987, Book 36 of Parcel Maps, Page 64, Official Records, San Francisco County Recorder; thence Southerly at a right angle 297.17 feet along said Easterly line of said Lot 16; thence continuing along said Easterly line Southwesterly, deflecting 10° 37' 07" to the right, 88.35 feet to the Northerly line of Marin Street (70' Wide); thence Westerly, deflecting 79° 22' 53" to the right 831.34 feet along said Northerly line of Marin Street to the point of beginning.

Pursuant to that Certificate of Compliance recorded April 15, 2015, Instrument No. 2015-K046802-00, of Official Records.

APN: Block 4346, Lot 003

EXHIBIT C

REPLACEMENT PROPERTY DOCUMENTS

1. Phase I Environmental Site Assessment prepared by ENVIRON International Corporation dated January 2015 as Project Number 04-161290.
2. Metals Plant Plan.
3. Block Map revised August 1970 and further revised February 1997.
4. Parcel Map Being a Subdivision of Assessor's Lot 10, Block 4349 dated March 19, 1987.
5. Removal Action Work Plan Bridgeview Management Company Site Former Federated Metals Property 1901 Army Street San Francisco, California dated January 18, 2001 prepared by MFG, Inc. as Project Number 036216(2).
6. Notice from the Department of Toxic Substances Control dated January 23, 2001 regarding Final Removal Action Workplan (RAW).
7. Covenant to Restrict Use of Property Environmental Restriction by and between the San Francisco Chronicle and the Department of Toxic Substances Control recorded May 29, 2003 in the Official Records of San Francisco County, California as Document Number 2003-H448585-00.
8. Notice from the Department of Toxic Substances Control dated June 3, 2003 regarding Operation and Maintenance Agreement.
9. Operation and Maintenance Agreement by and between the Department of Toxic Substances Control and the San Francisco Chronicle executed on May 12, 2003.
10. Easement Deed by and between The Chronicle Publishing Company and The Hearst Corporation, as grantor, and Pacific Gas and Electric Company, as grantee.
11. Exhibit "A-1" Potrero-Hunters Point Project Drawing.
12. San Francisco Environment Code Chapter 20 Compliance Letter from the Department of the Environment, City and County of San Francisco dated July 12, 2013.
13. Draft Five-Year Review The San Francisco Chronicle 1901 Cesar Chavez San Francisco, California 94124 prepared by The Hearst Corporation dated June 1, 2013.
14. Phase I Environmental Site Assessment (including Appendices A-F) prepared by Pangea Environmental Services, Inc. dated March 29, 2010.
15. Notice of Lease from Pangea Environmental Services, Inc. to Site Mitigation Branch of the Department of Toxic Substances Control dated November 18, 2009.
16. Hazardous Materials Survey Report 2000 Marin Street, San Francisco prepared by Vista Environmental Consulting, Inc. dated October 26, 2011 as Project Number 1109601.
17. Cost Proposal for Asbestos Abatement from Eco Bay Services, Inc. dated February 2, 2012.
18. Hazardous Materials Inspection Form from Sensible Environmental Solutions, Inc. dated May 4, 2012.

19. Correspondence from Mark Piros, Unit Chief of the Department of Toxic Substances Control, dated September 3, 2013 and correspondence from Anna Amarandos of Rutan & Tucker, LLP dated August 19, 2013 regarding porous asphalt.

20. Notice from Cambria Environmental Technology, Inc. dated February 19, 1998 regarding Task 1 and 2 of DTSC's Voluntary Cleanup Agreement (VCA).

21. Conditional Closure and Self-Certification Report and Covenant of Deed Restriction - Finals, for 1901 Army Street Facility Project prepared by Clayton Environmental Consultants, Inc. dated November 29, 1995 as Project Number 63382.00.

22. Hazardous Materials Report at Federated-Fry Metals Property San Francisco, California for San Francisco Newspaper Printing Co. San Francisco, California prepared by Clayton Environmental Consultants, Inc. dated December 3, 1987.

23. Attachments to Hazardous Materials Report at Federated-Fry Metals Property San Francisco, California for San Francisco Newspaper Printing Co. San Francisco, California prepared by Clayton Environmental Consultants, Inc. dated December 3, 1987.

24. State Environmental Site History at the Department of Toxic Substances Control EnviroStor.

EXHIBIT D

FORM OF CITY DEED

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

_____
_____
_____
San Francisco, CA _____
Documentary Transfer Tax of $_____
based on full value of the property conveyed

_____
(Space above this line reserved for Recorder's use only)

QUITCLAIM DEED
(Assessor's Parcel No. _____)

FOR VALUABLE CONSIDERATION, receipt and adequacy of which are hereby acknowledged, the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("**Grantor**"), pursuant to Ordinance No. _____, adopted by the Board of Supervisors on _____, 201_ and approved by the Mayor on _____, 201_, hereby RELEASES, REMISES, AND QUITCLAIMS to _____, any and all right, title, and interest Grantor may have in and to the real property located in the City and County of San Francisco, State of California, described on the attached **Exhibit 1**.

Executed as of _____, 201_.

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation

By: _____
Name: Andrico Penick
Title: Acting Director of Property

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
) ss
County of San Francisco)

On _____, before me, _____, a notary public in and for said State, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under Penalty of Perjury under the laws of the State of California that the foregoing paragraph is true and correct.

Witness my hand and official seal.

Signature _____ (Seal)

EXHIBIT 1 TO CITY DEED

LEGAL DESCRIPTION

The land referred to is situated in the County of San Francisco, City of San Francisco, State of California, and is described as follows:

Commencing at a point on the southerly line of Bryant Street distant thereon 275 feet southwesterly from the southwesterly line of Fourth Street, and running thence southwesterly along said southeasterly line of Bryant Street 137 feet 6 inches; thence at right angles southeasterly 275 feet; thence at right angles southwesterly 137 feet 6 inches; thence at right angles southeasterly 80 feet to the northwesterly line of Freelon Street, if extended; thence at right angles northeasterly 275 feet; and thence at right angles northwesterly 355 feet to the southeasterly line of Bryant Street and the point of commencement; being a portion of One Hundred Vara Lots Numbers 180 and 186 in One Hundred Vara Block Number 376.

EXHIBIT E

FORM OF DEVELOPER DEED

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:
Director of Property
Real Estate Division
City and County of San Francisco
25 Van Ness Avenue, Suite 400
San Francisco, CA 94102

With a copy to:
San Francisco Public Utilities Commission
Real Estate Services Division
525 Golden Gate Avenue, 10th Floor
San Francisco, CA 94102
Attention: Real Estate Director

Documentary Transfer Tax of $0 based on
full value of the property conveyed

(Space above this line reserved for Recorder's use only)

GRANT DEED
(Assessor's Parcel No. _____)

The undersigned grantor declares:

Documentary transfer tax is $_____
( ) computed on full value of property conveyed, or
( ) computed on full value less value of liens and encumbrances remaining at time of sale.
( ) Unincorporated area: (X) City of San Francisco; and

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, [2000 Marin Property, L.P., a Delaware limited partnership] ("**Grantor**"), does hereby GRANT to the City and County of San Francisco, a municipal corporation ("**Grantee**"), all of Grantor's right, title and interest in and to that certain real property in the City and County of San Francisco, State of California, as more particularly described in the attached **Exhibit A** (which is hereby incorporated as a part of this Deed), subject to [encumbrances permitted under [_____ dated as of _____ between Grantor and Grantee (the "**Agreement**")] and all matters of record].

Grantor's liability arising out of or in connection with this Deed shall be limited to Grantor's assets and any proceeds of insurance policies required of Grantor by this Agreement and Grantee shall not look to any property or assets of any direct or indirect partner, member,

manager, shareholder, director, officer, principal, employee, or agent of Grantor (collectively, "**Grantor Parties**") in seeking either to enforce Grantor's obligations or to satisfy a judgment for Grantor's failure to perform such obligations and none of the Grantor Parties shall be personally liable for the performance of Grantor's obligations under this Deed. In no event shall either party be liable for, and each party, on behalf of itself and, to the extent applicable to such party, its respective officers, employees, elected officials, supervisors, boards, commissions, commissioners, direct or indirect partners, members, managers, shareholders, directors, officers, principals, employees, and agents, hereby waives any claim against the other party for, any indirect or consequential damages, including loss of profits or business opportunity, arising under or in connection with this Deed. Further, in no event shall either party's respective officers, employees, elected officials, supervisors, boards, commissions, commissioners, direct or indirect partners, members, managers, shareholders, directors, officers, principals, employees, or agents be liable to the other party for any punitive damages provided, however, that neither Grantee nor the Grantor shall be excused from any punitive damages imposed by a court of competent jurisdiction, after all appeal periods have run with their having been no appeal.

Executed as of _____.

2000 MARIN PROPERTY, L.P.,
a Delaware limited partnership
By: _____
Name: _____
Its: _____

CERTIFICATE OF ACCEPTANCE

This is to certify that the interest in real property conveyed by the foregoing Grant Deed to the City and County of San Francisco, a municipal corporation, is hereby accepted pursuant to Board of Supervisors' Resolution No. 18110 Series of 1939, approved August 7, 1957, and the grantee consents to recordation thereof by its duly authorized officer.

Dated: _____ By: _____
Andrico Penick, Acting Director of Property

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
) ss
County of San Francisco)

On _____, before me, _____, a notary public in and for said State, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under Penalty of Perjury under the laws of the State of California that the foregoing paragraph is true and correct.

Witness my hand and official seal.

Signature _____ (Seal)

EXHIBIT 1 TO DEVELOPER DEED

LEGAL DESCRIPTION

The land referred to is situated in the County of San Francisco, City of San Francisco, State of California, and is described as follows:

Beginning at the intersection of the Northerly line of Marin Street (70' Wide) and the Southwesterly line of Evans Avenue (80' Wide); thence Northwesterly along said line of Evans Avenue, 362.15 feet to the beginning of a nontangent curve to the right and to which beginning a radius point deflects 175° 07' 48" to the right, 540.00 feet; thence Easterly, along said curve 181.81 feet, through a central angle of 19° 17' 27" to a point distant 41.20 feet Southerly from the Southerly line of Cesar Chavez Street (75' Wide); thence 0.20 feet Northerly along a line perpendicular to said Southerly line of Cesar Chavez Street to a point distant 41.00 feet South of said Southerly line; thence Easterly along last said line, 772.26 feet to the Easterly line of Lot 16, of Parcel Map recorded December 10, 1987, Book 36 of Parcel Maps, Page 64, Official Records, San Francisco County Recorder; thence Southerly at a right angle 297.17 feet along said Easterly line of said Lot 16; thence continuing along said Easterly line Southwesterly, deflecting 10° 37' 07" to the right, 88.35 feet to the Northerly line of Marin Street (70' Wide); thence Westerly, deflecting 79° 22' 53" to the right 831.34 feet along said Northerly line of Marin Street to the point of beginning.

Pursuant to that Certificate of Compliance recorded April 15, 2015, Instrument No. 2015-K046802-00, of Official Records.

APN: Block 4346, Lot 003

EXHIBIT F

LIMITED SCOPE OF CONSTRUCTION OF TEMPORARY SFPUC FACILITY

1. Pursuant to Section 1.5 of this Agreement, Developer shall provide a Temporary SFPUC Facility by performing the following improvements (**"Developer's Work"**) in and on the approximately two and four tenths (2.4)-acre Developer Work Area on the Replacement Property:

   a. Installation of 60,000 square feet of flat, secured, paved, and open industrial space for ingress and egress, circulation, and parking of vehicles and trailers, and storage of power poles, materials, and equipment;

   b. Installation of 21,000 square feet of secured warehouse space with a large roll-up door and no less than a 30-foot ceiling height for **(i)** ingress, egress, circulation, and parking of heavy equipment and City vehicles; and **(ii)** storage of heavy equipment, other equipment, and materials;

   c. Installation of another structure containing:

      i. no less than 6,000 square feet of office space with eight (8) offices, sixteen (16) cubicles, and five (5) computer kiosks;

      ii. one (1) field employee dispatch room/conference room with kitchen facilities accommodating 50 employees;

      iii. two (2) employee locker rooms, together accommodating 50 lockers (30" wide x 75" high); and

      iv. three (3) two-gang restrooms with two (2) restrooms each providing two (2) employee showers.

   d. Installation of a closed-circuit television security system at appropriate locations within or on the perimeter of the Developer Work Area;

   e. Installation of appropriate fencing acceptable to City on and completely surrounding the perimeter of the Developer Work Area; and

   f. Construction or improvement of site circulation, ingress, and egress improvements.

2. City has no responsibility or liability of any kind with respect to any pipes, cables, conduits, or other facilities of utility companies or other parties that may be on, in or under the Developer Work Area. Developer shall be solely responsible for the location of such existing utilities and their protection from damage, and to pay for any damage caused by Developer's activities on or about the Developer Work Area.

3. Upon completion of Developer's Work, Developer shall cause all debris to be removed, and cause the Developer Work Area and any other City property affected by Developer's

Work to be restored to its original condition to the SFPUC's satisfaction.

4. Developer shall conduct and cause the Developer's Work to be conducted in a safe and reasonable manner and in compliance with all applicable federal, State, and local laws and industry standards.

5. Developer shall procure at its expense and keep in effect, and cause its contractor and its subcontractors, if any, performing Developer's Work to procure, at its expense and keep in effect at all times commercially reasonable insurance coverages and coverage limits as required by City with regard to Developer's Work.

EXHIBIT F-1

DEPICTION OF REPLACEMENT PROPERTY THAT SHOWS DEVELOPER WORK AREA AND REPLACEMENT PROPERTY LEASE AREA

EXHIBIT G

FORM OF CERTIFICATE OF COMPLIANCE

FOR

TEMPORARY SFPUC FACILITY

The City and County of San Francisco, a California municipal corporation ("**City**") delivers this Certificate of Compliance to 2000 Marin Property, L.P., a Delaware limited partnership ("**Developer**") in connection with the "Temporary SFPUC Facility" described in that certain Conditional Land Disposition and Acquisition Agreement entered into by and between City and Developer as of _____, 2018 (the "**CLDAA**"). Any defined term used in this Certificate that is not otherwise defined shall have the meaning attributed to such defined term in the CLDAA.

Pursuant to Section 1.5 of the CLDAA, City hereby certifies to Developer, in connection with the completion of the Temporary SFPUC Facility, that:

1. City **(a)** acknowledges receipt of the Completion Notice or Final Completion Notice, as applicable, **(b)** acknowledges that a Temporary Certificate of Occupancy has been issued by the San Francisco Department of Building Inspection with respect to the Temporary SFPUC Facility, **(c)** has fully inspected the completed Temporary SFPUC Facility, and **(d)** hereby approves the Temporary SFPUC Facility unconditionally and agrees that there are no conditions or impediments for City to Vacate and Move;

2. On a date mutually agreed to by the Parties that is no later than thirty (30) days after the Closing, Developer shall perform the Moving Services and City shall Vacate and Move; and

3. [if necessary]; [City acknowledges that it has delivered an executed assignment of the 651 Bryant Lease to Developer, with the consent of the Landlord, in a form acceptable to Developer and City, pursuant to Section 1.6 of the CLDAA].

IN WITNESS WHEREOF, this Certificate of Compliance is executed and delivered as of _____.

CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation

By: _____
Harlan L. Kelly, Jr., General Manager
San Francisco Public Utilities Commission

By: _____
Andrico Penick,
Acting Director of Property

PUBLIC UTILITIES COMMISSION

City and County of San Francisco

RESOLUTION NO. **18-0121**

WHEREAS, The City and County of San Francisco (City), under the jurisdiction of the San Francisco Public Utilities Commission (SFPUC), owns certain real property known as 639 Bryant Street, Block 3777, Lot 052 (City Property), an approximately 1.37-acre parcel improved with a warehouse and parking lot currently used by SFPUC for heavy equipment and materials storage, SFPUC vehicle parking, construction staging, and other related purposes; and

WHEREAS, The SFPUC also operates a hydrogen peroxide tank on the City Property; and

WHEREAS, The SFPUC leases adjacent property at 651 Bryant Street, Block 3777, Lot 050 (City Leased Premises), for related SFPUC office and warehouse purposes under a lease that expires in October 2019, with a right to extend the lease for an additional 10 years; and

WHEREAS, The City Property is small and to meet the SFPUC's anticipated future water and power utility yard needs, either expansion of the existing facility or securing a replacement facility will be necessary in the near future; and

WHEREAS, 2000 Marin, L.P., a Delaware limited partnership (Developer), owns certain real property known as 2000 Marin Street, Block 4346, Lot 002 (2000 Marin), an approximately 7.98-acre parcel with a 74,000-square foot building built in 1989; and

WHEREAS, The Developer proposes to acquire the City Property in exchange for 2000 Marin, and seeks to develop a mixed-use project on the City Property, the City Leased Premises, and other adjacent parcels with approximately 923,000 square feet of office, 73,000 square feet of residential/PDR, 80,000 square feet of residential, and a 40,000-square foot public plaza (Development Project); and

WHEREAS, The City Property and the City Leased Premises are located within the City's proposed Central SOMA Plan, a multi-year public and cooperative interagency planning process the City began in 2011 (Planning Department Case No. 2011.1356EMTZU); and

WHEREAS, On April 17, 2018, the Board of Supervisors adopted Resolution No. 115-18 (File No. 180370) supporting negotiations for a potential exchange of the City Property for 2000 Marin, subject to City analysis and approvals following any required environmental review; and

WHEREAS, The Central SOMA Plan was approved by the City Planning Commission on May 10, 2018 and requires approval of an amendment to the City Planning Code by the Board of Supervisors to become effective; and

WHEREAS, The City and Developer propose to enter into a Conditional Land Use and Disposition Agreement ("Agreement") setting forth the terms and conditions for the parties' exchange of the City Property and 2000 Marin; and

WHEREAS, Under the Agreement's terms, the consummation of the property exchange transaction is conditioned on, among other things, the approval by the Board of Supervisors and the Mayor of the exchange, at their sole discretion, following the satisfaction of numerous conditions and completion of all required environmental review; and

WHEREAS, Developer's obligation to complete the property exchange is conditioned on, among other things, the Developer's receipt of all governmental approvals necessary for Developer to proceed with the Developer Project, including zoning changes, and the Board of Supervisors' waiver or reduction of certain development impact fees in exchange for Developer's dedication of a public park to the City as part of the Developer Project; and

WHEREAS, The fair market value of the City Property is $63,875,000, as determined by a MAI appraisal by Clifford Advisory, LLC dated July 2, 2018; and

WHEREAS, The fair market value of 2000 Marin is $63,600,000, as determined by a MAI appraisal by Clifford Advisory, LLC, dated July 2, 2018 and such appraisal states that there is not currently adequate information regarding the soils contamination to determine what development impact, if any, could be anticipated, and whether the conditions impact value; and

WHEREAS, the Agreement requires the Developer to pay for a Phase II environmental study of 2000 Marin and based on the results of that study, SFPUC will prepare an estimate of the costs of remediating 2000 Marin for the SFPUC's proposed industrial uses to be presented to this Commission as part of its review of the environmental condition of the property provided for under the Agreement; and

WHREAS, The Commission's declaration of surplus regarding 639 Bryant, the proposed exchange of the City Property for 2000 Marin, and the Developer's obligations to make the payments described above (other than City's pre-Agreement costs) are conditioned upon the satisfaction of certain conditions, including (1) the Commission's review of the Phase II environmental testing results, remediation costs, and written approval of the environmental condition of 2000 Marin and (2) the Commission's approval of the Developer's lease of a portion of 2000 Marin to Kilroy or an alternate funding source; and

WHEREAS, In addition to providing for the exchange of 2000 Marin for the City Property, the Agreement also provides that:

1. Prior to the consummation of the proposed property exchange, the Developer will construct new temporary facilities ("Temporary SFPUC Facility") for the SFPUC on a portion of 2000 Marin. The Agreement requires the SFPUC to reimburse the Developer for its costs incurred in constructing the Temporary SFPUC Facility (the "Reimbursable Costs") but provides that the Developer will enter into a lease of the remaining portion of 2000 Marin to Kilroy Realty, or an affiliate, and assign any such lease to the SFPUC upon the consummation of the proposed property exchange, and the rental income from such lease will be sufficient for the SFPUC to repay the Reimbursable Costs. If the Developer does not complete such a lease prior to the consummation of the proposed property exchange, City and Developer will work together to identify and secure an alternative revenue source acceptable to City that will generate sufficient revenue to allow City to repay Developer the Reimbursable Costs. This Commission must approve

either the proposed lease or an alternative revenue source as an express condition of the consummation of the proposed property exchange.

2. At its sole expense, the Developer will relocate the hydrogen peroxide tank from the City Property to a location either on or under the public park to be constructed on the City Property, on other land owned by the Developer within the Development Project, or on or under a public street adjacent to or within the Development Project and, if necessary, provide City with **(i)** a license, easement, or other instrument acceptable to City that will allow City to access the hydrogen peroxide tank during the period prior to its relocation and **(ii)** an easement or other instrument acceptable to City that will grant to City irrevocable real estate rights to access, operate, maintain, repair, and replace the hydrogen peroxide tank at its new location.

3. The Developer will reimburse the SFPUC for up to $35,000 in expenses incurred as consultant fees in connection with cost estimates for the relocation of the SFPUC's personal property to 2000 Marin.

4. The Developer will reimburse City for up to $245,000 of its pre-Agreement transaction costs, including attorney's fees for negotiation and preparation of the Agreement, and costs incurred to investigate the physical condition, title, and suitability of 2000 Marin for City's use.

5. The Developer will pay up to $690,000 ("Transaction Costs") for City's transaction and relocation costs incurred during the period commencing on the day after the Effective Date of the Agreement and ending on the earlier of the date that the Agreement is terminated pursuant to its terms, or the consummation of the proposed property exchange. The Transaction Costs include the City's actual costs to relocate the SFPUC's personal property from the City Property to the SFPUC Temporary Facility; Phase II environmental testing and SFPUC's oversight costs (not to exceed $100,000) for 2000 Marin; appraisal fees; City personnel, consultant, and other environmental review costs and fees; and City's attorney's fees, title insurance, escrow costs, and other closing costs to acquire 2000 Marin; and

WHEREAS, The SFPUC intends to use the entirety of 2000 Marin solely for utility purposes after the SFPUC determines its optimal use and the scope of improvements necessary for such use and identifies adequate funding for such improvements, and towards that end, any lease with Kilroy Realty or an affiliate for a portion of 2000 Marin shall be for a short-term, temporary use; and

WHEREAS, This resolution is not an approval of any project or a commitment to proceed with the proposed property exchange, and this resolution does not constitute an "Approval," as that term is defined by CEQA Guidelines Section 15352; and

WHEREAS, This Agreement constitutes a conditional, phased land acquisition agreement and the Agreement stipulates that the City shall complete all necessary environmental review as required by the California Environmental Quality Act (CEQA), Chapter 31 of the Administrative Code, and all other applicable local and State laws prior to taking any final approval action for the consummation of the exchange transaction for the properties; now, therefore, be it

RESOLVED, That this Commission hereby finds that the existing space at the City Property will not meet the SFPUC's anticipated future utility yard needs, requiring either expansion of the existing facility or securing a replacement facility in the near future; and, be it

FURTHER RESOLVED, That this Commission finds that SFPUC's acquisition of 2000 Marin under the terms and conditions set forth in the proposed Agreement would allow improved and more integrated SFPUC utility yard operations on a site that is five times larger than the City Property, with excellent access to transportation routes; and, be it

FURTHER RESOLVED, That this Commission instructs SFPUC staff to return this to this Commission for its consideration of those matters that require its further consideration and approval pursuant to the proposed Agreement, including the SFPUC Commission's review of the Phase II environmental testing results, the projected remediation costs, and the environmental condition of 2000 Marin; and, be it

FURTHER RESOLVED, That if and when all of the conditions in the Agreement are satisfied and the consummation of the proposed property exchange contemplated by the Agreement is completed and the SFPUC consequently acquires 2000 Marin, the City Property will be surplus to the SFPUC's utility needs; and, be it

FURTHER RESOLVED, That this Commission hereby ratifies, approves, and authorizes all actions heretofore taken by any City official in connection with this Agreement; and, be it

FURTHER RESOLVED, That this Commission hereby authorizes and directs the SFPUC's General Manager to execute the Agreement in substantially the same form presented to this Commission, subject to the approval of the Board of Supervisors and Mayor; and, be it

FURTHER RESOLVED, That this Commission hereby authorizes the SFPUC General Manager and/or the Director of Property to enter into any amendments or modifications to this Agreement, including without limitation, the exhibits, that the General Manager or Director of Property determines, in consultation with the City Attorney, are in the best interest of the City, do not materially increase the obligations or liabilities of the City, are necessary or advisable to effectuate the purposes and intent of the Agreement or this resolution, and are in compliance with all applicable laws, including the City Charter; and, be it

FURTHER RESOLVED, That, upon approval by City's Board of Supervisors and the Mayor and the consummation of the proposed property exchange, this Commission authorizes the Director of Property and/or the SFPUC General Manager to execute and deliver a quitclaim deed conveying the City Property to Developer; and, be it

FURTHER RESOLVED, That upon approval by City's Board of Supervisors and the Mayor, this Commission authorizes the Director of Property and/or the General Manager of the SFPUC to take any and all other steps they, in consultation with the City Attorney, deem necessary and advisable to effectuate the purpose and intent of this Resolution.

I hereby certify that the foregoing resolution was adopted by the Public Utilities Commission at its meeting of July 10, 2018.

Donna Hood

Secretary, Public Utilities Commission

FORM SFEC-126: **FILE NO: 180550**

NOTIFICATION OF CONTRACT APPROVAL

(S.F. Campaign and Governmental Conduct Code § 1.126)

City Elective Officer Information *(Please print clearly.)*	
Name of City elective officer(s): Members, Board of Supervisors	City elective office(s) held: Members, Board of Supervisors

Contractor Information *(Please print clearly.)*

Name of contractor: 2000 Marin Property, L.P.

Please list the names of (1) members of the contractor's board of directors; (2) the contractor's chief executive officer, chief financial officer and chief operating officer; (3) any person who has an ownership of 20 percent or more in the contractor; (4) any subcontractor listed in the bid or contract; and (5) any political committee sponsored or controlled by the contractor. Use additional pages as necessary.

1) 2000 Marin Property, L.P. does not have a board of directors. It has a general partner (2000 Marin Property GP, L.L.C.).
2) Robert J. Speyer, CEO & COO
   Joseph G. Doran, CFO, Vice President & Treasurer
3) The only individual or entity that directly owns 20% or more of 2000 Marin Property, L.P. is its limited partner, TSCE 2007 2000 Marin, L.L.C., which holds a 100% limited partner interest. No individual directly or indirectly owns 20% or more of 2000 Marin Property, L.P., 2000 Marin Property GP, L.L.C., TSCE 2007 2000 Marin, L.L.C., or TSCE 2007 Holdings, L.L.C.
4) N/A

Contractor address:
2000 Marin Property, L.P.
c/o Tishman Speyer
One Bush Street, Suite 450
San Francisco, California 94104
Attention: Carl D. Shannon
Telephone: (415) 344-6630
E-mail: cshannon@tishmanspeyer.com

Date that contract was approved: Pending	Amount of contract: +/- $66,000,000 (appraised value of land plus estimate of transaction expenses)

Describe the nature of the contract that was approved: Conditional land disposition and acquisition agreement

Comments:

This contract was approved by (check applicable):

☐ the City elective officer(s) identified on this form

☑ a board on which the City elective officer(s) serves San Francisco Board of Supervisors
Print Name of Board

☐ the board of a state agency (Health Authority, Housing Authority Commission, Industrial Development Authority Board, Parking Authority, Relocation Appeals Board, and Local Workforce Investment Board) on which an appointee of the City elective officer(s) identified on this form sits

Print Name of Board

Filer Information (*Please print clearly.*)	
Name of filer: Angela Calvillo, Clerk of the Board	Contact telephone number: (415) 554-5184
Address: City Hall, Room 244, 1 Dr. Carlton B. Goodlett Pl., San Francisco, CA 94102	E-mail: Board.of.Supervisors@sfgov.org

Signature of City Elective Officer (if submitted by City elective officer) Date Signed

Signature of Board Secretary or Clerk (if submitted by Board Secretary or Clerk) Date Signed

Print Form

Introduction Form

By a Member of the Board of Supervisors or Mayor

Time stamp
or meeting date

I hereby submit the following item for introduction (select only one):

- [x] 1. For reference to Committee. (An Ordinance, Resolution, Motion or Charter Amendment).
- [ ] 2. Request for next printed agenda Without Reference to Committee.
- [ ] 3. Request for hearing on a subject matter at Committee.
- [ ] 4. Request for letter beginning :"Supervisor _____ inquiries"
- [ ] 5. City Attorney Request.
- [ ] 6. Call File No. _____ from Committee.
- [ ] 7. Budget Analyst request (attached written motion).
- [ ] 8. Substitute Legislation File No. _____
- [ ] 9. Reactivate File No. _____
- [ ] 10. Question(s) submitted for Mayoral Appearance before the BOS on _____

Please check the appropriate boxes. The proposed legislation should be forwarded to the following:

- [ ] Small Business Commission
- [ ] Youth Commission
- [ ] Ethics Commission
- [ ] Planning Commission
- [ ] Building Inspection Commission

Note: For the Imperative Agenda (a resolution not on the printed agenda), use the Imperative Form.

Sponsor(s):

Supervisor Peskin, Kim

Subject:

[Agreement for the Potential Exchange of 639 Bryant Street for 2000 Marin Street]

The text is listed:

Resolution approving a Conditional Land Disposition and Acquisition Agreement with 2000 Marin Property, L.P. for the City's future transfer of real property at 639 Bryant Street (Block 3777, Lot 052) in exchange for real property at 2000 Marin Street (Block 4346, Lot 002), including the reimbursement of certain SFPUC's costs; finding that the Agreement is a conditional land acquisition agreement under CEQA Guidelines Section 15004(b)(2)(A), with closing conditioned on City discretionary approval after the completion of environmental review.

Signature of Sponsoring Supervisor:

For Clerk's Use Only