

12.5.16 draft

LEASE DISPOSITION AND DEVELOPMENT AGREEMENT

by and between

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation,

and

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA

For the delivery of a leasehold estate in real property
comprising a portion of the campus of
The Priscilla Chan and Mark Zuckerberg San Francisco General Hospital and Trauma Center
in San Francisco, California,
for the construction of a research facility and related site improvements

Dated as of _____

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LEASE DISPOSITION AND DEVELOPMENT AGREEMENT

THIS LEASE DISPOSITION AND DEVELOPMENT AGREEMENT (this "Agreement" or this "LDDA"), dated for reference purposes as of _____, 20____, is by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("**City**"), and THE REGENTS OF THE UNIVERSITY OF CALIFORNIA, a California public corporation ("**University**"). City and University are sometimes each individually referred to herein as a "Party" and collectively referred to as the "**Parties.**"

RECITALS

THIS AGREEMENT is made with reference to the following facts and circumstances:

A. City owns in fee all of that certain real property comprising the campus of the Priscilla Chan and Mark Zuckerberg San Francisco General Hospital and Trauma Center ("**ZSFG**"), located in San Francisco, California. The land that is the subject of this Agreement is (i) a portion of the ZSFG campus, and is described on the attached Attachment A-1 and shown on the attached Attachment A-2 (the "**Research Facility Site**"), (ii) an adjacent portion of the ZSFG campus generally depicted on the attached Attachment A-3 (the "**ZSFG Campus Improvements Site**"), and (iii) an adjacent portion of the ZSFG campus generally depicted on the attached Attachment A-4 (the "**Utility Installation Site**"). The Research Facility Site, ZSFG Campus Improvements Site and Utility Installation Site are sometimes collectively referred to as the "**Site**" or the "**Property.**"

B. University desires to obtain a long-term ground leasehold interest in the Research Facility Site in order to develop, construct, operate, and occupy a modern research facility for University's research activities and uses approved under the Ground Lease (as defined below) (the "**Research Facility**" or "**Research Facility Building**"). In order to develop the Research Facility Building, the Parties anticipate that University will install certain utility connections within the Utility Installation Site.

C. In connection with the construction of the Research Facility, University will perform certain other improvements on the ZSFG Campus Improvements Site that will benefit the ZSFG campus and its users, including University, including a campus street adjacent to and south of Building 5 of the ZSFG campus on the ZSFG Campus Improvements Site on north side of the new Research Facility Site, with circulation space, landscaping, a one-way eastbound driveway, surface parking spaces that will be incorporated into the hospital's parking program, relocation of a historic fountain from the site, and landscaping and public sidewalks around the perimeter of the Research Facility Building (collectively, the "**ZSFG Campus Improvements**").

D. University will entitle the Research Facility itself on the Research Facility Site pursuant to its exemption from local land use control and as the building official for plan check and inspection, but in general conformity with the proposed height, bulk, massing and setbacks described in this LDDA. University will construct the ZSFG Campus Improvements on the ZSFG Campus Improvements Site in accordance with local requirements and codes, including the San Francisco Building Code, as described in this LDDA.

E. The Parties now desire to enter into this Agreement to set forth the terms and conditions upon which the City would grant a leasehold estate in the Research Facility Site to University pursuant to a long term ground lease (the "**Ground Lease**") and University would develop the Research Facility Site

and perform the improvements to the ZSFG Campus Improvements Site, and own, operate, and occupy the Research Facility Building.

AGREEMENT

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

1. GENERAL: PARTIES, TERM, DEFINITIONS, GROUND LEASE, AND PAYMENTS

1.1 University

University is The Regents of the University of California, a public corporation.

1.2 City

City is the City and County of San Francisco, a municipal corporation.

1.3 Research Facility Site; ZSFG Campus Improvements Site; Utility Installation Site

The Research Facility Site is located in the City and County of San Francisco, and is more particularly described in the legal description attached as Attachment A-1 and depicted on the Site Plan attached as Attachment A-2. The ZSFG Campus Improvements Site is located adjacent to the Research Facility Site, as generally depicted on Attachment A-3, and the Utility Installation Site is also located adjacent to the Research Facility Site, as generally depicted on Attachment A-4. Upon City's approval of the 100% Construction Documents for work on the ZSFG Campus Improvements that will be constructed on the ZSFG Campus Improvements Site, as provided in Section 5.3, the Parties shall modify the legal description of the Research Facility Site to the extent required to remove from the description of the Research Facility Site any portion of any parking space to be constructed as part of the ZSFG Campus Improvements, and Exhibit A to the Ground Lease and Memorandum of Lease shall be correspondingly corrected.

1.4 Term of this Agreement

The term of this Agreement shall be from the Effective Date until Completion of the Project pursuant to Article 6 hereof, unless this Agreement is earlier terminated in accordance with its provisions (the "LDDA Term").

1.5 Definitions

Initially capitalized terms used in this Agreement are defined in Article 14 or have the meanings given them when first defined. The Recitals are incorporated into this Agreement by reference. Any initially capitalized words or acronyms used but not defined in this Agreement shall have the meanings given them in the Ground Lease.

1.6 Relationship of this Agreement to Ground Lease

This Agreement (i) provides for an agreement by the City to lease the Research Facility Site to University under the Ground Lease subject to certain conditions precedent, and (ii) governs development of the Research Facility Site and performance of the ZSFG Campus Improvements on the ZSFG Campus Improvements Site during the LDDA Term. It addresses, among other matters, the Delivery of the

Property, and the scope of University's obligations to design, develop and construct the Research Facility and ZSFG Campus Improvements (collectively, the "**Project**") and to obtain Project approvals in accordance with this Agreement (the "**University Work**"), and the schedule of performance for such obligations. If the conditions for the Close of Escrow or Project Approvals as set forth in Article 2 of this Agreement are satisfied, then the City will ground lease the Research Facility Site to University under the Ground Lease, which shall be in the form attached as Attachment G, and which will govern University's occupancy and use of the Research Facility. During the LDDA Term, this Agreement shall control in the event of any inconsistency between this Agreement and the Ground Lease. Upon University's Completion of the Project in accordance with the terms of Article 6, this Agreement will terminate in its entirety except solely the provisions, which, by their terms, expressly survive Completion. Completion will be determined as provided in Section 6.1 and Section 6.2. Except with respect to those terms that expressly survive Completion, from and after Completion, the Ground Lease alone will govern the rights and obligations of the Parties with respect to use and occupancy of the Research Facility Site.

1.7 Parking Replacement Contribution

The Parties acknowledge that development of the Research Facility on the Research Facility Site will result in loss of existing parking spaces used by patients, staff and visitors to the ZSFG campus. As a condition to City entering into the Ground Lease, University shall make contribution to City of Ten Million Dollars (\$10,000,000) (the "**Parking Reimbursement Contribution**"), which the Parties agree is roughly equivalent to the cost of replacing the parking spaces lost by development of the Research Facility. The Parking Reimbursement Contribution shall be paid to City at Close of Escrow, and City shall hold the Parking Reimbursement Contribution in a segregated account until Completion of Construction as provided below. If this LDDA and the Ground Lease is terminated following Close of Escrow but prior to completion of the Project, City shall promptly refund the Parking Reimbursement Contribution to University.

2. DISPOSITION OF LEASEHOLD ESTATE; ESCROW

2.1 Execution of Transaction Documents

Subject to satisfaction of all applicable conditions to the Close of Escrow, University and City each agree to execute subject to the terms hereof, the Ground Lease, a memorandum of ground lease, and certain other documents referred to herein to be executed and delivered or recorded by the Parties hereunder.

2.2 Parking Relief Plan

Prior to Close of Escrow the Parties shall jointly develop a parking relief plan ("**Parking Relief Plan**") that incorporates temporary parking opportunities and strategies that the Parties will implement during the course of construction of the Project through the date replacement parking is secured for the ZSFG campus, whether through expansion of the parking garage serving the ZSFG campus or other through other means. The Parking Relief Plan will incorporate, but not be limited to, the strategies outlined in Attachment B. Following development of the Parking Relief Plan, the Parties will execute a memorandum memorializing the Parking Relief Plan, which shall be attached to the Ground Lease as an exhibit (the "**Memorandum of Parking Relief Plan**").

2.3 Escrow

(a) **Opening of Escrow at the Request of Either Party.** At the request of either City or University, University shall open an escrow for the Delivery of the Property (the "**Escrow**") with

the local (San Francisco) office of such title company as University may select and City may find reasonably satisfactory (“**Title Company**”). In the absence of a formal escrow, the Parties agree that counsel for City shall act as escrow holder for the Delivery of the Property.

(b) **Close Date.** The Close of Escrow shall occur on a date (the “**Close Date**”) designated by University upon not less than thirty (30) days written notice to City, provided such Close Date shall be within the period provided for close of escrow in the Schedule of Performance (unless otherwise agreed by the Parties in writing), and shall not occur earlier than the date by which all of the conditions precedent described in Sections 2.4 and 2.5 are either satisfied or waived by the Party that is benefited by such conditions. University acknowledges that the Research Facility Site and portions of the ZSFG Campus Improvements Site are presently improved with and used for a surface parking lot for patients, staff and visitors to the ZSFG campus, and that City will require advance notice of the date on which such surface parking lot will no longer be available, as provided in the LDDA. Accordingly, City and University will coordinate to establish the Close Date to allow reasonable notice to the parties using the surface parking lot and implementation of the Parking Relief Plan.

(c) **Joint Escrow Instructions.** Not later than thirty (30) days before the Close Date, University shall prepare and submit to City for review and approval joint escrow instructions as are necessary and consistent with this Agreement. If the joint escrow instructions are acceptable to City, City shall execute and transmit the instructions to the Title Company not later than five (5) days prior to the Close Date. If the joint escrow instructions are not acceptable to City, City shall inform University in writing of the reasons for City’s determination that the instructions are not acceptable within five (5) business days of receipt and University shall revise such joint escrow instructions accordingly and shall resubmit the same to City for review and execution in accordance with this Section 2.3(c). The foregoing process shall continue until such time as the Parties have mutually approved joint escrow instructions consistent with this Agreement.

(d) **Costs of Escrow.** City shall not be required to pay any costs or expenses for or related to the Escrow. University shall pay all fees, charges, costs and other amounts necessary for the Close of Escrow, including, but not limited to, any escrow fees, the costs of any title reports, surveys, inspections or premiums for any title insurance policies and endorsements obtained by University, recording fees, if any, and transfer taxes, if any (together, “**Closing Costs**”). University shall pay any Closing Costs within the times necessary for the Close of Escrow, as set forth in a closing statement prepared by the Title Company and approved by University prior to the Close Date (the “**Closing Statement**”).

2.4 Conditions to City’s Obligation to Close of Escrow

(a) **City’s Conditions Precedent.** The following are conditions precedent to City’s obligation to approve of the Close of Escrow and thereby Deliver the Property to University under the Ground Lease:

(i) No uncured Event of Default (or Unmatured Event of Default) exists on University’s part under this Agreement and University has not terminated this Agreement pursuant to Section 3.4 or otherwise.

(ii) City shall have approved those aspects of the Design Documents (as defined in Section 5.2) that are required under Article 5 to be approved by City and detailed plans and specifications for the ZSFG Campus Improvements prior to the Close of Escrow.

(iii) The Parties shall have agreed upon the Parking Relief Plan pursuant to Section 2.2 and University shall have submitted into Escrow the documents described in Section 2.6(b)(ii), duly executed and where required acknowledged by University.

(iv) University shall have obtained all Regulatory Approvals (to the extent required to begin construction of the Improvements and to the extent applicable to University as set forth herein) and such Regulatory Approvals shall be Finally Granted. Building Permits, or, in the case of the Site Permit Process, the Site Permit and any addendum or addenda to the Site Permit, which are required for the commencement of Construction of the Improvements (as applicable to University) shall have been Finally Granted.

(v) University shall have in place all insurance required under this Agreement, the Ground Lease and the Construction License and shall have deposited evidence thereof into Escrow, or University shall have confirmed that University will self-insure for the required coverage.

(vi) City shall have reviewed the Design Documents and confirmed that, in its reasonable good faith judgment, such documents provide that the ZSFG Campus Improvements will be constructed in accordance with DPW Standards (as defined in Section 5.1(f)).

(vii) City's Board of Supervisors authorizations and approvals required for this Agreement, the Ground Lease, and, any other agreements contemplated by this Agreement to be executed by City that require such approval, shall have been completed and shall have become and remain effective, and such approvals shall be Finally Granted.

(viii) The Board of Regents of the University of California authorizations and approvals required for this Agreement, the Ground Lease, and, any other agreements contemplated by this Agreement to be executed by University that require such approval, shall have been completed and shall have become and remain effective, and such approvals shall be Finally Granted.

(ix) City and University shall have agreed upon the legal description for the Research Facility Site.

(x) University shall have deposited the Parking Reimbursement Contribution into Escrow in accordance with Section 2.6(b)(ii) below.

(b) Satisfaction of City's Conditions. The conditions precedent set forth above are intended solely for the benefit of City. If any such condition precedent is not satisfied on or before the Close Date, subject to Force Majeure and Litigation Force Majeure delay as provided in Section 12.1, City, acting through the Director of Property, in consultation with Director of Public Health, shall have the right in its sole discretion to (i) waive in writing the condition precedent in question and proceed with the Close of Escrow, (ii) terminate this Agreement, in which event neither Party shall have any further obligations hereunder except for those obligations which expressly survive the termination of this Agreement (or which survive any permit or other agreement entered into the Parties); provided, however, that if any such condition precedent is not satisfied due to a default by a Party of any express obligations under this Agreement, the nondefaulting Party shall have the right to exercise all of its rights and remedies hereunder, or (iii) extend the Close Date for a reasonable period of time specified in writing by City, not to exceed sixty (60) days, to allow such conditions precedent to be satisfied, subject to City's right to terminate this Agreement in accordance with the foregoing item (ii) upon the expiration of the period of any such extension if all such conditions precedent have not been satisfied.

2.5 Conditions to University's Obligation to Close Escrow

(a) **University's Conditions Precedent.** The following are conditions precedent to University's obligation to approve the Close of Escrow and thereby (i) accept Delivery of the Property, (ii) construct the ZSFG Campus Improvements on the ZSFG Campus Improvements Site, and (iii) perform any contemplated work on the Utility Installation Site:

(i) No uncured Event of Default (or Unmatured Event of Default) exists on City's part under this Agreement and University has not terminated this Agreement pursuant to Section 3.4 or otherwise.

(ii) Title Company shall be irrevocably committed to issue to University, upon payment by University of the premium thereunder, the title insurance policy required by Section 2.8(a)(i) to be delivered to University, and University shall have approved the title condition of the Utilities Installation Site and the Research Facility Site as provided in Section 2.7.

(iii) There shall have been no Adverse Change (as defined in Section 3.1(a)(ii)).

(iv) All Regulatory Approvals required to commence construction of the Project shall have been issued without any conditions that are unacceptable to University, in its reasonable discretion, and such Regulatory Approvals shall be Finally Granted.

(v) All Building Permits that are required for the commencement of construction of the ZSFG Campus Improvements shall have been Finally Granted, and City shall have executed any such permits that City is required to execute as co-permittee.

(vi) The Parties shall have agreed upon the Parking Relief Plan pursuant to Section 2.2 and City shall have submitted into Escrow the documents described in Section 2.6(b)(i), duly executed and where required acknowledged by City.

(vii) City's Board of Supervisors authorizations and approvals required for this Agreement, the Ground Lease, and, any other agreements contemplated by this Agreement to be executed by City that require such approval, shall have been completed and shall have become and remain effective, and such approvals shall be Finally Granted.

(viii) The Board of Regents of the University of California authorizations and approvals required for this Agreement, the Ground Lease, and, any other agreements contemplated by this Agreement to be executed by University that require such approval, shall have been completed and shall have become and remain effective, and such approvals shall be Finally Granted.

(b) **Satisfaction of University's Conditions Precedent.** The conditions precedent set forth above are intended solely for the benefit of University. If any such condition precedent is not satisfied on or before the Close Date, subject to Force Majeure and Litigation Force Majeure, University shall have the right in its sole discretion to (i) waive in writing the condition precedent in question and proceed with the Close of Escrow, (ii) terminate this Agreement, in which event neither Party shall have any further obligations hereunder except for those obligations which expressly survive the termination of this Agreement (or which survive any permit or other agreement entered into the Parties); provided, however, that if any such condition precedent is not satisfied due to a default by a Party of any express obligations under this Agreement, the nondefaulting Party shall have the right to exercise all of its rights and remedies hereunder, or (iii) extend the Close Date for a reasonable period of time specified in writing

by University, not to exceed sixty (60) days, to allow such conditions precedent to be satisfied, subject to University's right to terminate this Agreement in accordance with the foregoing item (ii) upon the expiration of the period of any such extension if all such conditions precedent have not been satisfied.

2.6 Delivery of the Property

(a) Obligation to Close Escrow. Provided that the conditions to City's obligations with respect to the Close of Escrow and Delivery of the Property as set forth in Section 2.4 and the conditions to University's obligations with respect to Close of Escrow and acceptance of the Delivery of the Property as set forth in Section 2.5 have been satisfied or expressly waived on or before the Close Date, City and University shall instruct the Title Company to complete the Close of Escrow, as set forth below. Upon the Close of Escrow, (i) City shall deliver the Ground Lease, the Utility Easement Agreement and the Construction License, all as set forth below and (ii) City shall Deliver the Site to University, and University shall accept the Delivery of the Site, under and in accordance with the Ground Lease, the Construction License and the Utility Easement Agreement.

(b) Steps to Close Escrow. The Close of Escrow shall be completed as follows:

(i) On or before the Close of Escrow, City shall execute and acknowledge, or cause to be executed and acknowledged, as necessary, and deposit into Escrow with the Title Company the following: (1) the Ground Lease, (2) if required by University, a memorandum of this Agreement in the form of Attachment L (the "**Memorandum of Lease**"), (3) a construction license for the performance of the ZSFG Campus Improvements on the ZSFG Campus Improvements Site in the form of Attachment J (the "**Construction License**"), (4) an easement agreement for underground utilities, in substantially the form of Attachment M, provided the description of the easement area shall be modified to the extent required to correspond to the requirements shown in the Final Construction Documents (the "**Utility Easement Agreement**"), (5) if the Parties determine an easement is required for access or a curb-cut, a Loading Dock Access Easement Agreement, in substantially the form of Attachment N attached hereto (the "**Loading Dock Easement Agreement**"), (6) if required by the San Francisco Fire Marshal or any City or State agency with permitting authority or if required in connection with the General Plan Referral as a result of the Research Facility Site not comprising a separate legal parcel or not having sufficient direct access to an open public street, or if the parties otherwise agree, a Declaration of Restrictions in a form reasonably approved by the Parties prior to the Close of Escrow (the "**Declaration of Restrictions**"), (7) the Memorandum of Parking Relief Plan, (8) copies of the resolutions of the Board of Supervisors authorizing and approving the Ground Lease, this Agreement and any other documents contemplated hereby, and (9) any other agreements, instruments, affidavits or other documents required by Title Company to Close Escrow.

(ii) On or before the Close of Escrow, University shall (A) pay into Escrow with the Title Company the Parking Reimbursement Contribution and all Closing Costs, and (B) execute and acknowledge (or cause to be executed and acknowledged), as necessary, and deposit into Escrow with the Title Company the following: (1) the Ground Lease, (2) the Memorandum of Lease, (3) the Construction License, (4) the Utility Easement Agreement, (5) if required pursuant to Section 2.6(b)(i)(5), the Loading Dock Access Easement Agreement, (6) if required pursuant to Section 2.6(b)(i)(6), the Declaration of Restrictions (if applicable), (7) the Memorandum of Parking Relief Plan, and (8) evidence of approval of the Board of Regents of the University of California of the Ground Lease, this Agreement and any other documents contemplated hereby.

(iii) City and University shall instruct the Title Company to consummate the Escrow according to the joint escrow instructions described in Section 2.3(c). Upon the Close of Escrow, the Title Company shall (A) record in the Official Records the Memorandum of Lease, the Utility

Easement Agreement, the Loading Dock Access Easement Agreement (if applicable,) the Declaration of Restrictions (if applicable), and any other documents reasonably required to be recorded under the terms of any Regulatory Approvals or under the terms hereof or as otherwise agreed to by the Parties, and shall deliver to the respective Parties confirmed copies of all documents recorded pursuant to the foregoing, in each case showing all applicable recording information relating thereto, together with executed counterparts of the other documents described in this Section 2.6(b), and (B) disburse the Parking Reimbursement Contribution to City.

(iv) Upon the Close of Escrow, the Title Company shall disburse any funds deposited into Escrow pursuant to this Agreement in accordance with the terms hereof and a Closing Statement approved by University prior to the Close of Escrow in accordance with Section 2.3(d).

(v) The Title Company shall issue a title policy to University and to the City as required under Section 2.8.

(c) **Waiver of Conditions to Close of Escrow.** Unless the Parties otherwise expressly agree at the time of Close of Escrow, all conditions to the Close of Escrow of the Parties shall, upon the Close of Escrow, be deemed waived by the Party benefited by such condition.

2.7 Condition of Title to the Research Facility Site and Utility Installation Site

(a) **Permitted Title Exceptions.** Except for those permitted title exceptions shown on Attachment I, and such other matters as University shall cause to arise in connection with University's use or operation of the Research Facility Site and which University agrees to hereunder (collectively, the "**Permitted Title Exceptions**"), City shall Deliver the Research Facility Site to University under and subject to the provisions of the Ground Lease, with title for the term specified in the Ground Lease, free and clear of (i) possession and rights of possession of the Site by others, and (ii) liens, encumbrances, covenants, assessments, easements, leases and taxes. City shall also deliver the Utilities Installation Site subject to title exceptions approved by University, provided, if there are title matters objected to by University, the parties agree to meet and confer to resolve the issue, but if the matter cannot be resolved to University's satisfaction, it will not be a default but instead will be a failure of a closing condition.

(b) **Title Defect.** If, at the time scheduled for the Close of Escrow under Section 2.3, there remains (i) any possession or rights of possession of the Research Facility Site by others, or (ii) any lien, encumbrance, covenant, assessment, easement, lease, tax, or judgment that encumbers the Research Facility Site, or other right, title or interest in the Research Facility Site, which in either case, is not a Permitted Title Exception and would materially and adversely affect the development or operation of the Project (a "**Title Defect**"), City, at City's sole election, will have up to thirty (30) days from the time scheduled for the Close of Escrow under Section 2.3 (the "**Title Defect Cure Period**") to remove or indemnify against the Title Defect in a manner reasonably satisfactory to University. In such event, the time scheduled for the Close of Escrow under Section 2.3 will be extended to the earlier of seven (7) business days after the Title Defect is removed or indemnified against pursuant to the foregoing or the expiration of the Title Defect Cure Period. If the Title Defect can be removed by bonding and City has not so bonded the Title Defect on or before the time scheduled for the Close of Escrow, University may in its sole discretion and at University's sole cost cause a bond to be issued.

(c) **University's Remedies for an Uncured Title Defect.** If by expiration of the Title Defect Cure Period, subject to any Force Majeure or Litigation Force Majeure, unless the Parties mutually agree to extend such date, a Title Defect still exists and all other of University's conditions precedent have been satisfied, University may by written notice to City either (i) terminate this Agreement, in which event neither Party shall have any further obligations hereunder except for those

obligations which expressly survive the termination of this Agreement, or (ii) accept Delivery of the Research Facility Site and/or Utility Installation Site subject to the Title Defect, or (iii) for a City Caused Title Defect (as defined in Section 2.7(d)), University shall have the right to specific performance or damages in the amount required to remove the City Caused Title Defect. If University elects to accept Delivery, the Title Defect will be deemed waived but solely with respect to any action by University against City. If the Agreement is terminated under this Section, University shall have no further remedies against City with respect to such termination. If University does not accept Delivery and fails to terminate this Agreement within fifteen (15) days after the expiration of the Title Defect Cure Period, or any extension thereof, as provided above, City may terminate this Agreement upon three (3) days written notice to University.

(d) Covenants of City Regarding the Research Facility Site and Utilities Installation Site Before the Close of Escrow. In addition to its obligations under Section 2.7(a), and not in limitation of University's rights under Section 2.5, City will not intentionally take any actions that alter the condition of title to the Research Facility Site or the Utilities Installation Site existing as of the date of this Agreement except as specifically contemplated hereunder or under the Ground Lease. Without limiting the foregoing, between the Effective Date of this Agreement and the Close of Escrow or earlier termination of this Agreement as permitted hereunder, City shall not (i) make any material physical alterations to the Research Facility Site or the Utilities Installation Site except as expressly contemplated by this Agreement (for clarity, the parties agree that City may engage in maintenance activities), or (ii) enter into any lease, license or other agreement for the use or occupancy of the Research Facility Site, or (iii) enter into any lease, license or other agreement for the use or occupancy of the Utilities Installation Site that would materially affect the cost or ability to construct the improvements to be constructed thereon as part of the Project pursuant to the Utility Easement Agreement or require the consent or approval of a third party to City's execution of the Utility Easement Agreement, in each case without University's prior written consent, which consent may be withheld, conditioned or delayed in University's sole and absolute discretion. The City's breach of its obligations under this Section 2.7(d) shall be referred to as a "City Caused Title Defect").

2.8 Title Insurance

(a) Title Insurance to be Issued at the Close of Escrow. The joint escrow instructions described in Section 2.3(c) will provide that concurrently with the Close of Escrow, the Title Company will issue and deliver:

(i) to University, an A.L.T.A. extended coverage title insurance policy (or, at University's election, a C.L.T.A. title insurance policy) issued by the Title Company, with such coinsurance or reinsurance and direct access agreements as University may reasonably request, in an amount reasonably designated by University which is satisfactory to the Title Company, insuring that the leasehold estate in the Research Facility Site is vested in University subject only to the Permitted Title Exceptions, and with such endorsements as may be reasonably requested by University, the premium for which shall be paid by University; and

(ii) to City an A.L.T.A. extended coverage title insurance policy (or, if University elects to obtain the same, a C.L.T.A. title insurance policy) issued by Title Company in a reasonable amount specified by City and satisfactory to the Title Company, insuring City's fee interest in the Site subject to the Ground Lease and those Permitted Title Exceptions which are applicable to the fee, and with such C.L.T.A. endorsements as City may reasonably request, provided that subject to Section 2.8(c), City pays any incremental cost for such policy (including endorsements) in excess of the C.L.T.A. standard coverage portion of City's title insurance policy.

2.9 Surveys

University is responsible for securing any and all surveys and engineering studies, at its sole cost and expense, as needed for the title insurance required under this Agreement. University shall provide City with complete and accurate copies of all such final surveys and engineering studies.

2.10 Compliance with Laws

(a) **Compliance with Laws and Other Requirements.** University shall comply at all times throughout the duration of the LDDA Term, with: (i) all Laws applicable to University; (ii) with respect to the ZSFG Campus Improvements, the DPW Standards (as applicable: <http://www.sfpublicworks.org/services/standards-specifications-and-plans>); (iii) all of the Mitigation and Improvement Measures described in Section 11.2; (iv) all requirements of all policies of insurance required under Section 5.11 and, from and after the Close of Escrow, under Section 19 of the Ground Lease, and such other insurance policies of University that may be applicable to the Research Facility Site, the Improvements or University's personal property; (v) the Ground Lease (to the extent that it is then in effect); (vi) the Construction License and the Utility Easement Agreement (to the extent the same are then in effect); and (vii) all other applicable Project Requirements. Notwithstanding anything herein to the contrary, the Parties acknowledge that the provisions of this Section 2.10(a) are not intended to modify the allocation of responsibilities contained herein, and in no event shall this Section 2.10(a) be interpreted such that University will be obligated to perform obligations that are expressly allocated to the City in the Ground Lease. University shall, promptly upon request, provide City with reasonable evidence of compliance with University's obligations under this Section.

(b) Regulatory Approvals.

(i) University understands and agrees that City is entering into this Agreement in its capacity as a landowner with a proprietary interest in the Site and not as a regulatory agency with certain police powers. University understands and agrees that neither entry by City into this Agreement nor any approvals given by City under this Agreement shall be deemed to imply that University, by virtue of the same, has obtained any required approvals from City departments, boards or commissions that may have jurisdiction over the Property. By entering into this Agreement, City is in no way modifying or limiting the obligations of University to develop the Project in accordance with all Laws applicable to University as provided in this Agreement. Nothing in this Agreement shall be construed, or deemed to be construed, as a waiver by University of its constitutional status, sovereignty or exemptions available to it as a California constitutional corporation regarding its exemption from compliance with local regulations or other local Laws as related to the Research Facility Site or the Project.

(ii) University understands that its Construction of the Improvements on the Site and development of portions of the Project will require certain limited approvals, authorizations and permits from governmental agencies with jurisdiction in accordance with the provisions of this Agreement, which may include, with limitation, City's Planning Commission and/or Zoning Administrator, the Health Commission, the Department of Building Inspection, the Art Commission, and the Department of Public Health. University shall use good faith efforts to obtain any Regulatory Approvals required for the portions of the Project applicable to University in the manner set forth in this Section. For the Research Facility Building, University shall not be required to obtain Regulatory Approvals from the City (although City shall have certain approval rights as expressly set forth in this Agreement, including Arts Commission review and approval). For the ZSFG Campus Improvements, University shall obtain any required Regulatory Approvals from the City and University shall consult and coordinate with City in University's efforts to obtain such Regulatory Approvals. City shall cooperate

reasonably with University in its efforts to obtain required Regulatory Approvals, including executing any letters of authorization as owner of the Property, within fifteen (15) days of receipt of request from University. However, University shall not agree to the imposition of conditions or restrictions in connection with its efforts to obtain a permit from any other applicable regulatory agency if City is required to be a co-permittee under such permit and the conditions or restrictions would create any material obligations on the part of City unless City has previously approved such conditions in writing, in City's reasonable discretion. No such approval by City shall limit University's obligation to pay its share of the costs of complying with such conditions under this Section, to the extent caused by University. Subject to the conditions of this Section, City shall join any application by University for any required Regulatory Approval and in executing such Regulatory Approvals where required. University shall bear all costs associated with applying for and obtaining any applicable Regulatory Approvals, including approvals for the ZSFG Campus Improvements. University shall have the right to reasonably appeal or contest any adverse decision and/or imposition of any condition with respect to any contemplated Regulatory Approval in any manner permitted by Law. From and after the Close Date, University shall comply with any and all conditions or restrictions imposed under any applicable Regulatory Approval with respect to University's Construction or the Project. University shall pay or discharge any fines, penalties or corrective actions imposed as a result of the failure of University to comply with the terms and conditions of any applicable Regulatory Approval in the course of University's Construction of the Project, if, and only to the extent, resulting from University's actions or inaction in violation of any Law applicable to University. Without limiting any other indemnification provisions of this Agreement, University shall Indemnify City and the other City Indemnified Parties from and against any and all Losses resulting from University's failure to comply with the terms and conditions of any applicable Regulatory Approval in the course of University's Construction of the Project, except to the extent such Losses are caused by the negligence or willful misconduct of City or any City Indemnified Party(ies). The provisions of this Section shall survive any termination of this Agreement.

2.11 Period to Cure Defaults Prior to the Close of Escrow

If Escrow is not in the condition to close on the scheduled Close Date due solely to an Event of Default or, subject to any applicable notice and cure period, an Unmatured Event of Default by a Party hereunder, the nondefaulting Party shall have the rights and remedies set forth in Section 10.2(a) and Section 10.4(a), as applicable. If this Agreement is terminated under Section 10.2 or Section 10.4, the Title Company will have been instructed in the joint instructions described in Section 2.3(c), to return all documents and funds deposited with it to the respective Parties thirty (30) days after such time, unless within such thirty (30)-day period both Parties shall have performed fully all their obligations with respect to Close of Escrow, in which case the Title Company will be instructed to carry out its instructions without regard to such thirty (30)-day delay.

3. AS IS CONDITION OF THE SITE; CITY IMPROVEMENT OBLIGATIONS; INDEMNIFICATION; UNIVERSITY'S RIGHT TO TERMINATE ON ACCOUNT OF EXCESS REMEDIATION COSTS

3.1 Site As Is; Risk of Loss

(a) Acceptance of Site in "AS IS WITH ALL FAULTS" Condition; Risk of Loss

(i) Subject to the express terms and conditions of this Agreement, City shall not prepare the Site for any purpose whatsoever related to University's obligations to Construct the Improvements and University agrees to accept the Site in its "AS IS WITH ALL FAULTS" condition on the date of the Close of Escrow as further described in Section 3.1(c); provided that there is no change in the physical condition of the Site between the date of this Agreement and the date of Delivery that would

materially adversely interfere with development of the Project for its intended uses (each an “**Adverse Change**”).

(ii) If at any time between the Close of Escrow and the end of the LDDA Term, a fire or other casualty (excepting earthquake) damages or destroys the Site or Improvements, or any portion of the Site or Improvements, University shall, at its sole cost and expense (subject to Section 15.7 of the Ground Lease), restore any Improvements constructed by University as part of the Project hereunder to their condition existing immediately prior to such casualty; provided, if such damage or destruction is caused by the City or its Agents, City shall be responsible for such restoration costs that are not covered by insurance (including self-insurance) carried or required to be carried by University under this Agreement and the Ground Lease.

(b) Independent Investigation by University. University acknowledges that it has been afforded a full opportunity to inspect all of the public records of City relating to University’s proposed use of the Research Facility Site, the Utility Installation Site and the ZSFG Campus Improvements Site. University agrees to rely solely on its own inspection and investigation of the Research Facility Site, the Utility Installation Site and the ZSFG Campus Improvements Site, including any improvements thereon, with respect to all matters pertaining to the Project including, without limitation, (i) the quality, nature, adequacy and physical condition of the Research Facility Site, the Utility Installation Site and the ZSFG Campus Improvements Site; (ii) the quality, nature, adequacy, and physical, geotechnical and environmental condition of the Research Facility Site, the Utility Installation Site and the ZSFG Campus Improvements Site, including without limitation, presence of asbestos or lead, with regard to soils and any groundwater); (iii) the suitability of the Research Facility Site, the Utility Installation Site and the ZSFG Campus Improvements Site for the Project; (iv) the zoning, land use regulations, historic preservation Laws, and other Laws governing use of or construction on the Research Facility Site, the Utility Installation Site and the ZSFG Campus Improvements Site; and (v) all other matters of material significance affecting the Research Facility Site, the Utility Installation Site and the ZSFG Campus Improvements Site and its development, use, operation, and enjoyment under this Agreement.

(c) DISCLAIMER OF REPRESENTATIONS AND WARRANTIES. SUBJECT TO THE EXPRESS TERMS AND CONDITIONS OF THIS AGREEMENT, THE GROUND LEASE AND ANY OTHER DOCUMENTS OR INSTRUMENTS EXECUTED BY THE CITY IN CONNECTION WITH THE PROJECT, (I) UNIVERSITY AGREES THAT THE LEASE SITE, THE UTILITY INSTALLATION SITE AND THE ZSFG SITE ARE BEING DELIVERED BY CITY AND ACCEPTED BY UNIVERSITY IN THEIR “AS IS WITH ALL FAULTS” CONDITION AND (II) UNIVERSITY SPECIFICALLY ACKNOWLEDGES AND AGREES THAT NEITHER CITY, NOR ANY OF THE OTHER CITY INDEMNIFIED PARTIES, NOR ANY EMPLOYEE, OFFICER, COMMISSIONER, REPRESENTATIVE OR OTHER AGENT OF ANY OF THEM, HAS MADE, AND THERE IS HEREBY DISCLAIMED, ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, OF ANY KIND, WITH RESPECT TO THE CONDITION OF THE LEASE SITE, THE UTILITY INSTALLATION SITE OR THE ZSFG SITE, THE SUITABILITY OR FITNESS OF THE LEASE SITE, THE UTILITY INSTALLATION SITE OR THE ZSFG SITE OR APPURTENANCES TO THE LEASE SITE, THE UTILITY INSTALLATION SITE OR THE ZSFG SITE FOR THE DEVELOPMENT, USE OR OPERATION OF THE PROJECT, ANY COMPLIANCE WITH LAWS OR APPLICABLE LAND USE OR ZONING REGULATIONS, ANY MATTER AFFECTING THE USE, VALUE, OCCUPANCY OR ENJOYMENT OF THE LEASE SITE, THE UTILITY INSTALLATION SITE OR THE ZSFG SITE, OR ANY OTHER MATTER WHATSOEVER PERTAINING TO THE LEASE SITE, THE UTILITY INSTALLATION SITE OR THE ZSFG SITE OR THE PROJECT.

3.2 Release

As part of its agreement to accept the Property in accordance with the terms of Section 3.1(a), effective upon the Close of Escrow but subject to the express terms and conditions of this Agreement, the Ground Lease and any other documents or instruments executed by the City in connection with the Project, University, on behalf of itself and its successors and assigns, shall be deemed to waive any right to recover from, and forever releases, acquits and discharges, City, and its Agents of and from any and all Losses, whether direct or indirect, known or unknown, foreseen or unforeseen, that University may now have or that may arise on account of or in any way be connected with (i) the physical, geotechnical or environmental condition of the Property existing as of the date of the Delivery (including, but not limited to, soils conditions, and groundwater conditions), and (ii) any noncompliance of the Property with applicable Laws existing as of the time of Delivery of the Research Facility Site to University.

In connection with the foregoing release, University acknowledges that it is familiar with 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 BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

University agrees that the release contemplated by this Section includes unknown claims. Accordingly, University hereby waives the benefits of Civil Code Section 1542, or under any other statute or common law principle of similar effect, in connection with the releases contained in this Section. Notwithstanding anything to the contrary in this Agreement, the foregoing release shall survive any termination of this Agreement. Notwithstanding anything to the contrary contained herein, the foregoing release shall not apply with respect to any Losses arising from (A) the negligence or willful misconduct of City or any of the other City Indemnified Parties, (B) City's breach of its obligations under this Agreement, the Ground Lease or any other documents or instruments executed by the City in connection with the Project and/or (C) third party claims arising from the condition or use of the Research Facility Site, the ZSFG Campus Improvements Site or the Utility Installation Site prior to the Effective Date.

3.3 Environmental Matters

(a) Compliance with Hazardous Materials Laws. From and after Delivery of the Research Facility Site, University shall comply with the provisions of all Hazardous Materials Laws applicable to University with respect to the Research Facility Site and the activities conducted by or on behalf of University (or their respective successors, assigns, agents or invitees) on the Research Facility Site, and all uses, and improvements of the Research Facility Site by University or such parties, as further provided in the Ground Lease. Subject to the provisions of Section 3.4 and Section 5.1(e), from and after Delivery of the Utility Installation Site and the ZSFG Campus Improvements Site and continuing through the LDDA Term, University shall comply with the provisions of all Hazardous Materials Laws applicable to University relating to University's performance of its work on the Utility Installation Site and the ZSFG Campus Improvements Site. Subject to Section 3.4, the foregoing obligations shall include compliance with all conditions for Hazardous Materials Remediation under any applicable Regulatory Approvals obtained by University in connection with construction of the Project, to the extent applicable to University and related to the performance of its work under this Agreement.

(b) Implementation of Recommendations Regarding Environmental Conditions. Subject to the provisions of Section 3.4, University shall Remediate the pre-existing soils and groundwater conditions at the Research Facility Site following Close of Escrow as a Project cost. University shall cause such Remediation to be performed in accordance with applicable Laws, regulations

and agency requirements and standards, in each case, to the extent applicable to University and taking into account the construction and operational activities anticipated at the Research Facility Site. In order to ensure that the scope of Remediation is sufficient for the development of the Project, University shall consult with City prior to entering into a contract for the Remediation.

(c) **Post Remediation Environmental Assessment.** Following Remediation of the pre-existing Hazardous Materials at the Research Facility Site, University shall deliver to City an environmental assessment or other evidence (which may include, without limitation, a no further action or similar letter from applicable regulatory authorities) evidencing that the Remediation of such pre-existing Hazardous Materials has been completed in accordance with the requirements for the same under this Section 3.3.

(d) **Remedies Against Other Persons.** Nothing in this Agreement is intended in any way to preclude or limit University from pursuing any remedies University may have with regard to the existence of Hazardous Materials in, on, or under the Site against any Person other than any City Indemnified Parties.

(e) **Condition of Property.** Between the Effective Date and the Close of Escrow, neither City nor any other City Indemnified Party shall introduce any new Hazardous Materials to the Research Facility Site, the ZSFG Campus Improvements Site or the Utility Installation Site; provided, however, that City may continue to bring upon, use and store reasonable products and materials of the types typically associated with any use maintenance or protection of property similar to the Research Facility Site, the ZSFG Campus Improvements Site or the Utility Installation Site, as applicable, in each case in accordance with all applicable Laws. If any such Hazardous Materials are so introduced by or on behalf of the City or any other City Indemnified Party, City shall provide University with immediate written notice specifying the date, the type, the amount, and the location where such Hazardous Material were introduced and, notwithstanding anything to the contrary contained herein, the City shall be solely responsible for any Losses relating thereto, including without limitation any costs and expenses for Remediation of the same.

3.4 University's Right to Terminate on Account of Excess Remediation Costs

University shall have the option to terminate this Agreement and, to the extent then in effect, the Ground Lease and any other agreement entered into by University and City in connection with the Project pursuant to this Agreement, if (a) University, in good faith, projects that the cost of Remediation of any pre-existing Hazardous Materials on the Site for which University is responsible hereunder (including any such costs already incurred by University) (collectively, "**Construction Remediation Costs**") will exceed Three Million Six Hundred Thousand Dollars (\$3,600,000.00) (the "**Remediation Threshold**") and/or (b) if at any time during the LDDA Term, the actual Construction Remediation Costs incurred by University exceed the Restoration Threshold. University may exercise such option by written notice to City (a "**HazMat Termination Notice**"), which HazMat Termination Notice shall be accompanied by reasonable supporting evidence of University's good faith estimate of the Construction Remediation Costs, in the case of a termination pursuant to the foregoing item. University shall keep accurate books and records of all Construction Remediation Costs incurred in accordance with accounting principles generally accepted in the construction industry. Within thirty (30) days after receipt of the HazMat Termination Notice, the City shall have the right to provide University with written notice that (1) City requires additional supporting evidence of the actual Construction Remediation Costs incurred by University or, if applicable, the additional information regarding the basis for University's projection that the Construction Remediation Costs would exceed the Remediation Threshold, and/or (2) the City desires to inspect University's records regarding the Construction Remediation Costs, and University shall reasonably cooperate with such request. If the City reasonably disagrees with University's projection or

statement of Construction Remediation Costs, then within thirty (30) days after the receipt of the HazMat Termination Notice or, if applicable, within thirty (30) days of receipt of the additional information requested by City, City may request in writing that such projection or records be reviewed or audited by an independent consultant, having expertise in Hazardous Materials assessment and mutually acceptable to the City and University, or if the Parties are unable to agree, either party may apply to the Superior Court of the State of California in and for the County of San Francisco for appointment of an auditor meeting the foregoing qualifications. If the court denies or otherwise refuses to act upon such application, either party may apply to the American Arbitration Association, or any similar provider of professional commercial arbitration services, for appointment in accordance with the rules and procedures of such organization of an independent auditor. The results of such review or audit shall be binding on the Parties, except in the case of fraud, corruption or undue influence. City shall pay the entire cost of the review or audit unless the review or audit discovers that University has overstated the Construction Remediation Costs or the projection of Construction Remediation Costs by more than ten percent (10%), in which case University shall pay the entire cost of the review or audit.

If University terminates this Agreement and the Ground Lease pursuant to this Section, University shall, at its sole expense, return the Research Facility Site, and if University has commenced work in the ZSFG Campus Improvements Site and/or the Utility Installation Site, return the ZSFG Campus Improvements Site and/or Utility Installation Site, in a safe condition, and unless otherwise requested by City, shall remove all loose building materials, debris, supplies, equipment, personal property, and other materials present at the site resulting from University's construction activities. In addition, University shall restore the sites to a condition that is no worse than the condition of the sites was when delivered to University (including parking restriping), subject to normal wear and tear.

3.5 Indemnification

(a) Indemnification by University Before Close of Escrow. Without limiting any indemnity contained in any Permit to Enter, University shall Indemnify City and the other City Indemnified Parties from and against Losses incurred in connection with or arising prior to the Close of Escrow if, and only to the extent that, such Losses arise from the negligence or willful misconduct of University or its Agents on the Research Facility Site, the ZSFG Campus Improvements Site or the Utility Installation Site, including, without limitation, any default by University in the observation or performance of any of the terms, covenants or conditions of this Agreement to be observed or performed on University's part. Notwithstanding the foregoing, University shall not be required to Indemnify City or the other City Indemnified Parties against Losses to the extent such Losses are caused by (A) the negligence or willful misconduct of City or any of the other City Indemnified Parties, (B) City's breach of its obligations under this Agreement, and/or (C) third party claims arising from the condition or use of the Research Facility Site, the ZSFG Campus Improvements Site or the Utility Installation Site prior to the Effective Date.

(b) Indemnification by City. Except with respect to matters described in Section 3.1 and Section 3.2, and without limiting the waivers and releases set forth therein, City shall Indemnify University and the other University Indemnified Parties from and against any and all Losses incurred in connection with or arising prior to the Close of Escrow from (A) the negligence or willful misconduct of City or any other City Indemnified Parties on the Research Facility Site, the ZSFG Campus Improvements Site or the Utility Installation Site, (B) City's breach of its obligations under this Agreement and/or (C) any third party claims arising from the condition or use of the Research Facility Site, the ZSFG Campus Improvements Site or the Utility Installation Site prior to the Effective Date. Notwithstanding the foregoing, City shall not be required to Indemnify University or any other University Indemnified Parties against Losses to the extent such Losses are caused by the negligence or

willful misconduct of University or any of the other University Indemnified Parties, and/or (B) University's breach of its obligations under this Agreement.

(c) General Provisions Regarding Indemnities.

(i) Costs. Losses under the foregoing indemnities shall include, without limitation, Attorneys' Fees and Costs reasonably incurred, and the fees and of consultants and experts, laboratory costs, and other related costs reasonably incurred, as well as the Indemnified Party's reasonable costs of investigating any Loss.

(ii) Immediate Obligation to Defend. University agrees to defend the City and the other City Indemnified Parties against any claims that are actually or potentially within the scope of its indemnity obligations under this Agreement even if such claims may be groundless, fraudulent or false. The City or City Indemnified Party against whom any claim is made that may be within the scope of the indemnity provisions of this Agreement shall provide notice to University of such claim promptly after learning of such claim, and thereafter shall reasonably cooperate with University in the defense of such claim; provided that any failure to provide such notice shall not affect University's obligations under any such indemnity provisions except to the extent University is prejudiced by such failure. City agrees to defend University and the other University Indemnified Parties against any claims that are actually or potentially within its scope of the indemnity obligations of this Agreement even if such claims may be groundless, fraudulent or false. The University or University Indemnified Party against whom any claim is made which may be within the scope of the indemnity provisions of this Agreement shall provide notice to City of such claim promptly after learning of such claim, and thereafter shall reasonably cooperate with City in the defense of such claim; provided that any failure to provide such notice shall not affect City's obligations under any such indemnity provisions except to the extent City is prejudiced by such failure.

(iii) Not Limited by Insurance. The insurance required to be carried by a Party under the provisions of this Agreement shall not limit the indemnification obligations of such Party under this Agreement.

(iv) Survival. The indemnification obligations set forth in this Agreement shall survive any termination of this Agreement as to any acts or omissions occurring prior to the date of such termination.

(v) Additional Obligations. The agreements to Indemnify set forth in this Agreement are in addition to, and in no way shall be construed to limit or replace, any other obligations or liabilities that the Party providing such Indemnity may have to the other Party in this Agreement, the Ground Lease, any Permit to Enter or any other document or instrument executed by the indemnifying party in connection with the Project or applicable Law.

(vi) Defense. University shall, at its option but subject to the reasonable consent and approval of City, be entitled to control the defense, compromise, or settlement of any matter for which University is providing an indemnity through counsel of University's own choice; provided, however, in all cases City shall be entitled to participate in such defense, compromise, or settlement at its own expense. If University shall fail, however, within a reasonable time following notice from City alleging such failure, to take reasonable and appropriate action to defend such suit or claim, City shall have the right promptly to use City's attorneys or to hire outside counsel (reasonably satisfactory to University) to carry out such defense, which expense shall be due and payable to the City within twenty (20) business days after receipt of an invoice therefor, which invoice shall be accompanied by reasonable supporting documentation evidencing such expense. City shall, at its option but subject to the reasonable

consent and approval of City, be entitled to control the defense, compromise, or settlement of any matter for which City is providing an indemnity through counsel of City's own choice; provided, however, in all cases University shall be entitled to participate in such defense, compromise, or settlement at its own expense. If City shall fail, however, within a reasonable time following notice from University alleging such failure, to take reasonable and appropriate action to defend such suit or claim, University shall have the right promptly to use University's attorneys or to hire outside counsel (reasonably satisfactory to City) to carry out such defense, which expense shall be due and payable to University within twenty (20) business days after receipt of an invoice therefor.

4. ACCESS BY UNIVERSITY

4.1 Access and Entry by University to the Property

(a) Permit to Enter Before Close of Escrow. This Section will govern the right of access to and entry upon the Property by University and its Agents before the Close of Escrow.

(i) City hereby grants to University and its Agents the right of access to and entry upon and around the Research Facility Site, the ZSFG Campus Improvements Site, and the Utility Installation Site for purposes associated with the Project from and after the Effective Date, including developing construction documents, provided University first obtains a Permit to Enter from City in substantially the form as the Permit to Enter attached as Attachment K (the "**LDDA Permit to Enter**"). City shall issue the LDDA Permit to Enter to University within twenty (20) days of receipt by City of University's request, accompanied by the detail required to complete such LDDA Permit to Enter. Such LDDA Permit to Enter may be subject to reasonable terms and conditions regarding the timing and manner of the entry and use, including sufficient time to provide notice to affected parties that the portions of the Site will be unavailable for parking for the period of University's entry, if applicable, and if the purpose of University's entry is invasive testing or investigations, shall be subject to such other reasonable terms and conditions as are customary for such testing. The Parties shall cooperate to promptly develop a mutually acceptable work plan for the relevant work, if applicable. Provided that University has met all of the requirements in the LDDA Permit to Enter and the Parties have reached agreement on the terms and conditions of the entry and work plan, if applicable, City shall not have discretion to refuse to issue the LDDA Permit to Enter to University and shall not have the right to terminate the LDDA Permit to Enter except for material default (following notice and cure opportunities).

(ii) Provided University first obtains the LDDA Permit to Enter for such purpose, University and its Agents shall have the right of access to and entry upon the Property for the purpose of performing testing to carry out this Agreement, including invasive testing.

(iii) University may not perform any demolition, excavation or construction work before the Close of Escrow without the express written approval of City, which City may give or withhold in its sole and absolute discretion. If City grants such approval, City may include in a separate permit to enter such additional insurance, bond, guaranty and indemnification requirements as City reasonably determines are appropriate to protect its interests.

(iv) In making any entry upon the Research Facility Site, the ZSFG Campus Improvements Site, and the Utility Installation Site authorized in accordance with the foregoing, University shall use commercially reasonable efforts to not materially interfere with or obstruct the permitted, lawful use of the Site by City, or its invitees.

(v) City may require any contractor performing the work under an LDDA Permit to Enter to be a co-permittee.

(b) Property Maintenance. At all times prior to the Close of Escrow, and at City's sole cost and expense, City shall maintain the Research Facility Site, the ZSFG Campus Improvements Site, and the Utility Installation Site in the same or better condition than that existing as of the Effective Date, provided that City shall have no obligation to repair any damage to any portion of the Research Facility Site, the ZSFG Campus Improvements Site, or the Utility Installation Site caused by University's commencement of Construction thereon or to otherwise undertake any activities which are made the sole responsibility of University under the LDDA Permit to Enter.

4.2 Project Management Space

City shall have no obligation under this Agreement to provide interior office space for Project management or administration. University anticipates providing limited space for project management and contractor administrative use in connection with the Project in locations reasonably acceptable to University and the City's Director of Public Health or his or her designee, taking into account the Director's primary obligation to operate the hospital and provide health care services on the ZSFG Campus and City's planned construction of the Building 5 hospital. If University desires to place construction trailers on Vermont Street, such placement shall be subject to obtaining and complying with the requirements of a street space permit or other approval to encroach on the right of way of Vermont Street issued by the San Francisco Public Works Bureau of Street Use and Mapping. If the cooperation of the Director of Public Health is required for University to receive such street space permit or other approval to encroach on the right of way of Vermont Street because the Site is not immediately adjacent to the required section of Vermont Street or for similar reasons, the Director of Public Health shall reasonably cooperate with University's efforts to obtain such permit or approval. Parking space for University's Project management team and contractors and subcontractors on the ZSFG campus shall be limited as provided in the Parking Release Plan developed pursuant to Section 2.2.

5. DEVELOPMENT OF THE SITE

5.1 Scope of Development; Project Requirements; Costs

(a) Scope of Development. University shall construct or cause to be constructed the Project in the manner set forth in this Article 5. The Parties acknowledge that different design, construction, and City approval standards apply to the ZSFG Campus Improvements than apply to the Research Facility Site and the Research Facility Building, as more particularly described in this Article 5.

(b) Entitlements for Research Facility Building. University shall entitle the Research Facility Site and the Research Facility Building itself pursuant to its exemption from local land use control and as the building official for plan check and inspection, but in general conformity with the proposed height, bulk, and massing illustrated in the attached Attachment C-1 (the "**Initial Research Building Scheme**"). The Parties acknowledge that the proposed dimensions shown in the Initial Research Building Scheme comply with height requirements in the City's zoning, but deviate from the bulk limits. The exterior design parameters for the Research Facility Building shall be presented to the City of San Francisco Historic Preservation Committee to demonstrate adherence to the Design Guidelines set forth in the Environmental Impact Report for the Project (the "**EIR**") and previously reviewed with the Historic Preservation Committee, and the exterior design shall be subject to review and approval by the San Francisco Arts Commission Civic Design Review.

(c) Applicable Laws for Project Requirements. For the purposes of this Agreement (i) applicable Laws with respect to the ZSFG Campus Improvements shall include the applicable provisions, rules, regulations and guidelines of the San Francisco Building Code ("**SFBC**"), and with respect to sidewalks that are included in the ZSFG Campus Improvements, shall also include San

Francisco Public Works Code Section 703, and (ii) with respect to the Research Facility Building, Laws applicable to University, including those codes and requirements listed on the attached Attachment C-2.

(d) **Project Requirements.** All of the requirements set forth in this Section 5.1(d) are referred to collectively as the “**Project Requirements**.” University shall construct the Project in compliance with Design Documents approved pursuant to this Article 5, and in compliance with all applicable Laws as described in Section 5.1(c), including, without limitation, Hazardous Materials Laws applicable to University and Disabled Access Laws applicable to University and with the Mitigation and Improvement Measures set forth in Attachment D-1 (the “**Mitigation and Improvement Measures**”) [*Include if applicable: and items _____ set forth in Attachment D-2 (the “**General Plan Referral Conditions**”), as excerpted from the Determination Letter. [Note –the reference to the General Plan Referral Conditions will be deleted if no additional requirements are imposed.]*]

(e) **Costs.** University shall bear the cost of developing the Research Facility Site and the construction of the Project, including the cost of the ZSFG Campus Improvements. Without limiting the foregoing, University shall be responsible for performing all preparation work necessary for the development of the Project. Such preparation of the Property shall include, among other things, investigation and Remediation of pre-existing soils and groundwater Hazardous Materials conditions existing as of the date of Delivery of the Research Facility Site (subject to Section 3.4), demolition and site preparation, all structure and substructure work, and improvements. Notwithstanding anything to the contrary contained herein, University shall not be required to perform any Hazardous Materials Remediation at the ZSFG Campus Improvements Site or the Utilities Installation Site. If the ZSFG Campus Improvements or the Utilities Installation work triggers the need for any Hazardous Materials Remediation work and University elects not to proceed with the work, then University may terminate this Agreement as set forth in Section 3.4.

(f) **Standards Applicable to Design of ZSFG Campus Improvements.** University shall cause the design and materials of the ZSFG Campus Improvements to coordinate with the surrounding campus improvements, except as otherwise approved by City. Without limiting the foregoing, certain of the ZSFG Campus Improvements may require colored concrete or special finishes, and landscaping shall comply with the provisions of Section 5.2(c). Traffic lanes and parking areas included in the ZSFG Campus Improvements shall be designed according to traffic loads for a parking lot, and the roadway design, curb, sidewalk and curb ramp designs shall follow San Francisco standard plans, which can be found online at <http://sfdpw.org/index.aspx?page=294>, Department of Public Works Engineering Standard Specifications (the “**DPW Standards**”), provided that the ADA components of the ZSFG Campus Improvements shall be required to comply with regulations from the California Division of State Architect.

(g) **Competitive Requirements Inapplicable.** Pursuant to the Board of Supervisors Resolution approving this Ground Lease, University’s architectural, surveying, engineering, legal, project management, construction, contracting, and other consulting services for the Project are not subject to the requirements of Chapter 6 of City’s Administrative Code.

(h) **Integrated Project Delivery Process.** The Parties acknowledge that University may elect to use the building industry’s integrated project delivery (“**IPD**”) method, a teaming approach that brings key players, including owners, architects, engineers, and contractors, to collaborate and make design and construction decisions together early in the design process, designed to harness the talents and insights of all participants to achieve optimum project results, increase value to the owner, reduce waste, and maximize efficiency through all phases of design, fabrication, and construction, and that, among other matters, use of the IPD process could lead to changes in design from that shown in earlier design documents as the design progresses.

5.2 Description of Design Documents

(a) **Definition of Design Documents.** Subject to the provisions of Section 5.1(h), the “**Design Documents**” for the Research Facility Building and the ZSFG Campus Improvements shall each consist of the following, although due to the integrated delivery method used by University (as described in Section 5.1(h)) the deliverables, including design, will change as the design progresses in accordance with University’s IPD processes, and in such case changes in the design due to the IPD method will be subject to the same level of review and approval, if applicable, that the earlier design was subjected to.

i. “**Schematic Drawings**”, which shall generally include, without limitation (a) perspective drawings sufficient to illustrate the improvements to be constructed, (b) a site plan at appropriate scale showing relationships of the improvements with their respective uses, and designating public access areas, open space areas, walkways, loading areas and adjacent uses, and (c) plans and elevations sufficient to describe the development proposal, the general architectural character, and the location and size of uses;

ii. “**Design Development Documents**” in sufficient detail and completeness to show and describe among other things, the size and character of the improvements as to the architectural, structural, mechanical and electrical systems and materials.

iii. “**100% Construction Documents**,” which shall include all plans and specifications required under applicable Laws to complete the ZSFG Campus Improvements.

(b) **Licensed Design Professionals.** The Design Documents shall be prepared by or signed by an architect (or architects) duly licensed to practice architecture in and by the State of California. A California licensed architect shall coordinate the work of any associated design professionals, including engineers and landscape architects and serve as AOR-Architect of Record for the Project. A California licensed structural engineer shall review and certify all final structural plans and the sufficiency of structural support elements to support the Improvements under applicable Laws.

(c) **Landscaping Plan.** University shall develop the landscaping plan for the landscape components of the ZSFG Campus Improvements in collaboration with the ZSFG gardening staff to arrive at a landscaping plan that includes what species of plants are included in the ZSFG Campus Improvements. Such landscaping plan shall be subject City’s approval, which approval shall not be unreasonably withheld, conditioned or delayed, and which shall be incorporated into the 100% Construction Documents before ZSFG Campus Improvements completion.

(d) **Progress Meetings; Consultation.** During the preparation of the Design Documents (other than the Schematic Drawings), University and City Staff (as defined in Section 5.3(a)) shall hold periodic progress meetings, as appropriate to the stage of design, City Staff and University (and its applicable consultants) shall communicate and consult informally as frequently as reasonably necessary to facilitate City’s prompt consideration of University’s submittal of any Design Documents required by this Agreement relating to the ZSFG Campus Improvements, including development cost and budget information.

5.3 Method, Timing and Scope of City Review

(a) **City Staff.** For the purposes of this Agreement, except as provided in Section 5.1(b) with respect to the City of San Francisco Historic Preservation Committee and the San Francisco Arts Commission, City’s review and, to the extent applicable, approval of the Design Documents (relating to the ZSFG Campus Improvements and the exterior, height and bulk of the Research Facility Building) means review and, to the extent applicable, approval by City staff designated from time to time by City’s Director of Health and approved by the City Administrator, or their respective designees, to review the Design Documents (“**City Staff**”), acting in City’s proprietary capacity, and does not encompass review and approval of the Design Documents by City’s Planning Department or any other Regulatory Agency, as may be required pursuant to applicable Laws.

(b) Timing of City Review. University shall submit the Schematic Drawings, Design Development Documents, and, for the ZSFG Campus Improvements, 100% Construction Documents, to City for City's review and, to the extent applicable, approval or disapproval. City's limited approval and disapproval rights are described in Section 5.3(c). Each submittal set of Design Documents for which City's approval is required will be approved or disapproved within ten (10) business days after submittal, so long as the applicable Design Documents are properly submitted. If City does not approve, disapprove or conditionally approve the Design Documents for which City's approval is required within the ten (10) business day period described above, then University may submit a second written notice to City that such approval or disapproval was not received within the period provided by this Section 5.3(b) and requesting City's approval or disapproval of the Design Documents within ten (10) business days after University's second notice. If City fails to respond within such ten (10) business day period, then such Design Documents will be deemed approved, provided that the original request met the requirements of this Section. The timing for review of the Design Documents for which City's approval is required (i.e., for the ZSFG Campus Improvements) shall be ten (10) business days from City's receipt thereof. If City fails to respond within such ten (10) day period and thereafter fails to respond within five (5) business days after notice from University that disapproval was not received within such ten (10) business day period, then the Design Documents so submitted to City for review will be deemed approved. The Design Documents, as approved or deemed approved by City to the extent City's approval is required, shall be referred to as the "**Final Construction Documents.**" The above time periods are outside dates for City's review, City agrees to use good faith efforts to respond sooner to the extent possible.

(c) Limited City Disapproval Rights for Design Documents for Research Facility Building; City Disapproval Rights for Design Documents for ZSFG Campus Improvements. Without limiting the provisions of Section 5.1(b) regarding the function of the City of San Francisco Historic Preservation Committee and the San Francisco Art Commission, the exterior design parameters for the Research Facility are subject to DPH review, and City shall have the right to disapprove (1) height, bulk, and massing elements of the Research Facility that are materially inconsistent with the Initial Research Building Scheme, and (2) elements of the ZSFG Campus Improvements that may have a material adverse impact on ZSFG campus operations or that are not in material compliance with the Project Requirements, including applicable Mitigation and Improvement Measures. City shall not unreasonably withhold or condition approval of the Design Documents for the ZSFG Campus Improvements.

(d) Written Disapproval Notice Stating Reasons. If the City disapproves in whole or in part any Design Document for which City's approval is required, the City's written disapproval notice will state the reason or reasons and will recommend changes and make other recommendations. If the City conditionally approves in whole or in part a Design Document package for which City's approval is required, the conditions will be stated in writing.

(e) Resubmittal by University. Upon City's disapproval or conditional approval of any Design Document for which City's approval is required, University shall cause to be prepared and shall submit to City a revised Design Document, which shall respond to the matters specified by City in City's disapproval or conditional approval notice and shall clearly indicate which portions of the plans remain unchanged from the previously submitted plans. City shall respond to the revised Design Document in the manner described above.

(f) Good Faith Efforts to Attempt to Resolve Disputes. University and City recognize that conflicts may arise during the preparation of the Design Documents, and that such conflicts may delay the critical path of the Project, thereby adding unnecessary expense. Both parties agree to use their diligent good faith efforts to reach a solution expeditiously that is mutually satisfactory to University and City.

5.4 Contractor Selection

University shall follow University's standard procedures for qualifying and selecting University's general contractor. University's general contractor for the Project shall (1) have substantial recent experience in the construction of similar improvements in the San Francisco Bay Area, (2) be licensed by the State of California (as evidenced by University's submission to City of University's contractor's state license number), and (3) have the capacity to be bonded by a recognized surety company to assure full performance of the construction contract for the work shown on the 100% Construction Documents (as evidenced by University's submission to City of a commitment or other writing satisfactory to City issued by a recognized surety company confirming that University's contractor is bondable for construction projects having a contract price not less than the contract price under the construction contract for the Improvements). City shall designate its preferred employee to sit as a voting member on University's contractor prequalification and selection of Contractor team.

5.5 Construction Contract

Prior to commencement of construction, University shall provide City, for informational purposes, adequate evidence of a "**Construction Contract**" on commercially reasonable terms for construction of the Project as described in the 100% Construction Documents: (A) requiring contractor to obtain performance and payment bonds consistent with University's standard practice; (B) naming City and its agents and employees as co-indemnitees when University is indemnified and held harmless by Contractor; (C) requiring Contractor to obtain and maintain insurance coverages required under this Agreement and the Ground Lease, naming City and agents and employees as additional insureds; (D) identifying City as an intended third party beneficiary of the Construction Contract with respect to the ZSFG Campus Improvements only; and (E) providing for the contractor's(s') obligation, for a period of at least one (1) year after the final Completion of Construction of the ZSFG Campus Improvements, to correct, repair, and replace any work with respect to the ZSFG Campus Improvements that fails to conform to the Final Construction Documents (as the same may be revised during construction pursuant to properly approved change orders) and damage due to: (i) faulty materials or workmanship; or (ii) defective installation by such contractor(s) of materials or equipment manufactured by others, and including a one (1) year replacement warranty for trees and shrubs. The University may assign the Construction Contract to City, as it relates to the ZSFG Campus Improvements only, so that City may obtain the benefit of: (i) all express and implied warranties and guarantees from the contractor, all subcontractors and suppliers, (ii) all contractual rights related to the correction of nonconforming work, and (iii) the right to pursue claim(s) for patent and latent defects in the work and the completed project. If University does not assign the Construction Contract to City as set forth above at the time of City's acceptance of the ZSFG Campus Improvements, then University shall enforce the warranties and guaranties and pursue all contractual rights under the Construction Contract for the correction of nonconforming work and for patent and latent defects.

5.6 Work Plan; Conditions on Performance

University shall perform or cause the ZSFG Campus Improvements to be performed in accordance with one or more work plans approved in writing by the Director or his or her designee (as approved, a "**Work Plan**"), which Work Plan(s) shall include the following details:

- a. Hours for construction work;
- b. Timeline for commencement date and completion date of construction;
- c. Access routes for the trucks, equipment, etc.;
- d. Access routes for the removal of debris, special conditions regarding debris storage, if applicable;
- e. If work is to be performed in stages, provisions describing the phases thereof;
- f. Requirements for cautionary signage;
- g. Requirements for security in the construction area;
- h. Safety measures, including redirecting pedestrian traffic around the construction zone;

- i. Manner of providing 24/7 access for staff and patient ingress to and egress from Building 5 of the main hospital (Urgent Care);
- j. Protective measures for the guard house and brick and iron fence that runs along 23rd Street;
- k. Manner in which emergency access for fire and police protection will be maintained; and
- l. Other practical concerns.

The Work Plan(s) shall take into account any other City-sponsored ZSFG campus improvement projects and shall use diligent, good faith efforts to ensure that the work to be performed pursuant to the Work Plan(s) does not unreasonably delay, increase the cost of, or impose additional conditions on such City projects or University's work at the Site. University shall not materially amend, modify or supplement an approved Work Plan for the ZSFG Campus Improvements work without the prior written consent of Director or his or her designee, which shall not be unreasonably withheld, conditioned or delayed.

5.7 During Construction

(a) **Good Construction and Engineering Practices.** Once construction has commenced, such construction shall be accomplished expeditiously, diligently and in accordance with good construction and engineering practices and applicable Laws. University shall undertake and cause its contractor to undertake commercially reasonable measures to minimize damage, disruption or inconvenience caused by such work and make adequate provision for the safety and convenience of all persons affected by such work. Dust, noise and other effects of such work shall be controlled using commercially reasonable methods customarily used to control deleterious effects associated with construction projects in populated or developed urban areas. University, while performing any construction with respect to the Project, shall undertake commercially reasonable measures in accordance with good construction practices to minimize the risk of injury or damage to adjoining portions of the Premises and ZSFG campus and the surrounding property, or the risk of injury to members of the public, caused by or resulting from the performance of such construction. Without limiting the generality of the foregoing, if City determines that Naturally Occurring Asbestos (NOA) may exist in soil disturbed during excavation and grading, then upon the recommendation of the ZSFG Industrial Hygienist University shall cause University's contractors to implement air sampling monitoring to the standards mandated by the ZSFG Industrial Hygienist during any "earthmoving and grading" scope.

(b) **Limited Project Team Parking on Campus.** Limited parking shall be provided on the ZSFG campus for University and University's project management team, including without limitation University's contractors, as provided in Section 2.2.

(c) **Utilities.** University, at its sole expense, shall arrange for the provision of utilities necessary for the Project, subject to Article 14 of the Ground Lease (requirement to use SFPUC electrical power). University shall construct new utility facilities as may be needed on the Research Facility Site and the Utility Installation Site.

(d) **Minimize Disruption to Internal Roadway.** The Parties acknowledge that the existing internal campus roadway and pedestrian access adjacent to the main hospital building known as Building P is critical for construction access by both University and City for their respective projects, and for access by staff, patients and visitors to Building 5 and the new main hospital building, and must be kept operational at all times during construction. University acknowledges that University may be required to provide temporary improvements to allow continued use of the roadway and pedestrian access, and that DPH anticipates making exterior improvements along the perimeter of Building 5 that will be concurrent University's construction of the Project.

(e) **Progress Meetings; Updates.** Without limiting the generality of Section 5.11, during periods of construction University and City Staff shall hold periodic progress meetings and shall

communicate and consult informally as frequently as reasonably necessary to facilitate coordination of construction.

(f) Changes in Final Construction Documents or Construction Contract for ZSFG Campus Improvements or Certain Design Elements of Research Facility. University will not make or cause to be made any material changes to the exterior design of the Research Facility as set forth in the Initial Research Facility Scheme, or once approved, any design change that exceeds \$1,000,000 in contract value to Final Construction Documents pertaining to the ZSFG Campus Improvements. Prior to making any such changes, University must notify the City in writing. All such proposed changes must be submitted to City with a written description of the requested changes and a set of plans or other relevant document highlighting the requested changes. City will respond to University within five (5) business days after receipt of University's complete request. If, following City's approval of the proposed change, University desires to incorporate the change into the Project, then University shall cause the Final Construction Documents to be revised and shall execute a change order for such change on University's contractor's standard form therefor, and the term "Final Construction Documents" shall mean the Final Construction Documents as modified by such change order.

(g) Work Stoppages. In the event of any stoppage in the construction work of more than thirty (30) days caused by University or its contractor or subcontractors, University shall in consultation with City take all reasonable steps to cure such stoppage. In the event of any stoppage in the construction work of more than thirty (30) days that is caused by the City, its Agents or Invitees, including any delay by City in responding to submittals or resubmittals of plans or other documents within the period provided for such response under this Agreement, City shall, in consultation with University, take all reasonable steps to cure such stoppage.

5.8 Submittals After Completion

Within ninety (90) days after completion of the Project, University shall deliver to City a complete set of as-built documents with respect to the Research Facility Building and with respect to the ZSFG Campus Improvements, showing, in detail, the exact location, depth or height, and size of any improvements constructed or installed, with mark-ups neatly drafted to indicate modifications from the original design drawings. Such as-built documents shall be provided in the form of full-size, hard paper copies and converted into electronic format consistent with the as-built documents prepared and delivered to University.

5.9 Prevailing Wages (Labor Standards).

University will require University's construction contractor ("**Contractor**") to comply with Sections 1770, 1771, 1772, 1773, 1774, and 1775 of the State of California Labor Code. The State of California Department of Industrial Relations has ascertained the general prevailing per diem wage rates in the locality in which the construction of the Project is to be performed for each craft, classification, or type of worker required to perform construction work. A copy of the general prevailing per diem wage rates will be on file at University's principal facility office, posted at the Project site, and will be made available to any interested party upon request. University shall require University's Contractor to pay not less than the prevailing wage rates, as specified in the schedule and any amendments thereto, to all workers employed by Contractor in the execution of the construction Project. University shall require all construction contracts or subcontracts will include the provision that all contractors or subcontractors shall pay not less than the prevailing rates to all workers employed by such contractors or subcontractors in the execution of the Work. Review of any civil wage and penalty assessment shall be made pursuant to section 17420 of the California Labor Code.

5.10 Cooperation and Coordination.

City and University shall use commercially reasonable efforts to coordinate construction activities for the Research Facility Building and any City construction projects on the ZSFG campus so as to minimize conflicts, construction delays, disruption in access to Building 5 or the main hospital, or in delays in meeting regulatory deadlines and approvals. At the request of either Party, the Parties shall cause their respective project managers or representatives from their respective contractors to meet to discuss their respective work plans for the hospital campus, together with a projected schedule for such activities, and the parties shall jointly develop a proposed schedule for use of the hospital campus that allows each party to proceed with its project in logical phases that minimize delays in or increases in the cost of such party's project or disruption to the hospital campus (the "**Joint Work Schedule**"), provided that if conflicts cannot be reasonably resolved to the mutual satisfaction of the parties, City projects will be given precedence in this planning endeavor. The Joint Work Schedule shall take into account what would be logical phasing of each project, as well as special scheduling requirements for any work, and shall be designed to minimize the risk that either party will damage installations or improvements of the other Party. University and City will each cause their respective agents and contractors to coordinate with agents and contractors to follow the Joint Work Schedule to the extent practicable. If either Party reasonably determines that it must make material modifications to its work plan or schedule, it will provide prompt notice to the other party of such required change and the parties shall use good faith efforts to equitably modify the Joint Work Schedule to accommodate and reflect such change.

5.11 Insurance Requirements

Before Close of Escrow, there are no insurance requirements under this Agreement (although University may have insurance requirements in any Permit to Enter, as applicable). From and after Close of Escrow, University's obligation to maintain insurance (i) with respect to the Research Facility Site will be as set forth in the Ground Lease, (ii) with respect to the ZSFG Campus Improvements Site will be as set forth in the Construction License and (iii) with respect to the Utility Installation Site will be as set forth in the Utility Easement Agreement, provided that, in each instance, University shall require University's contractor to comply with the insurance requirements of the approved construction contract for the Project.

5.12 City Rights of Access

City and its Agents will have the reasonable right of access to the Research Facility Site, the ZSFG Campus Improvements Site and the Utility Installation Site to the extent necessary to carry out the purposes of this Agreement, including, but not limited to, the inspection for purposes of confirming University's compliance with its obligations under this Agreement and inspection of the work being performed by University in constructing the Project. Except in the event of an emergency which reasonably requires less notice than that set forth below in order to circumvent an immediate and imminent threat to the health or safety of any person or substantial damage to property or to correct a condition that interferes with City's ability to properly provide access to or delivery of healthcare, City, acting in its proprietary capacity pursuant to this Agreement, shall provide forty-eight (48) hours' prior written or telephonic notice of City's entry onto the Research Facility Site or any portion of the ZSFG Campus Improvements Site or Utility Installation Site that is then an active construction site. To the extent reasonably practicable, City shall take reasonable action to minimize any interference with University's construction activities. Provided that University makes staff available promptly after notice of City's intent to conduct a site visit, University shall have the right to have its staff or Agents accompany the City on any such site visit. City will provide University promptly upon request with a copy of any written reports prepared by the City or its Agents in connection with any such inspection, subject to withholding documents otherwise privileged or confidential. City disclaims any warranties,

representations and statements made in any such reports, and will have no liability or responsibility with respect to any such warranties, representations and statements.

5.13 Construction Signs and Barriers

University shall provide appropriate construction barriers and construction signs on the Research Facility Site, the ZSFG Campus Improvements Site and the Utility Installation Site during the period of Construction. University may also post such construction signs as mutually and reasonably agreed upon by the Parties, identifying University, the Project, the provider of any financing or such other information as is customarily displayed at development sites. The size, design and location of such signs and the composition and appearance of any non-moveable construction barriers must be submitted to City for approval before installation, which approval may not be unreasonably withheld, conditioned or delayed.

6. COMPLETION AND ACCEPTANCE OF ZSFG CAMPUS IMPROVEMENTS; CONFIRMATION OF COMPLETION

6.1 Completion and Acceptance of ZSFG Campus Improvements

(a) **City Inspection and Acceptance Letter.** University shall provide City with written notice of completion of the ZSFG Campus Improvements promptly following completion of the same in accordance with the approved Final Construction Documents (a “**ZSFG Campus Improvement Completion Notice**”). Once University has provided City with written notice of completion of the ZSFG Campus Improvements, the City shall have ten (10) days to inspect the ZSFG Campus Improvements to determine whether the ZSFG Campus Improvements were constructed in conformity with the Final Construction Documents pertaining to the ZSFG Campus Improvements and applicable DPW Standards, and within five (5) business days after such inspection, City shall either provide University with written notice that the ZSFG Campus Improvements do not satisfy such requirements, in which case City shall identify with particularity the reasons for this determination, or City shall deliver to University a letter of acceptance from the Director of Health or his or her designee (the “**Acceptance Letter**”). Once University has received the Acceptance Letter, University shall cause the ZSFG Campus Improvements to be delivered to City in accordance with the terms and conditions of Section 6.1(d).

(b) **Maintenance.** University shall be responsible for the care, maintenance, and repair of the ZSFG Campus Improvements until acceptance thereof by the City, subject to the provisions of Section 37 of the Ground Lease regarding the Sidewalk Improvements (as defined in Section 37 of the Ground Lease). City shall assume the responsibility of maintaining the ZSFG Campus Improvements upon acceptance thereof by the City. University shall continue to be responsible for any damage to accepted ZSFG Campus Improvements caused by its construction activities as provided in this Agreement.

(c) **Warranty for Defects.** University hereby warrants to the City that all materials and equipment furnished by University for the ZSFG Campus Improvements shall be (i) new, (ii) of good and workmanlike quality, and (iii) in accordance with the Final Construction Documents related to the ZSFG Campus Improvements at the time of completion. City's acceptance of the ZSFG Campus Improvements shall not constitute a waiver of defects by the City. University covenants that all ZSFG Campus Improvements shall be free from defects in material or workmanship and shall perform satisfactorily for a period of one (1) year following City's acceptance of the ZSFG Campus Improvements, provided the warranty period for plant materials including trees shall be three (3) years (as applicable, the “**Warranty Period**”). University's liability in connection with the warranty pertaining to the ZSFG Campus Improvements under this Section 6.1(c) shall not extend to ordinary wear and tear or harm or damage from improper maintenance, operation or use of the ZSFG Campus Improvements. During the Warranty Period, University shall, as necessary, and upon receipt of a reasonable request in writing from City, cause any work that does not conform to the requirements set forth in the first sentence of this Section 6.1(c) to be corrected or repaired or cause any defects in the ZSFG Campus Improvements to be replaced, at its own

expense. During the Warranty Period, should University fail to act with reasonable promptness to make such correction, repair or replacement of the ZSFG Campus Improvements, or should an emergency require that correction, repair or replacement of such ZSFG Campus Improvements be made before University can be notified (or prior to University's ability to respond after notice) in order to circumvent an immediate and imminent threat to the health or safety of any person or substantial damage to property or to correct a condition that interferes with City's ability to properly provide access to or delivery of healthcare, City, at its option and provided that notice thereof is provided to University, may make the necessary correction, repair, or replacement or otherwise perform the necessary work to such ZSFG Campus Improvements, and University shall reimburse the City for the actual cost thereof. The provisions of this Section 6.1(c) shall survive the termination of this Agreement.

(d) Delivery of ZSFG Campus Improvements. University shall deliver the ZSFG Campus Improvements free of all liens and, upon completion thereof, shall provide to City fully executed waivers and releases of mechanics' and materialmans' liens, in the form prescribed under applicable Laws, from the general contractor and all other contractors and subcontractors performing work related to the ZSFG Campus Improvements, and at the time of such delivery shall remove all construction materials and construction equipment from the affected portions of the ZSFG campus and shall repair, at University's cost, any damage caused by such removal or caused by University's construction activities on the ZSFG campus. Upon City's acceptance of the ZSFG Campus Improvements, University shall either (i) assign to the City any rights it may have against third parties with respect to any defects in design or construction of the ZSFG Campus Improvements and obligations of design professionals to maintain professional liability insurance, or (ii) retain the right to enforce any such rights during the Warranty Period to the extent of University's obligations under Section 6.1(c), and take action to enforce such rights if needed as set forth in Section 5.5.

6.2 Completion of Research Facility Building and Utility Connections

(a) Before issuance by University's inspection agents of a Certificate of Occupancy or a Temporary Certificate of Occupancy, University shall not occupy the Research Facility Building for any purpose other than for construction purposes under this Agreement.

(b) For purposes of the Research Facility Building and the utility connections to be installed on the Utility Installation Site, "**Completed**" or "**Completion**" means completion of construction of the Research Facility Building or such utility connections, as applicable, in accordance with the Final Construction Documents relating to the same, as evidenced by University's receipt of a Certificate of Occupancy or a Temporary Certificate of Occupancy.

6.3 Completion of Research Facility Building and Utility Connections

Upon Completion of Construction and City's delivery of the Acceptance Letter, University shall remove all construction materials and construction equipment from the affected portions of the ZSFG campus and shall repair, at University's cost, any damage caused by such removal or caused by University's construction activities on the ZSFG campus.

6.4 Termination of Agreement Upon Completion of Construction and Acceptance of ZSFG Campus Improvements; Form of Termination Confirmation

(a) Form of Termination of Agreement. Upon (i) Completion of the Research Facility Building and the utility connections to be installed on the Utility Installation Site and (ii) City's delivery of the Acceptance Letter for the ZSFG Campus Improvements in accordance with Section 6.1(a), the Parties shall confirm in writing the satisfaction of the obligations under this Agreement and, if the Parties previously recorded a Memorandum of Agreement, the Parties shall execute and record in the

Official Records a Termination of Lease Disposition and Development Agreement in the form of Attachment E (the “**Termination of LDDA**”), or such other form as shall be reasonably agreed to by the Parties.

(b) **Termination of Agreement Upon Recordation.** Recording of the Termination of LDDA will terminate this Agreement; *provided, however*, that such termination shall not relieve University of its obligations to complete any deferred items identified in the Acceptance Letter (“**Deferred Items**”), nor shall such termination relieve either Party of its obligations pursuant to any of the other provisions of this Agreement that expressly survive such a termination. City’s determination regarding the satisfaction of University’s construction obligations is not directed to, and thus City assumes no responsibility for, engineering or structural matters or compliance with building codes, regulations, Regulatory Approvals or Laws insofar as they are applicable to University as provided in this Agreement.

7. ENCUMBRANCES AND LIENS

7.1 No Mortgage of Fee

University may not under any circumstance engage in any financing or other transaction creating any mortgage, lien or other encumbrance on City’s fee interest in the Property. City’s fee interest in the Property shall not be subordinated under any circumstance whatsoever to any Mortgage (as defined in the Ground Lease) allowed under the Ground Lease.

7.2 Leasehold Liens

Following the Close of Escrow, University shall, pursuant to the terms and conditions of the Ground Lease, have the right to assign, mortgage or encumber any or all of its right, title and interest in the Property by way of leasehold mortgages, deeds of trust or other security instruments to any Mortgagee (as defined in the Ground Lease) under a Mortgage permitted under the Ground Lease. University may assign, mortgage or encumber its interest under this Agreement to any Mortgagee permitted under the Ground Lease under a Mortgage permitted under the Ground Lease, and in such event all of the provisions set forth in the Ground Lease relating to the rights of Mortgagees shall also apply to the rights and obligations of University and City under this Agreement.

7.3 Mechanics’ Liens

University shall keep the Site, this Agreement, and any Improvements thereon free from any liens arising out of any work performed, materials furnished or obligations incurred by University or its Agents. If University does not, within thirty (30) days following notice of the imposition of any such lien, cause the same to be released of record or sufficiently bonded over in City’s reasonable determination, it shall be a material default under this Agreement, and City shall have, in addition to all other remedies provided by this Agreement or by Law, the right but not the obligation to cause the same to be released or bonded over by such means as it shall deem proper, including without limitation, payment of the claim giving rise to such lien. All sums paid by City for such purpose and all reasonable out of pocket expenses incurred by City in connection therewith shall be payable to City by University within thirty (30) days following written demand by City, which demand shall include reasonable supporting documentation of such expenses. City shall keep the Site and any Improvements thereon free from any liens arising out of any work performed, materials furnished or obligations incurred by City or its Agents.

7.4 Contests

University may contest the validity or amount of any mechanic's lien related to the Property and to pursue any remedies associated with such contest; *provided, however*, such contest and pursuit of remedies does not subject the Property or any portion of it to forfeiture or sale and such contest shall be subject to all of the terms and conditions of the Ground Lease, including, but not limited to, the provision of security.

8. ASSIGNMENT AND TRANSFER

8.1 Prohibition Against Transfer of the Agreement

University may not sell, convey, assign, transfer, alienate or otherwise dispose of all or any of its interest or rights in this Agreement, including, but not limited to, any right or obligation to acquire a leasehold estate in the Research Facility Site, to develop the Research Facility Site, the ZSFG Campus Improvements Site or the Utility Installation Site or to otherwise do any of the above or make any contract or agreement to do any of the same (collectively, a "**Transfer**"), without in each instance obtaining the prior written approval of City, which approval may be given, withheld, or conditioned in City's sole discretion. Consent to any one Transfer will not be a waiver of City's right to require such consent for each and every subsequent Transfer. University shall reimburse City for its reasonable costs of reviewing a proposed Transfer, as provided in the Ground Lease, even if such cost is incurred prior to Close of Escrow.

8.2 No Release of Obligations

Except as expressly provided in the Ground Lease or by the specific written approval of City, which City may give or withhold in its sole discretion, no Transfer will relieve University or any other party from any obligations under this Agreement or the Ground Lease.

9. [RESERVED]

10. DEFAULTS, REMEDIES AND TERMINATION

10.1 Events of Default — University

Except to the extent caused directly or indirectly by a failure of City to comply with the terms of this Agreement, and subject to the provisions of Section 12.1, any one or more of the following constitute an Event of Default by University:

(a) University fails to pay any amount required to be paid under this Agreement when due and such failure continues for sixty (60) days following written notice from City to University;

(b) Provided that all conditions to University's obligation to the Close of Escrow as set forth in Section 2.5 have been satisfied or waived, University does not accept Delivery of the Property in accordance with this Agreement, the Ground Lease, the Construction License, the Utility Easement Agreement or any other agreement executed by City and University with respect to the Project within the times set forth therein, and such failure continues for a period of fifteen (15) business days after written notice from City;

(c) Subject to Force Majeure and Litigation Force Majeure, University fails to commence in accordance with the Schedule of Performance, or after commencement fails to prosecute

diligently to Completion, the Construction of the Improvements to be constructed on the Research Facility Site, the ZSFG Campus Improvements Site and the Utility Installation Site on or before the required completion dates set forth in the Schedule of Performance, or abandons or substantially suspends Construction for more than sixty (60) consecutive days, and such failure to commence or prosecute diligently to completion, abandonment or suspension continues for a period of sixty (60) days (or such later date as agreed to by City in its sole discretion) from the date of written notice from City, except for Deferred Items, if any, and that failure to prosecute diligently to Completion is due to the fault of University or University's Agents;

(d) University does not submit such of the Construction Documents pertaining to design as are required to be submitted within the times provided in this Agreement and the Schedule of Performance or by any permitted Site Permit, and University does not cure such default within sixty (60) days after the date of written demand by City to University;

(e) After Close of Escrow, University commits an uncured Event of Default under the Ground Lease, as Event of Default is defined in the Ground Lease, but such Event of Default under this Agreement shall be deemed cured if the Event of Default as defined in the Ground Lease is cured pursuant thereto;

(f) University files a petition for relief, or an order for relief is entered against University, in any case under applicable bankruptcy or insolvency Law, or any comparable Law that is now or hereafter may be in effect, whether for liquidation or reorganization, which proceedings if filed against University are not dismissed or stayed within one hundred twenty (120) days;

(g) A writ of execution is levied on this Agreement that is not released within one hundred twenty (120) days, or a receiver, trustee or custodian is appointed to take custody of all or any material part of the property of University, which appointment is not dismissed within one hundred twenty (120) days;

(h) University makes a general assignment for the benefit of its creditors;

(i) Subject to University's right to self-insure pursuant to Section 5.11, University fails to maintain the insurance required pursuant to Section 5.11, or fails to deliver certificates or policies as required pursuant to that Section, and such failure continues for sixty (60) days following written notice from City to University (provided, University's failure to have insurance as and when required will not affect or increase City's liability in any way under this Agreement);

(j) Without limiting any other provisions of this Section, subject to Force Majeure and Litigation Force Majeure, University violates any other covenant, or fails to perform any other obligation to be performed by University under this Agreement at the time such performance is due, and such violation or failures continues without cure for more than thirty (30) days after written notice from City specifying the nature of such violation or failure, or, if such cure cannot reasonably be completed within such thirty (30)-day period, if University does not within such thirty (30)-day period commence such cure, or having so commenced, does not prosecute such cure with diligence and dispatch to completion within a reasonable time thereafter;

(k) University executes any mortgage, encumbrance or lien not permitted by this Agreement or the Ground Lease, or such mortgage, encumbrance or lien is placed of record (regardless of whether or when it is foreclosed or otherwise enforced); and

(l) Any Transfer made in violation of Section 8.1.

10.2 Remedies of City

Upon the occurrence and during the continuance of an Event of Default by University, City has the remedies set forth below:

(a) **Before Close of Escrow.** For an Event of Default by University that occurs before the Close of Escrow, City is entitled to all rights and remedies at law or in equity, including but not limited to actual out of pocket damages and termination of this Agreement, upon thirty (30) days' written notice to University after the applicable cure period with respect to such an Event of Default has expired.

(b) **After Close of Escrow.** For an Event of Default by University that occurs after the Close of Escrow, City is entitled to the same rights and remedies as set forth in Article 23 of the Ground Lease. Upon the occurrence and during the continuance of such an Event of Default, City shall have all rights and remedies available at law or equity, including such equitable relief that may be appropriate to the circumstances of such Event of Default, provided (1) City shall first seek injunctive relief, an order for specific performance, and/or damages, and (2) City shall not have the right to terminate this Agreement except (i) following a material breach for which termination is a permitted remedy under California law; (ii) which has been finally adjudicated by the Superior Court of California, County of San Francisco, with jurisdiction over the Parties and this Lease as the appropriate remedy and Tenant has either exhausted all appeals or failed to file an appeal thereof within the required time frame (including any available extensions), and (iii) the breach cannot be remedied by money or by some other non-termination remedy. All of City's rights and remedies shall be cumulative, and except as may be otherwise provided by applicable Law, the exercise of any one or more rights shall not preclude the exercise of any others. Any termination of this Agreement by City shall result in a simultaneous termination of the Ground Lease, and any termination of the Ground Lease by City shall result in a simultaneous termination of this Agreement.

(c) **Nonliability of University's Member, Partners, Shareholders, Directors Officers and Employees.** No member, officer, partner, agent, shareholder, director or employee of University will be personally liable to City in the event of an Event of Default by University or for any amount that may become due to City or with respect to any obligations under the terms of this Agreement or the Ground Lease including, without limitation, the indemnity obligations set forth in Section 3.5.

10.3 Events of Default – City

Any one or more of the following constitute an Event of Default by City:

(a) Provided that all conditions to City's obligation to the Close of Escrow as set forth in Section 2.4 have been satisfied or waived by City, City fails to make Delivery of the Property in violation of this Agreement within the times set forth in this Agreement, and such failure continues for thirty (30) days after written notice from University;

(b) Without limiting subsection (a) above or subsection (c) below, subject to Force Majeure and Litigation Force Majeure, City violates any other covenant, or fails to perform any other obligation to be performed by City under this Agreement or the Ground Lease at the time such performance is due and such violation or failure continues without cure for more than thirty (30) days after the written notice by University, specifying the nature of such violation or failure, or, if such cure cannot reasonably be completed within such thirty (30)-day period, if City does not within such thirty (30)-day period commence such cure, or having so commenced does not prosecute such cure with diligence and dispatch to completion within a reasonable time thereafter; and

(c) City fails to pay any amount required to be paid under this Agreement when due and such failure continues for thirty (30) days following written notice from University to City.

10.4 Remedies of University

Upon the occurrence of an Event of Default by City, University has the remedies set forth below:

(a) **Before Close of Escrow.** For an Event of Default by City that occurs before the Close of Escrow, University is entitled to all rights and remedies at law or in equity, including but not limited to actual out of pocket damages and termination of this Agreement, upon thirty (30) days' written notice to City after the applicable cure period with respect to such an Event of Default has expired.

(b) **After Close of Escrow.** For an Event of Default by City that occurs after the Close of Escrow, University is entitled to the same rights and remedies as set forth in Article 26 of the Ground Lease. Upon the occurrence and during the continuance of such an Event of Default, University shall have all rights and remedies available at law or equity, including such equitable relief that may be appropriate to the circumstances of such Event of Default, provided (1) University shall first seek injunctive relief or an order for specific performance, where appropriate to the circumstances, (2) University shall not have the right to terminate this Agreement except following a material breach for which termination is a permitted remedy under California law and the breach cannot be remedied by money or by some other remedy, and (3) any damages claim shall be limited to actual out of pocket damages. City acknowledges that an Event of Default by City hereunder will be conclusively deemed to be a breach of an agreement to transfer real property that cannot be adequately relieved by pecuniary compensation as set forth in California Civil Code Section 3387. All of University's rights and remedies shall be cumulative, and except as may be otherwise provided by applicable Law, the exercise of any one or more rights shall not preclude the exercise of any others. Any termination of this Agreement by University shall result in a simultaneous termination of the Ground Lease, and any termination of the Ground Lease by University shall result in a simultaneous termination of this Agreement.

(c) **Nonliability of City Members, Officials and Employees.** No member, official, commissioner or employee of City will be personally liable to University, or any successor in interest, in the event of an Event of Default by City or for any amount that may become due to University or successor or on any obligations under the terms of this Agreement.

10.5 General

(a) **Institution of Legal Actions.** Subject to the limitations contained in this Agreement, either Party may institute legal action to cure correct or remedy any Event of Default, to recover damages for any default or to obtain any other remedy consistent with the terms of this Agreement. Such legal actions shall be instituted in the Superior Court of City and County of San Francisco, State of California, in any other appropriate court in that City and County or, if appropriate, in the Federal District Court in San Francisco, California.

(b) **Acceptance of Service of Process.** In the event that any legal action is commenced by University against City, service of process on City shall be made by personal service upon City in such manner as may be provided by Law. In the event that any legal action is commenced by City against University, service of process on University shall be made by personal service upon University at the address provided for notices or such other address as shall have been given to City by University under Section 12.2, or in such other manner as may be provided by Law, and will be valid whether made within or outside of the State of California.

(c) **Rights and Remedies Are Cumulative.** Except with respect to any rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the Parties to this Agreement, whether provided by law, in equity or by this Agreement, are cumulative, and not in derogation of other rights and remedies found in this Agreement and, after Delivery, in the Ground Lease. The exercise by either Party of any one or more of such remedies will not preclude the exercise by it, at the same or a different time, of any other such remedies for the same default or breach or of any of its remedies for any other default or breach by the other Party. No waiver made by either Party with respect to the performance, or manner or time of performance, or any obligation of the other party or any condition to its own obligation under this Agreement will be considered a waiver with respect to the particular obligation of the other party or condition to its own obligation beyond those expressly waived to the extent of such waiver, or a waiver in any respect in regard to any other rights of the Party making the waiver or any other obligations of the other Party.

(d) **Limited Damages.** The Parties are entering into this Agreement for the public good, and not as a means to create liabilities or profits for either Party. Accordingly, in any instance where a Party is liable to the other for damages, it shall be limited to actual out of pocket damages incurred by that Party and shall not include lost profits, the cost differential of alternative sites, or incidental, consequential or punitive damages. With respect to any indemnity, actual damages shall include the actual amount paid to third parties that falls within the scope of the indemnity. The Parties would not enter into this Agreement without the limitation on damages set forth in this Section 10.5(d).

10.6 Plans and Data

If either Party terminates this Agreement before Completion of the Improvements, University shall deliver to City copies of any and all reports and studies in its possession regarding the Property and copies of all Construction Documents within thirty (30) days after written demand from City, in each case subject to any restrictions on the confidentiality and/or transmission of the same. The foregoing shall be provided without any representations and warranties with respect to the same and University expressly disclaims any representations, warranties and statements made in any such reports, studies and other materials delivered pursuant to this Section 10.6 and will have no liability or responsibility with respect thereto.

10.7 Return of Site

If this Agreement terminates due to an Event of Default by University, University shall, at its sole expense and as promptly as practicable, return the Property to City in a condition not less safe than the condition of the Property on the Effective Date, and unless otherwise requested by City, shall remove all loose building materials and debris present at the Property resulting from University's Construction activities. In the event that University is required to return the Property as provided above in this Section 10.7, University shall obtain those permits customary and necessary to enter upon the Property in order to complete such work and shall otherwise comply with applicable Law pertaining to University with respect to such work. In such event, City shall cooperate with University in University's efforts to obtain such permits, provided that City will not be required to expend any money or undertake any obligations in connection therewith. Notwithstanding any such termination, the provisions of this Section shall survive any termination of this Agreement.

11. SPECIAL PROVISIONS

University agrees to comply with the following, based on the requirements in effect as of the Effective Date, and as they may be amended between the Effective Date and the Ground Lease Commencement Date (as defined in the Ground Lease).

11.1 Covenant Not to Discriminate.

(a) **Covenant Not to Discriminate.** In the performance of this Agreement, University covenants and agrees that it will not discriminate against an applicant for employment because of race, color, religion, sex, age, ancestry, national origin, sexual orientation, handicap, veteran's status, medical condition (as defined in Section 12926 of the State of California Government Code), marital status, or citizenship (within the limits imposed by law or University's policy) because of habit, local custom, or otherwise. All applicants for employment and employees are to be treated without regard to their race, color, religion, sex, age, ancestry, and national origin, sexual orientation, handicap, veteran's status, medical condition (as defined in Section 12926 of the State of California Government Code), marital status, or citizenship (within the limits imposed by law or University's policy). Such equal treatment shall apply, but not be limited to, employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

(b) **Other Contracts.** University shall include in all contracts relating to the Improvements to be constructed on the Property a non-discrimination clause applicable to such contractor in substantially the form of Section 11.1(a) above.

11.2 Mitigation Measures

In order to mitigate any significant environmental impacts of development of the Property, University agrees that University will comply with the mitigation measures and General Plan Referral Conditions described in, respectively, Attachment D-1 and Attachment D-2.

11.3 MacBride Principles — Northern Ireland

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

11.4 Tropical Hardwood Ban/Virgin Redwood Ban

Pursuant to Section 804(b) of the San Francisco Environment Code, City urges companies not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product. Except as permitted by City under application of Sections 802(b) and 803(b) of the San Francisco Environment Code, University shall not provide any items to the rehabilitation or development of the Property, or otherwise in the performance of this Agreement that are tropical hardwoods, tropical hardwood wood products, virgin redwood, or virgin redwood products.

11.5 Tobacco Product Advertising Prohibition

University acknowledges and agrees that no advertising of cigarettes or tobacco products shall be allowed on the Property. The foregoing advertising prohibition includes the placement of the name of a company producing, selling or distributing cigarettes or tobacco products or the name of any cigarette or tobacco product in any promotion of any event or product. This prohibition does not apply to any advertisement sponsored by a state, local or nonprofit entity designed to (a) communicate the health hazards of cigarettes and tobacco products or (b) encourage people not to smoke or to stop smoking.

11.6 Drug-Free Workplace

University acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1989, the unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited on City premises. University and its employees, agents or assigns shall comply with all terms and provisions of such Act and the rules and regulations promulgated thereunder.

11.7 Pesticide Restrictions

DPH, in its operation of the ZSFG campus, is subject to the provisions of Chapter 3 of the San Francisco Environment Code (the Integrated Pest Management Program Ordinance or “**IPM Ordinance**”), which describes an integrated pest management (“**IPM**”) policy to be implemented by all City departments. Because of the impact such pesticide use could have on the balance of the ZSFG campus, University agrees to confer with City staff prior to using or applying pesticides on the outdoor areas of the Property (i.e., outside of the Improvements), or contracting with any party to provide pest abatement or control services, on the outdoor areas of Property to allow DPH staff to confer with the San Francisco Department of the Environment to ascertain the impact of such activity on the balance of the ZSFG campus. University shall (i) list, to the extent reasonably possible, the types and estimated quantities of pesticides that University may need to apply to the exterior portions of the Premises, (ii) describe the steps University will take with respect to such outdoor areas that are consistent with City’s IPM Policy described in Section 300 of the IPM Ordinance and (iii) identify, by name, title, address and telephone number, an individual to act as University’s primary contact person with the City with regard to such pesticide application. University shall comply, and shall require all of University’s contractors to comply, with the IPM plan approved by the City and shall comply with the requirements of Sections 300(d), 302, 304, 305(f), 305(g) and 306 of the IPM Ordinance as if University were a City department. Among other matters, the provisions of the IPM Ordinance to which DPH is subject: (a) provide for the use of pesticides only as a last resort, (b) prohibit the use or application of pesticides on property owned by the City, except for pesticides granted an exemption under Section 303 of the IPM Ordinance (including pesticides included on the most current Reduced Risk Pesticide List compiled by City’s Department of the Environment), (c) impose certain notice requirements, and (d) require DPH to keep certain records and to report to the Department of the Environment all pesticide use on City property.

University agrees that if University or University’s contractor will apply pesticides to outdoor areas at the Property, University will first obtain a written recommendation from a person holding a valid Agricultural Pest Control Advisor license issued by the California Department of Pesticide Regulation (“**CDPR**”) and any such pesticide application shall be made only by or under the supervision of a person holding a valid, CDPR-issued Qualified Applicator certificate or Qualified Applicator license.

11.8 Substitute for City’s Apprenticeship and Local Hiring Ordinance

University, as the second largest employer in San Francisco and a critical component of San Francisco’s important health and life science sectors, recognizes its ability to provide job training and

opportunity to San Francisco residents. University and City have agreed to work together to ensure resident workers are made aware of construction employment opportunities, and are fairly and equitably considered for hire at the time job opportunities become available in connection with Project, in the manner described in Attachment O.

11.9 University Conflicts of Interest

Through its execution of this Agreement, University certifies that it does not know of any fact that would constitute a conflict of interest pursuant to the Regents of the University of California's Conflict of Interest Code created pursuant to The Political Reform Act, Government Code section 81000, et seq., and agrees that if University becomes aware of any such fact during the term of this Agreement then University shall immediately notify the City. University further states that it is familiar with the provisions of Section 15.103 of the San Francisco Charter, Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Sections Section 87100 et seq. and Sections Section 1090 et seq. of the Government Code of the State of California, and certifies that it knows of no facts that would constitute a violation of said provisions, and agrees that if University becomes aware of any such fact during the term of this Agreement then University shall promptly notify the City. University further certifies that it has made a complete disclosure to City of all facts bearing on any possible interests, direct or indirect, which University believes any officer or employee of City presently has or will have in this Agreement or in the performance thereof or in any portion of the profits thereof. Willful failure by University to make such disclosure, if any, shall constitute grounds for City's termination and cancellation of this Agreement.

11.10 Prohibition of Political Activity with City Funds

Through its execution of this Agreement, University acknowledges that no funds appropriated by City for this Agreement may be expended for organizing, creating, funding, participating in, supporting, or attempting to influence any political campaign for a candidate or for a ballot measure (collectively, "**Political Activity**"). Accordingly, an employee working in any position funded under this Agreement shall not engage in any Political Activity during the work hours funded hereunder, nor shall any equipment or resource funded by this Agreement be used for any Political Activity.

11.11 Preservative Treated Wood Containing Arsenic

University may not purchase preservative-treated wood products containing arsenic in the performance of this Agreement. The term "preservative-treated wood containing arsenic" shall mean wood treated with a preservative that contains arsenic, elemental arsenic, or an arsenic copper combination, including, but not limited to, chromated copper arsenate preservative, ammoniacal copper zinc arsenate preservative, or ammoniacal copper arsenate preservative. University may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared and adopted by the Department of the Environment. This provision does not preclude University from purchasing preservative-treated wood containing arsenic for saltwater immersion. The term "saltwater immersion" shall mean a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

11.12 Compliance with Disabled Access Laws

University acknowledges that, pursuant to the Disabled Access Laws, programs, services and other activities provided by a public entity to the public, whether directly or through University or contractor, must be accessible to the disabled public.

11.13 Graffiti Removal

From and after the Close of Escrow, University shall remove all graffiti from the Research Facility Site within ten (10) days of the earlier of University's (a) discovery or notification of the graffiti or (b) receipt of notification of the graffiti from the Department of Public Works. "Graffiti" shall not include: (1) any sign or banner that is authorized by, and in compliance with, the applicable requirements of the San Francisco Public Works Code, the San Francisco Planning Code or the San Francisco Building Code; or (2) any mural or other painting or marking on the property that is protected as a work of fine art under the California Art Preservation Act (California Civil Code Sections 987 et seq.) or as a work of visual art under the Federal Visual Artists Rights Act of 1990 (17 U.S.C. §§ 101 et seq.).

11.14 Budgetary and Fiscal Requirements of City Charter

The terms of this Agreement shall be governed by and subject to the budgetary and fiscal provisions of the City's Charter. Notwithstanding anything to the contrary contained in this Agreement, there shall be no obligation for the payment or expenditure of money by City under this Agreement unless the Controller of the City and County of San Francisco first certifies, pursuant to Section 3.105 of the City's Charter, that there is a valid appropriation from which the expenditure may be made and that unencumbered funds are available from the appropriation to pay the expenditure.

12. GENERAL PROVISIONS

12.1 Force Majeure – Extension of Time of Performance

(a) **Effect of Force Majeure.** For the purpose of any of the provisions of this Agreement, including, without limitation, the Schedule of Performance, neither University, University's Agents, University's Contractors of any tier, any University successor in interest, City, City's Agents, nor any City successor in interest (the "**Delayed Party**," as applicable) will be considered in breach of or default in any obligation or satisfaction of a condition to an obligation of the other Party in event of Force Majeure or Litigation Force Majeure.

(b) **Definition of Force Majeure.** "**Force Majeure**" means events other than Litigation Force Majeure that cause delays in the Delayed Party's performance of its obligations under this Agreement, or in the satisfaction of a condition to the other Party's performance under this Agreement, due primarily to causes beyond the Delayed Party's control and not caused by the acts or omissions of the Delayed Party (excluding, in any case, a Delayed Party's performance of the payment of money required under the terms of this Agreement), including, but not restricted to: acts of God or of the public enemy; war; explosion; invasion; insurrection; rebellion; riots; acts of the government (including any general moratorium in the issuance of permits applicable to the Site or the Improvements, provided, however, in the absence of such a moratorium, acts of the government relating to issuance of building permits or other applicable Regulatory Approvals are governed by Section 12.1(d)); fires; floods; tidal waves; epidemics; quarantine restrictions; freight embargoes; earthquakes; unusually severe weather; delays of contractors or subcontractors due to any of these causes; the unanticipated presence of Hazardous Materials or other concealed conditions on the Site or Improvements that would not have reasonably been discovered through due diligence and that would delay or materially adversely impair University's ability to construct the Project; substantial interruption of work because of other construction by third parties in the immediate vicinity of the Site; archeological finds on the Site; strikes, and substantial interruption of work because of labor disputes; inability to obtain materials or reasonably acceptable substitute materials (provided that University has ordered such materials on a timely basis and University is not otherwise at fault for such inability to obtain materials); changes in state or federal law that would delay or materially adversely impair University's ability to construct the Project. Force

Majeure, as it relates to University's obligations only, shall also include City's failure to act within a reasonable time in keeping its standard practices, or (when applicable) within the specific timeframes required by this Agreement, whenever University requests an approval or consent from City, provided Force Majeure shall not include any delays caused by University's failure to submit complete applications and materials required in connection with any such request for approval or consent. In the event of the occurrence of any such Force Majeure delay, the time or times for performance of the obligations of University or City will be extended for the period of the delay; provided, however, within thirty (30) days after the beginning of any such delay, the Delayed Party shall have first notified the other Party in writing of the cause or causes of such delay and claimed an extension for the reasonably estimated period of the delay. Notwithstanding anything to the contrary in this Section, the lack of credit or financing (unless such lack is itself a result of some other event of Force Majeure) shall not be considered to be a matter beyond University's control and therefore no event caused by a lack of such financing in and of itself shall be considered to be an event of Force Majeure for purposes of this Agreement.

(c) **Definition of Litigation Force Majeure.** "Litigation Force Majeure" means any action or proceeding before any court, tribunal, or other judicial, adjudicative or legislative decision-making body, including any administrative appeal, brought by a third party, (a) that seeks to challenge the validity of any action taken by City or University in connection with the Project, including City's or University's approval, execution, and delivery of this Agreement or the Ground Lease and its performance hereunder, or other action by University or its Board of Regents or City or any of its commissions approving the execution and delivery of this Agreement, the performance of any action required or permitted to be performed by University or City hereunder, or any findings upon which any of the foregoing are predicated, or (b) which seeks to challenge the validity of any other Regulatory Approval. Performance by a party hereunder shall be deemed delayed or made impossible by virtue of Litigation Force Majeure during the pendency thereof, and until a judgment, order, or other decision resolving such matter in favor of the party whose performance is delayed has become final and unappealable. Under no circumstances shall the delay attributable to an event of Litigation Force Majeure extend beyond twenty-four (24) months unless both Parties in each of their respective sole and absolute discretion expressly waive such limitation. The Parties shall each proceed with due diligence and, shall cooperate with one another to defend the action or proceeding or take other measures to resolve the dispute that is the subject of such action or proceeding.

(d) **Permits.** If University is diligently proceeding to obtain necessary building permits or addenda as required by Section 2.10(b) or other applicable Regulatory Approvals for the Improvements, Force Majeure includes University's inability to obtain any such building permits or addenda or other Regulatory Approvals.

(e) **Limitations Before Close of Escrow.** Before the Close of Escrow, Force Majeure delays (other than Litigation Force Majeure or delays described in Section 12.1(d)) will be limited to an aggregate of sixty (60) months. At any time after the expiration of such sixty (60)-month period, the other Party may terminate the Agreement by giving thirty (30) days' notice to the Delayed Party.

12.2 Notices

(a) **Manner of Delivery.** Except as otherwise expressly provided in this Agreement, all notices, demands, approvals, consents and other formal communications between City and University required or permitted under this Agreement shall be in writing and shall be deemed given and effective (i) on the date of receipt if given by personal delivery on a business day (or the next business day if delivered personally on a day that is not a business day), or (ii) if mailed, three (3) business days after deposit with

the U.S. Postal Service for delivery by United States registered or certified mail, first class postage prepaid, or (iii) on the first business day after deposit with a reputable overnight delivery service, all fees for such delivery prepaid, in each case to City or University at their respective addresses for notice designated below. For convenience of the Parties, copies of notices may also be given by telefacsimile to the facsimile number set forth below or such other number as may be provided from time to time by notice given in the manner required under this Agreement; however, neither Party may give official or binding notice by telefacsimile or email.

(b) Request for Approval. In order for a request for any approval required under the terms of this Agreement to be effective, it shall be clearly marked "Request for Approval" and state (or be accompanied by a cover letter stating) substantially the following:

(i) the section of this Agreement under which the request is made and the action or response required;

(ii) if applicable, the period of time as stated in this Agreement within which the recipient of the notice shall respond; and

(iii) if specifically stated in the Agreement that the failure to object to the notice within the stated time period will be deemed to be the equivalent of the recipient's approval of or consent to the request for approval that is the subject matter of the notice.

In the event that a request for approval states a period of time for approval that is less than the time period provided for in this Agreement for such approval, the time period stated in this Agreement shall be the controlling time period. In no event shall a recipient's approval of or consent to the subject matter of notice be deemed to have been given by its failure to object to such notice if such notice (or the accompanying cover letter) does not comply with the requirements of this Section.

(c) Addresses for Notices. All notices shall be properly addressed and delivered to the Parties at the addresses set forth below or at such other addresses as either Party may designate by written notice given in the manner provided in this Section:

To University: The Regents of the University of California
Office of the President
1111 Franklin Street, Sixth Floor
Oakland, California 94607
Attn: Director of Real Estate

With a copy to: University of California, San Francisco
Real Estate Services
654 Minnesota Street, 2nd Floor
San Francisco, California 94143-0287
Attn: Director, Real Estate Services

To City:

City and County of San Francisco
Real Estate Division
25 Van Ness Ave., Suite 400
San Francisco, California 94112
Attn: Director of Property

San Francisco Department of Public Health
101 Grove Street
San Francisco, CA 94102
Attn: Director of Health

Office of City Attorney
City Hall, Room 234
1 Dr. Carlton B. Goodlett Place
San Francisco, California 94102-4682
Attention: Real Estate/Finance Team

Director of Department of Public Works
Department of Public Works
City and County of San Francisco
Room 348, City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, California 94102

12.3 Conflict of Interest

No member, official or employee of City may have any personal interest, direct or indirect, in this Agreement nor shall any such member, official or employee participate in any decision relating to this Agreement that affects her or his personal interest or the interests of any corporation, partnership or association in which she or he is interested directly or indirectly.

12.4 Inspection of Books and Records

City, including its Agents, has the right, during the continuance of an uncured Event of Default, to inspect the books and records of University pertaining to University's compliance with its obligations under this Agreement, provided that City shall provide at least ten (10) business days' prior written notice of any such inspection, which shall take place at the offices of University where such books and records are maintained, and City shall, to the maximum extent allowed by applicable Law, keep strictly confidential any such information that University reasonably and in good faith determines is proprietary and clearly and conspicuously so designates.

12.5 Time of Performance

(a) **Expiration.** All performance dates (including cure dates) expire at 5:00 p.m., San Francisco, California time, on the performance or cure date.

(b) **Weekends and Holidays.** A performance date that falls on a Saturday, Sunday or City holiday is deemed extended to the next working day.

(c) **Days for Performance.** All periods for performance specified in this Agreement in terms of days shall be calendar days, and not business days, unless otherwise expressly provided in this Agreement.

(d) **Time of the Essence.** Time is of the essence with respect to each required completion date in the Schedule of Performance, subject to the provisions of Section 12.1 relating to Force Majeure and Litigation Force Majeure and subject to the cure provisions of Section 10.1(c).

12.6 Interpretation of Agreement

(a) **Attachments.** Whenever an “Attachment” is referenced, it means an exhibit or attachment to this Agreement unless otherwise specifically identified. All such exhibits are incorporated in this Agreement by reference.

(b) **Captions.** Whenever a section or paragraph is referenced, it refers to this Agreement unless otherwise specifically identified. The captions preceding the sections of this Agreement and in the table of contents 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 item, 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) **No Presumption Against Drafter.** This Agreement has been negotiated at arm’s length and between Persons sophisticated and knowledgeable in the matters dealt with herein. In addition, experienced and knowledgeable legal counsel has represented each Party. Accordingly, this Agreement shall be interpreted to achieve the intents and purposes of the Parties, without any presumption against the Party responsible for drafting any part of this Agreement (including, but not limited to California Civil Code Section 1654).

(e) **Costs and Expenses.** The Party on which any obligation is imposed in this Agreement shall be solely responsible for paying all costs and expenses incurred in the performance of such obligation, unless the provision imposing such obligation specifically provides to the contrary.

(f) **Agreement 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 of this Agreement.

(g) **Approvals.** Unless this Agreement otherwise expressly provides or unless City’s Charter otherwise requires, all approvals, consents or determinations to be made by or on behalf of City or City under this Agreement shall be made by the Director of Property or his designee, and the Director of Property is hereby authorized to make such approvals, consents and determinations.

12.7 Successors and Assigns

This Agreement is binding upon and will inure to the benefit of the successors and assigns of City and University, subject to the limitations set forth in Section 8. Where the term “University” or “City” is used in this Agreement, it means and includes their respective successors and assigns.

12.8 No Third Party Beneficiaries

This Agreement is made and entered into for the sole protection and benefit of City and University and their successors and assigns. No other Person shall have or acquire any right or action based upon any provisions of this Agreement.

12.9 Real Estate Commissions

University and City each represents that it engaged no broker, agent or finder in connection with this transaction. In the event any broker, agent or finder makes a claim, the Party through whom such claim is made agrees to Indemnify the other Party from any Losses arising out of such claim. The foregoing shall survive the termination of this Agreement.

12.10 Counterparts

This Agreement may be executed in counterparts, each of which is deemed to be an original, and all such counterparts constitute one and the same instrument.

12.11 Entire Agreement

This Agreement (including the Attachments) constitutes the entire agreement between the Parties with respect to the subject matter of this Agreement and supersedes all negotiations or previous agreements between the Parties with respect to all or any part of the terms and conditions mentioned in or incidental to this Agreement. No parole evidence of any prior or other agreement shall be permitted to contradict or vary the terms of this Agreement.

12.12 Amendment

Neither this Agreement nor any of its terms may be terminated, amended or modified except by a written instrument executed by the Parties.

12.13 Governing Law

The Laws of the State of California shall govern the interpretation and enforcement of this Agreement. As part of the consideration for City’s entering into this Agreement, University agrees that all actions or proceedings arising directly or indirectly under this Agreement may be litigated in courts having sites within the State of California having jurisdiction of the dispute arising under this Agreement, and University expressly consents to the jurisdiction of any such local, state or federal court, and consents that any service of process in such action or proceeding may be made by personal service upon University wherever University may then be located, or by certified or registered mail directed to University at the address set forth in Section 12.2 for the delivery of notices.

12.14 Recordation

A Memorandum of Agreement will be recorded by University in the Official Records on or after the Effective Date. Either Party shall, promptly upon request of the other Party, deliver to such requesting Party a duly executed and acknowledged quitclaim deed, suitable for recordation in the Official Records and in form and content reasonably satisfactory to the requesting Party (and City Attorney in the event that City is the requesting Party), for the purpose of effecting the termination of the non-requesting Party's interest under this Agreement upon the termination of this Agreement. Either Party may record such quitclaim deed at any time on or after the termination of this Agreement, without the need for any approval or further act of the non-requesting Party.

12.15 Extensions by City

Upon the request of University, City, acting through the Director of Property, may, by written instrument, extend the time for University's performance of any term, covenant or condition of this Agreement or permit the curing of any default upon such terms and conditions as the Director of Property determines is appropriate, including but not limited to, the time within which University shall agree to such terms or conditions, provided, however, any such extension or grant of permission to cure any particular default will not operate to release University from, nor constitute a waiver of City's rights with respect to any of University's obligations or any other term, covenant or condition of this Agreement or any other default in, or breach of, this Agreement or otherwise effect the time of the essence provisions with respect to the extended date or the other dates for performance under this Agreement. The foregoing shall not limit or alter University's right to assert a Force Majeure delay for any delay caused by City.

12.16 Further Assurances; Technical Corrections

The Parties agree to execute and acknowledge such other and further documents and take such other reasonable actions as may be necessary or reasonably required to effectuate the terms of this Agreement. The Director of Property is authorized to execute on behalf of City any closing or similar documents and any contracts, agreements, memoranda or similar documents with State, regional or local entities or other Persons that are necessary or proper to achieve the purposes and objectives of this Agreement and do not materially increase the obligations of City under this Agreement, if the Director of Property determines, in consultation with City Attorney, that the document is necessary or proper and in City's best interests. The Director of Property's signature of any such document shall conclusively evidence such a determination by him or her. Further, the parties reserve the right, upon mutual agreement of the Director of Property and University, to enter into memoranda of technical corrections to reflect any non-material changes in the actual legal description and square footages of the Research Facility Site and/or the Improvements, and upon full execution thereof, such memoranda shall be deemed to become a part of this Agreement.

12.17 Attorneys' Fees

If any material dispute arises between the Parties concerning the meaning or interpretation of any provision of this Agreement, then the Party not prevailing in such dispute, shall pay any and all costs and expenses incurred by the other Party in enforcing or establishing its rights under this Agreement, including, without limitation, Attorneys' Fees and 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 several from the other provisions of this Agreement and to survive and not be merged into any such judgment.

12.18 Relationship of Parties

The subject of this Agreement is a private development with neither Party acting as the agent of the other Party in any respect. None of the provisions in this Agreement shall be deemed to render City a partner in University's business, or joint venturer or member in any joint enterprise with University.

12.19 Severability

If any provision of this Agreement, or its application to any Person 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 Person 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 grossly inequitable under all of the circumstances, or would frustrate the fundamental purposes of this Agreement.

12.20 Effective Date

This Agreement shall become effective on the date the Parties duly execute and deliver this Agreement following approval by City's Board of Supervisors and the Mayor, in their respective sole and absolute discretion. The Effective Date of this Agreement will be inserted by City on the cover page and on Page 1 of this Agreement; provided, however, no failure by City to do so shall in any way invalidate this Agreement. Where used in this Agreement or in any of its exhibits, references to "the date of this Agreement," the "reference date of this Agreement," "Agreement date" or "Effective Date" will mean the Effective Date determined as set forth above and shown on Page 1 of this Agreement.

13. COOPERATION AND GOOD FAITH

In connection with this Agreement, University and City shall reasonably cooperate with one another to achieve the objectives and purposes of this Agreement. In so doing, University and City shall each refrain from doing anything that would render its performance under this Agreement impossible and each shall do everything that this Agreement contemplates that the Party shall do to accomplish the objectives and purposes of this Agreement. In furtherance, and not in limitation of University's obligations under the terms of this Agreement, University covenants that University shall pursue all actions, obligations, undertakings and agreements for which it is responsible under this Agreement with diligence and in good faith, including without limitation, in connection with all submissions required under Section 5.2 and Section 5.3 and any revisions required thereunder, all obligations to seek Regulatory Approvals and any addenda thereto as set forth in Section 2.10(b), all obligations to seek financing commitments and to obtain the other documents and make the submissions required by Section 7.1, and all obligations to reach the agreements and make submissions as set forth in Section 11.

14. DEFINITIONS

For purposes of this Agreement, the following initially capitalized terms shall have the meanings ascribed to them in this Section:

100% Constructions Documents as described in Section 5.2(a)(iii).

Acceptance Letter as defined in Section 6.1(a).

Affiliate as defined in the Ground Lease.

Agents means, when used with reference to either Party to this Agreement or any other Person, the members, officers, directors, commissioners, boards, employees, agents and contractors of such Party or other Person, and their respective heirs, legal representatives, successors and assigns.

Agreement means this Lease Disposition and Development Agreement, as it may be amended from time to time in accordance with its terms.

Attorneys' Fees and Costs means any and all attorneys' fees, costs, expenses and disbursements (including such fees, costs, expenses and disbursements of attorneys of City's Office of City Attorney and of University's in-house counsel) reasonably incurred, including, but not limited to, expert witness 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 other costs and fees associated with any other legal, administrative or alternative dispute resolution proceeding, including such fees and costs associated with execution upon any judgment or order, and costs on appeal. For purposes of this Agreement, the reasonable fees of attorneys of the Office of City Attorney and any in-house counsel of University shall be based on the fees regularly charged by private attorneys with an equivalent number of years of professional experience in the subject matter area of the law for which City's or University's counsel's services were rendered who practice in the City and County of San Francisco, State of California, in law firms with approximately the same number of attorneys as employed by the Office of City Attorney, or, in the case of University, the number of attorneys employed by University's in-house counsel.

City Caused Title Defect as defined in Section 2.7(d).

City Indemnified Parties means City, including, but not limited to, all of its boards, commissions, departments, agencies and other subdivisions, including, without limitation, all of the Agents of City.

City Staff as defined in Section 5.3(a).

Close Date as defined in Section 2.3(b).

Close of Escrow means the Delivery of the Property by City to University through the Escrow.

Closing Costs as defined in Section 2.3(d).

Closing Statement as defined in Section 2.3(d).

Completion or Completed as defined in Section 6.2(b).

Construct or Construction, means (A) with respect to the Research Facility, all new construction, replacement, rehabilitation, and demolition occurring on the Research Facility Site pursuant to this Agreement and the Ground Lease for the Research Facility, (B) with respect to the ZSFG Campus Improvements, all new construction, replacement, rehabilitation, and demolition occurring on the ZSFG Campus Improvements Site pursuant to this Agreement, the Construction License and the Ground Lease for the ZSFG Campus Improvements, and (C) with respect to the Utility Installation Site, all new construction, replacement, rehabilitation, and demolition occurring on the Utility Installation Site pursuant to this Agreement, the Utility Easement Agreement and the Ground Lease.

Construction Contract as defined in Section 5.5.

Construction License as defined in Section 2.6(b)(i).

Construction Remediation Costs as defined in Section 3.4.

Declaration of Restrictions as defined in Section 2.6(b)(i).

Deferred Items as defined in Section 6.4(b).

Delayed Party as defined in Section 12.1(a).

Delivery or Delivery of the Property means (a) execution and delivery, through Escrow, of the Ground Lease, Construction License and Utility Easement Agreement, and (b) the delivery by City to University of (i) the leasehold estate in the Property under the Ground Lease and (ii) use of the Utility Installation Site and the ZSFG Campus Improvement Site pursuant to the Utility Easement Agreement and the Construction Licenses, respectively.

Design Documents as described in Section 5.2(a).

Design Development Documents as described in Section 5.2(a)(ii).

Disabled Access Laws means all Laws applicable to University related to access for persons with disabilities including, without limitation, the Americans with Disabilities Act, 42 U.S.C.S. Sections 12101 et seq. and with respect to the ZSFG Campus Improvements, disabled access laws under City's building code.

DPW Standards as defined in Section 5.1(f).

Effective Date as defined in Section 12.20.

EIR as defined in Section 5.1(b).

Escrow as defined in Section 2.3(a).

Event of Default as defined in Section 10.

Final Construction Documents as described in Section 5.3(b).

Finally Granted means that the action is final, binding and non-appealable and all applicable statutes of limitation relating to such action, including without limitation with respect to CEQA, shall have expired without the filing or commencement of any judicial or administrative action or proceeding in a court of competent jurisdiction with regard to such action.

Force Majeure means the Force Majeure provisions described in Section 12.1(b).

General Plan Referral Conditions as described in Section 5.1(d).

Ground Lease as defined in Recital E.

Handle when used with reference to Hazardous Materials means to use, generate, process, produce, package, treat, store, emit, discharge, or dispose of any Hazardous Material. "Handling" will have a correlative meaning.

Hazardous Material means any material that, because of its quantity, concentration or physical or chemical characteristics, is deemed by any federal, state or local governmental authority applicable to

University 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 the “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; any asbestos and asbestos containing materials on the Site, any Improvements to be constructed on the Site by or on behalf of University, and petroleum, including crude oil or any fraction, and natural gas or natural gas liquids.

Hazardous Material Claims means any and all, relating to damage, contribution, cost recovery compensation, loss or injury resulting from the presence, release or discharge of any Hazardous Materials, including, without limitation, Losses based in common law. Hazardous Material Claims include, without limitation, Investigation and Remediation costs, fines, natural resource damages, damages for decrease in value of the Site or any Improvements, the loss or restriction of the use or any amenity of the Site or any Improvements, and attorneys’ fees and consultants’ fees and experts’ fees and costs.

Hazardous Material Laws means any present or future federal, state or local Laws or policies relating to Hazardous Material (including, without limitation, its Handling, transportation or Release) or to human health and safety, industrial hygiene or environmental conditions in, on, under or about the Site (including the Improvements) and any other property, including, without limitation, soil, air, air quality, water, water quality and groundwater conditions.

HazMat Termination Notice as defined in Section 3.4.

Improvements means all physical construction on the Research Facility Site, the ZSFG Campus Improvements Site and the Utility Installation Site to be installed or constructed during the LDDA Term.

Indemnified Parties means, individually or collectively, as the case may be, City Indemnified Parties and University Indemnified Parties.

Indemnify means indemnify, protect, defend and hold harmless.

Initial Research Building Scheme as defined in Section 5.1(b).

Investigate or Investigation when used with reference to Hazardous Material means any activity undertaken to determine the nature and extent of Hazardous Material that may be located in, on, or under the Site, any Improvements or any portion of this Agreement or that have been, are being, or threaten to be Released into the environment. Investigation may include, without limitation, preparation of site history reports and sampling and analysis of environmental conditions in, on, or under the Site or any Improvements.

Invitees as defined in the Ground Lease.

IPD as defined in Section 5.1(h).

Joint Work Schedule as defined in Section 5.10.

Law or Laws shall mean (i) with respect to University and University’s duties and/or obligations under this Agreement, all present and future laws, ordinances, rules, regulations, permits, authorizations, orders and requirements, to the extent applicable to University, and (ii) with respect to City and City’s

duties and/or obligations under this Agreement, all present and future laws, ordinances, rules, regulations, permits, authorizations, orders and requirements, to the extent applicable to City.

LDDA Permit to Enter as defined in Section 4.1(a)(i).

LDDA Term as defined in Section 1.4.

Research Facility Site as defined in Recital A.

Litigation Force Majeure as defined in Section 12.1(c).

Loading Dock Easement Agreement as defined in Section 2.6(b)(i).

Loss or Losses means 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 costs and expenses (including, without limitation, Attorneys' Fees and Costs, and consultants' fees and costs) of whatever kind or nature, known or unknown, contingent or otherwise.

Memorandum of Agreement means a memorandum of this Lease Disposition and Development Agreement in the form of Attachment L.

Memorandum of Lease as defined in Section 2.6(b)(i).

Memorandum of Parking Relief Plan as defined in Section 2.2.

Mitigation and Improvement Measures as described in Section 5.1(d).

Mortgage as defined in the Ground Lease.

Mortgagee as defined in the Ground Lease.

Official Records mean, with reference to the recordation of documents, the Official Records of City and County of San Francisco.

Parking Reimbursement Contribution as defined in Section 1.7.

Parking Relief Plan as defined in Section 2.2.

Party means City or University, as a party to this Agreement. "Parties" means both City and University, as parties to this Agreement.

Permitted Title Exceptions as defined in Section 2.7(a).

Person means any individual, partnership, corporation (including, but not limited to, any business trust), limited liability company, joint stock company, trust, unincorporated association, joint venture or any other entity or association, the United States, or a federal, state or political subdivision thereof.

Political Activity as defined in Section 11.10.

Project as defined in Section 1.6.

Project Requirements as defined in Section 5.1(d).

Property as defined in Recital A.

Regulatory Approval means, (i) with respect to University or University's duties and/or obligations under this Agreement, any authorization, approval or permit required by any applicable governmental agency having jurisdiction over University, or applicable with respect to the ZSFG Campus Improvements and just with respect to the Research Facility Building as provided in this LDDA, and (ii) with respect to City or City's duties and/or obligations under this Agreement, any applicable governmental agency having jurisdiction over City.

Release when used with respect to Hazardous Material means any actual or imminent spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into or inside any existing improvements or any Improvements constructed under this Agreement by or on behalf of University, or in, on, or under the Research Facility Site.

Remediate or Remediation when used with reference to Hazardous Materials means any activities undertaken to clean up, remove, contain, treat, stabilize, monitor or otherwise control Hazardous Materials located in, on, or under the Research Facility Site or that have been, are being, or threaten to be Released into the environment.

Remediation Threshold as defined in Section 3.4.

Research Facility Building or Research Facility as defined in Recital B.

SFBC as defined in Section 5.1(c).

Site Permit is a set of drawings for new construction that is considered entirely design development drawings, and do not include structural, mechanical, electrical, plumbing and more detailed information. The primary purpose of a Site Permit is to gain approval of the physical mass of the building as it relates to the site.

Site Permit Process means the process that allows construction to begin with an approved Site Permit and the earthwork and excavation addenda, and then continue to completion following the issuance of addenda covering the remaining aspects and phases of construction not provided for under the initial approved portion of the building permit.

Schematic Drawings as described in Section 5.2(a)(i).

Termination of LDDA as described in Section 6.4(a).

Title Company as defined in Section 2.3(a).

Title Defect as defined in Section 2.7(b).

Title Defect Cure Period as defined in Section 2.7(b).

Transfer as defined in Section 8.1.

University Indemnified Parties means University and its Regents, board members, directors, employees and agents, including, but not limited to, all of its boards, departments, agencies and other subdivisions, including, without limitation, all of the Agents and Invitees of University.

University Work as defined in Section 1.6.

Unmatured Event of Default means any event, act, failure to act, or other occurrence that, with the giving of notice or the passage of time, or both, would constitute an Event of Default under this Agreement.

Utility Easement Agreement as defined in Section 2.6(b)(i).

Utility Installation Site as defined in Recital A.

Work Plan as defined in Section 5.6.

ZSFG as defined in Recital A.

ZSFG Campus Improvements Site as defined in Recital A.

ZSFG Campus Improvements as defined in Recital C.

ZSFG Campus Improvements Completion Notice as defined in Section 6.1(a).

[Remainder of Page Intentionally Blank]

IN WITNESS WHEREOF City and University have caused this Lease Disposition and Development Agreement to be executed by their duly appointed representatives as of the date first above written.

UNIVERSITY:

The Regents of the University of California, a California public corporation

By: _____
Name: _____
Title: _____
Date signed: _____

Approved as to Form for University:

By: _____

University Counsel

CITY:

City and County of San Francisco, a municipal corporation

By: _____
JOHN UPDIKE
Director of Property
Date signed: _____

By: _____
BARBARA A. GARCIA, MPA
Director of Public Health
Date signed: _____

Approved as to Form for City:

DENNIS J. HERRERA, City Attorney

By: _____
Charles Sullivan
Deputy City Attorney

ATTACHMENT A-1

LEGAL DESCRIPTION OF RESEARCH FACILITY SITE

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF SAN FRANCISCO,
COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

ATTACHMENT A-2

SITE PLAN

ATTACHMENT A-3

DEPICTION OF ZSFG CAMPUS IMPROVEMENTS SITE

ATTACHMENT A-4

DEPICTION OF UTILITY INSTALLATION SITE

ATTACHMENT B

PARKING RELIEF PLAN CONSIDERATIONS

The following elements will be considered in connection the parking relief plan.

I. Temporary parking relief strategies during construction on the ZSFG campus.

(i) Limited construction parking. Limited or no parking shall be provided on the ZSFG campus for University's project management team for the Project, and University shall arrange for off-site parking for University's contractors and subcontractors during construction, to the extent required.

(ii) Shuttle Service From Off-Site Parking Lot. Shared shuttle service, free to UCSF staff and City staff who currently have parking permits on the ZSFG Campus, to a remote site, owned by UCSF in Mission Bay. Shuttle service would also provide transportation for the Tenant's contractor crews similar to the shuttle service plan developed by the City during the construction of the new acute care hospital. Space on the shuttle would be first come –first served; and would be at no cost to participants as an incentive to provide an equivalent amount of parking space on campus for use by patients. Details of the shuttle service: frequency of travel, hours of service, duration of service, and other aspects would be contained in the temporary parking relief plan.

(iii) Preservation of a number of existing ADA and patient parking spaces on the B/C parking lot during construction of the proposed new Research Facility. The Parties will develop a plan that preserves an agreed upon number of temporary parking spaces on the B/C lot in a manner that will not impact the construction of either the proposed new Research Facility or the planned construction on the existing (Building 5) main hospital. The plan will incorporate each of the project schedules including coordination of temporary site work construction; designation of mobilization areas for materials and temporary utilities; emergency and fire access to the site; and operational access, by patients and visitors, to the existing (Building 5) main hospital.

II. Alternative process for parking relief in the event that an expansion of the parking garage is not approved and commenced by a to-be-established date to which both Parties agree.

ATTACHMENT C-1

INITIAL RESEARCH BUILDING SCHEME

[Attached]

ATTACHMENT C-2

APPLICABLE CODES AND REQUIREMENTS FOR RESEARCH FACILITY BUILDING

STATUTORY AND JURISDICTIONAL REGULATIONS

A. Perform the Work in accordance with Applicable Code Requirements and applicable requirements of all other regulatory agencies, including, but not limited to, the following:

1. California Code of Regulations, Title 8, Industrial Safety
 2. California Code of Regulations, Title 13, Hazardous Materials Transportation
 3. California Code of Regulations, Title 17, Radiation Safety.
 4. California Code of Regulations, Title 19, Public Safety
 5. California Code of Regulations, Title 20, Public Utilities and Energy.
 6. California Code of Regulations, Title 21, Public Works.
 7. California Code of Regulations, Title 23, Underground Storage Tank Regulations.
 8. California Code of Regulations, Title 24, California Building Standards Code
 - a. Part 1, Administrative Regulations.
 - b. Part 2, California Building Code
 - c. Part 3, the California Electrical Code.
 - d. Part 4, the California Mechanical Code.
 - e. Part 5, the California Plumbing Code.
 - f. Part 6, the California Energy Code.
 - g. Part 8 - California Historical Building Code
 - h. Part 9, the California Fire Code.
 - i. Part 10 - California Existing Building Code
 - j. Part 11 - California Green Building Standards Code (CALGreen)
 - k. Part 12, State Referenced Standards Code.
 9. California Code of Regulations, Title 25, Housing and Community Development.
 10. California Code of Regulations, Title 26, Toxics.
 11. UC Facilities Manual (<http://www.ucop.edu/construction-services/facilities-manual/index.html>)
 12. University Policies (<http://www.ucop.edu/construction-services/facilities-manual/volume-1/vol-1-chapter-5.html#5-1>)
- B. Unless otherwise specified, specific references to codes, regulations, standards, manufacturer's instruction, or requirements of regulatory agencies, when used to specify requirements for materials or design elements, shall mean the latest edition of each, as applicable to University, in effect at the Delivery Date.

ATTACHMENT D-1

APPLICABLE IMPROVEMENT AND MITIGATION MEASURES (CONSTRUCTION)

ATTACHMENT D-2

GENERAL PLAN REFERRAL CONDITIONS (CONSTRUCTION)

ATTACHMENT E

FORM OF TERMINATION OF LEASE DISPOSITION AND DEVELOPMENT AGREEMENT

Recorded at the request of, and
When recorded, mail to:

Real Estate Division
City and County of San Francisco
25 Van Ness Avenue, Suite 400
San Francisco, CA 94102
Attn: Director of Property

TERMINATION OF LEASE DISPOSITION AND DEVELOPMENT AGREEMENT

THIS TERMINATION OF LEASE DISPOSITION AND DEVELOPMENT AGREEMENT is made and entered into as of _____, 20__ by and between the CITY AND COUNTY OF SAN FRANCISCO (“*City*”) and THE REGENTS OF THE UNIVERSITY OF CALIFORNIA, a California public corporation (“*University*”).

RECITALS

A. City and University, entered into a Lease Disposition and Development Agreement dated as of _____, 201__ (the “*Agreement*”), a memorandum of which was recorded on _____, 201__, in the Office of the Recorder of City and County of San Francisco, in Reel _____, of the Official Records, at Image _____, setting forth the terms and conditions under which City and University would enter into a Ground Lease of certain real property situated in City and County of San Francisco, State of California, which property is more particularly described in Attachment A (the “*Property*”), and setting forth certain obligations of University to construct certain improvements (as defined in the Agreement) on the Property and on certain adjacent property.

B. Pursuant to that certain Ground Lease dated _____, 20__ (the “*Ground Lease*”), a memorandum of which was recorded on _____, 20__, in the Office of the Recorder of City and County of San Francisco, in Reel _____, of the Official Records, at Image _____, City conveyed to University (as University thereunder) a leasehold interest in the Property.

C. The construction obligations of University as specified in the Agreement have been fully performed and the ZSFG Campus Improvements, as defined in the Agreement, have been completed in accordance therewith and have been accepted by the City.

D. City and University now desire to evidence the termination of the Agreement.

NOW THEREFORE, the Parties agree as follows:

1. Termination. City and University acknowledge and agree that the Agreement has terminated in accordance with the terms thereof, and the Parties shall have no further rights and obligations to each other under the Agreement, except to the extent the provisions of the Agreement expressly provides that such rights and obligations shall survive the termination thereof

2. Effect of City's Determination. As stated in the Agreement, City's determination regarding the satisfaction of University's construction obligations is not directed to, and thus City assumes no responsibility for, engineering or structural matters or compliance with building codes, regulations, Regulatory Approvals or applicable Laws (each as defined in the Agreement) relating to construction provided in the Agreement.

3. Lease Not Modified. Nothing contained in this instrument shall modify in any way any provisions of the Ground Lease.

IN WITNESS WHEREOF, University and City have duly executed this instrument as of the date written above.

University:

**The Regents of the University of California, a
California public corporation**

By: _____
Name: _____
Title: _____

Approved as to Form for University:

By: _____

University Counsel

City:

**City and County of San Francisco,
a municipal corporation**

By: _____
JOHN UPDIKE
Director of Property

Approved as to Form for City:
DENNIS J. HERRERA, City Attorney

By: _____

Deputy City Attorney

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)
)
County of _____)

On _____ before me, _____,
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)

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)
)
County of _____)

On _____ before me, _____,
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)

ATTACHMENT F

SCHEDULE OF PERFORMANCE

This Schedule of Performance includes Tenant's reasonable estimates of completion dates, as well as Outside Dates for performance (subject to Force Majeure and Litigation Force Majeure extensions). Tenant's estimates may be amended throughout the course of the Project.

The parties acknowledge, agree and understand that the estimated dates may be modified throughout the course of the Project through Tenant's/University's use of Integrated Project Delivery tools and processes.

	Current Estimated Date	Final Outside Date
UCSF Capital Planning Approval	April 2017	April 2018
UCSF Programming Space	April 2017	April 2018
Procure Project Team	May 2017	May 2018
Schematic Design Approvals	June to November 2017	November 2018
Close of Escrow	November 2017	November 2018
The Regents Approval of Construction Contract	January 2018	November 2018
Tenant Enters Into Construction Contract for Research Facility	February 2018	December 2019
Tenant Starts Construction	January 2019	January 2020
Tenant Substantially Completes Research Facility and ZSFG Campus Improvements	February 2021	February 2023

Migration Schedule of current UCSF Staff into Research Facility Building,	February 2022	February 2023

ATTACHMENT G

FORM OF GROUND LEASE

[Attached]

ATTACHMENT H

FORM OF MEMORANDUM OF LEASE

Recorded at the request of, and
When recorded, mail to:

The Regents of the University of California
Office of the President
1111 Franklin Street, Sixth Floor
Oakland, California 94607
Attn: Director of Real Estate

MEMORANDUM OF LEASE

This Memorandum of Lease ("Memorandum"), dated for reference purposes as of _____, 20__, is by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("City"), and THE REGENTS OF THE UNIVERSITY OF CALIFORNIA, a California public corporation ("Tenant").

Recitals

A. Concurrently herewith, City and Tenant have entered into that certain Ground Lease, dated _____, 20__ (the "Lease"), pursuant to which City leased to Tenant and Tenant leased from City the real property more particularly described in the attached Exhibit A (the "Property"), which is incorporated by this reference.

B. City and Tenant desire to execute this Memorandum to provide constructive notice of the Lease to all third parties, and all of the terms and conditions of the Lease are incorporated herein by reference as if they were fully set forth herein and reference is made to the Lease itself for a complete and definitive statement of the rights and obligations of City and Tenant thereunder.

For good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

1. Term. Pursuant to the terms of the Lease, City leased the Property to Tenant for a term commencing on the date City delivers possession of the Property to Tenant as set forth in the Lease. The Term of the Lease shall expire on the date that is seventy-five (75) years after the Commencement Date (as defined in the Lease), subject to Tenant's option to extend the Term for an additional twenty-four (24) years, unless earlier terminated in accordance with the terms of the Lease.

2. Lease Terms. The lease of the Property to Tenant is made pursuant to the Lease, which is incorporated in this Memorandum by reference. This Memorandum shall not be deemed to modify, alter or amend in any way the provisions of the Lease. In the event any conflict exists between the terms of the Lease and this Memorandum, the terms of the Lease shall govern.

3. Successors and Assigns. This Memorandum and the Lease shall bind and inure to the benefit of the parties and their respective heirs, successors, and assigns, subject, however, to the provisions of the Lease.

IN WITNESS WHEREOF, City and Tenant have executed this Memorandum of Lease as of the day and year first above written.

TENANT:

**The Regents of the University of California, a
California public corporation**

By: _____

Name: _____

Title: _____

Date signed: _____

Approved as to Form for Tenant:

By: _____

University Counsel

CITY:

**City and County of San Francisco,
a municipal corporation**

By: _____

JOHN UPDIKE

Director of Property

Date signed: _____

Approved as to Form for City:

DENNIS J. HERRERA, City Attorney

By: _____

Charles Sullivan

Deputy City Attorney

ATTACHMENT I

PERMITTED TITLE EXCEPTIONS

ATTACHMENT J

FORM OF CONSTRUCTION LICENSE

ATTACHMENT K

FORM OF LDDA PERMIT TO ENTER

ATTACHMENT L

FORM OF MEMORANDUM OF AGREEMENT

[Attached]

ATTACHMENT M

FORM OF UTILITY EASEMENT AGREEMENT

[Attached]

ATTACHMENT N

FORM OF LOADING DOCK EASEMENT AGREEMENT

ATTACHMENT O

DESCRIPTION OF WORKFORCE DEVELOPMENT PROGRAM

Local Hiring Program

University has adopted voluntarily construction hiring goals of at least 30% of total construction hours to be performed by qualified San Francisco resident construction tradespersons on certain of its construction projects. University's intent in adopting its voluntary hiring goals is to strengthen the economic opportunities it provides to the community, increase employment opportunities for San Francisco residents and engage local unions in innovative partnerships.

University's Office of Strategic Community and University Relations has general oversight of this voluntary program through the management of University's Community Construction Outreach Program ("CCOP"). The CCOP is charged with ensuring that San Francisco resident workers are made aware of employment opportunities, and are fairly and equitably considered for hire at the time job opportunities become available.

University will apply its voluntary construction hiring goals to the construction of the Project.

University commits to the following over the course of the Project's construction:

- University will make every good faith effort to reach its goal of at least 30% of total construction hours to be performed by qualified San Francisco resident tradespersons.
- University will require the Project's prime contractor and all subcontractors to make a good faith effort to assist University in reaching the 30% voluntary goal.
- University will require the Project's prime contractor to appoint a full-time staff member ("Project Manager") responsible for ensuring that the prime contractor and all subcontractors make every good faith effort to ensure that 30% of the Project's total construction hours are performed by qualified resident tradespeople. The Project Manager will work in partnership with the CCOP Director.
- Specifically, the Project Manager, will:
 - Create a Crew Work Projection plan (representing prime contractor and all subcontractors) for the duration of the Project that identifies local hire opportunities.
 - Identify and coordinate local name-call opportunities, refer qualified local name-call opportunities to the prime contractor and the subcontractors, follow up with the referred local name-call individuals to inquire about their experience.
 - Attend all pre-construction meetings and all regular prime contractor and subcontractor working meetings throughout the course of the Project, as required by University, to review local hiring goals and progress.
 - Ensure that the prime contractor and all subcontractors provide University in a timely manner monthly certified payroll reports via the LCP tracker system.

- Track actual resident hiring statistics on a monthly basis and provide a quarterly report to the CCOP Director documenting the Project's local hire statistics, as well as relevant workforce demographics. The report will also articulate the ways in which the prime contractor and the subcontractors are making a good faith effort to help the Project achieve the 30% voluntary goal.
- University will retain CityBuild Academy, a program of the San Francisco Office of Economic and Workforce Development (OEWD), at an annual cost of \$200,000, to identify and refer qualified San Francisco resident construction tradespersons for the Project during its construction. This will not preclude University or its prime contractor or subcontractors from utilizing their own sources for identifying and hiring qualified resident tradespersons. The retention of CityBuild will commence no later than 90 days prior to the Project's construction start and continue until the University receives a notice of occupancy. University shall notify CityBuild of the Project's construction start date 120 days prior to start of construction. The Office of Strategic Community and University Relations shall manage CityBuild's engagement with University, under the direction of the CCOP Director.
- The CCOP Director and Project Manager will meet monthly with OEWD to review the Project's hiring progress, including a review of total construction hours performed by San Francisco resident workers in the prior month.

It is recognized that over the Term of the Lease, it may be necessary for University to renovate or otherwise execute improvements to the Project. University will apply its voluntary local hiring goal as described in this Attachment, with the City as a partner, to these improvements as follows:

- In years 1-25 of the Lease, when the total cost of a construction project exceeds \$1.5 million.
- In years 26-50, when the total cost of a construction project exceeds \$3.5 million.
- In years 51-75, when the total cost of a construction project exceeds \$6 million.

Further, University recognizes that its ability to realize its voluntary local hiring goal depends, in part, on the availability of qualified resident tradespersons. University further recognizes that the CityBuild Academy Pre-Apprenticeship Training Program provides hands-on training in 26 building trades, as well as employment referral and supportive services. Therefore, University commits to supporting the training of resident tradespeople through two annual contributions to CityBuild Academy, a contribution of \$250,000, to be paid 90 days prior to the Project's construction start, and a second contribution of \$250,000, to be paid 12 months after the first payment is made.

